As filed with the Securities and Exchange Commission on September 1, 2021.

Registration No. 333-

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

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

CUE HEALTH INC.
(Exact name of registrant as specified in its charter)

Delaware	**3826**	**27-1562193**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

4980 Carroll Canyon Rd.
Suite 100
San Diego, CA 92121
(858) 412-8151
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Ayub Khattak
Chief Executive Officer
Cue Health Inc.
4980 Carroll Canyon Rd.
Suite 100
San Diego, CA 92121
(858) 412-8151
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

E. Thom Rumberger Jr. **Glenn R. Pollner** **Molly Fox** **Craig Hilts** **Wilmer Cutler Pickering Hale and Dorr LLP** **2600 El Camino Real, Suite 400** **Palo Alto, CA 94306** **(650) 858 6000**	**Erica Palsis** **General Counsel** **Cue Health Inc.** **4980 Carroll Canyon Rd.** **Suite 100** **San Diego, CA 92121** **(858) 412-8151**	**Charles S. Kim** **Jonie Kondracki** **Kristin VanderPas** **Denny Won** **Cooley LLP** **4401 Eastgate Mall** **San Diego, CA 92121** **(858) 550-6000**

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement is declared effective.

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

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

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered	**Proposed Maximum Aggregate Offering Price(1)**	**Amount of Registration Fee(2)**
Common stock, par value $0.00001 per share	$100,000,000	$10,910

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

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

SUBJECT TO COMPLETION, DATED SEPTEMBER 1, 2021

Shares

Common Stock

This is the initial public offering of shares of common stock of Cue Health Inc.

We are offering shares of our common stock. Prior to this offering, there has been no public market for our common stock. It is currently estimated that the initial public offering price per share will be between $ and $. We have applied to have our common stock listed on the Nasdaq Global Market under the symbol "HLTH."

We are an emerging growth company under the federal securities laws and, as such, have elected to comply with certain reduced public company reporting requirements for this prospectus and future filings. See "Prospectus Summary—Implications of Being an Emerging Growth Company."

Investing in our common stock involves a high degree of risk. See the section titled "Risk Factors" beginning on page 25.

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

(1) See the section titled "Underwriting" for additional disclosure regarding the estimated underwriting discounts and commissions and estimated offering expenses.

We have granted the underwriters the right to purchase up to an additional shares of common stock from us at the public offering price less underwriting discounts and commissions.

The underwriters expect to deliver the shares against payment in New York, New York on or about , 2021.

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

Joint Book-Running Managers

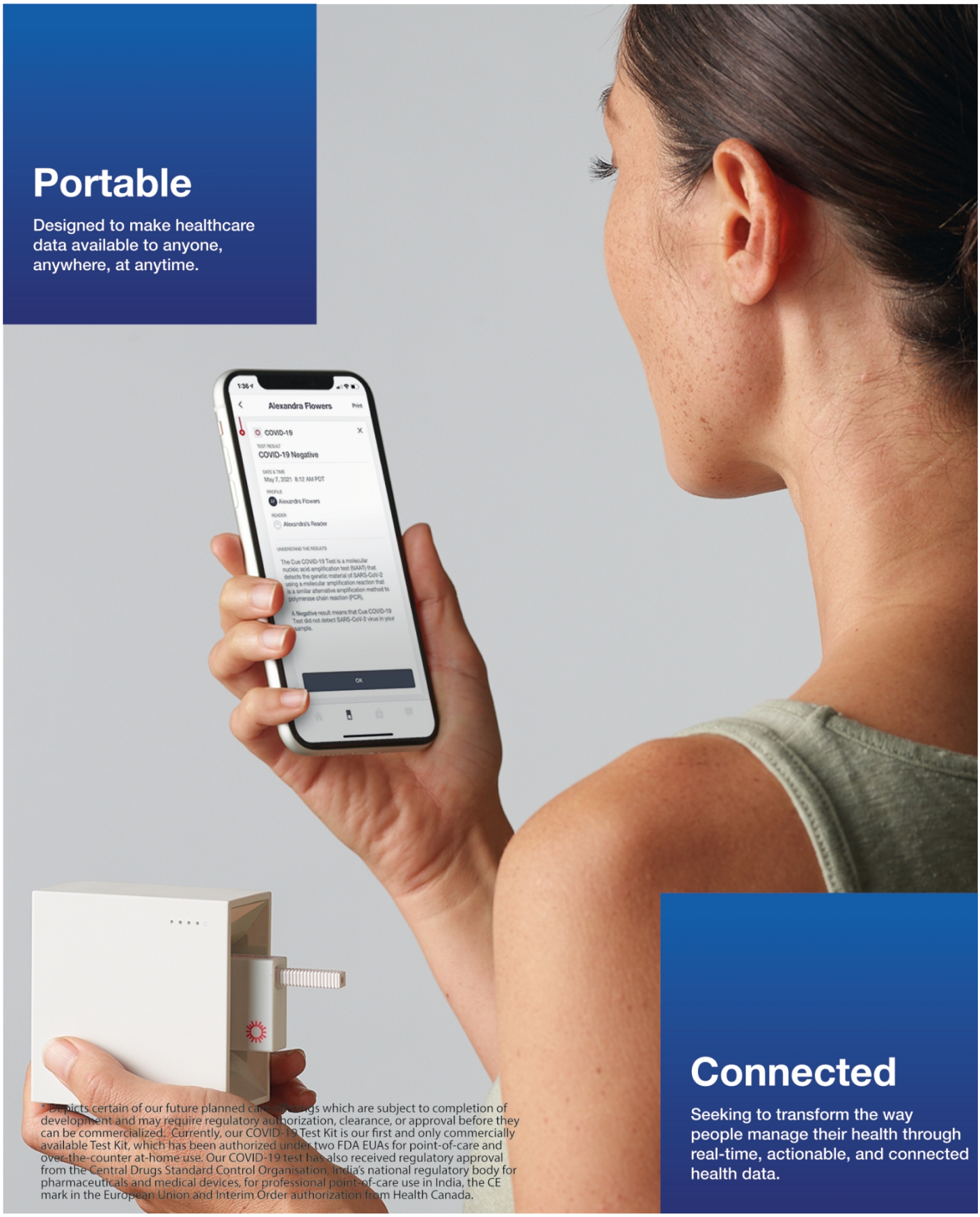
Goldman Sachs & Co. LLC **Morgan Stanley** **Cowen**

Lead Manager

BTIG

, 2021

Our mission is to enable **personalized, proactive,** and **informed healthcare** that empowers people to live their healthiest lives.



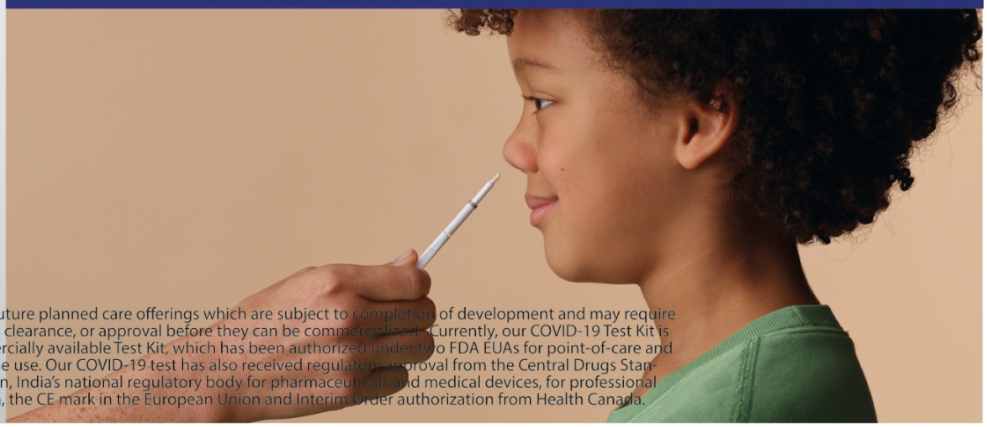
* Depicts certain of our future planned care offerings which are subject to completion of development and may require regulatory authorization, clearance, or approval before they can be commercialized. Currently, our COVID-19 Test Kit is our first and only commercially available Test Kit, which has been authorized under two FDA EUAs for point-of-care and over-the-counter at-home use. Our COVID-19 test has also received regulatory approval from the Central Drugs Standard Control Organisation, India's national regulatory body for pharmaceuticals and medical devices, for professional point-of-care use in India, the CE mark in the European Union and Interim Order authorization from Health Canada.

Fast & Accurate

Lab-quality diagnostics anywhere in minutes to make faster and more informed healthcare decisions.

Intuitive

Designed to deliver a superior user experience in any setting; one that is fully guided, easy to use, and puts the consumer in control of their health data.



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We are helping **pioneer a healthcare digital transformation, beginning with diagnostics.**

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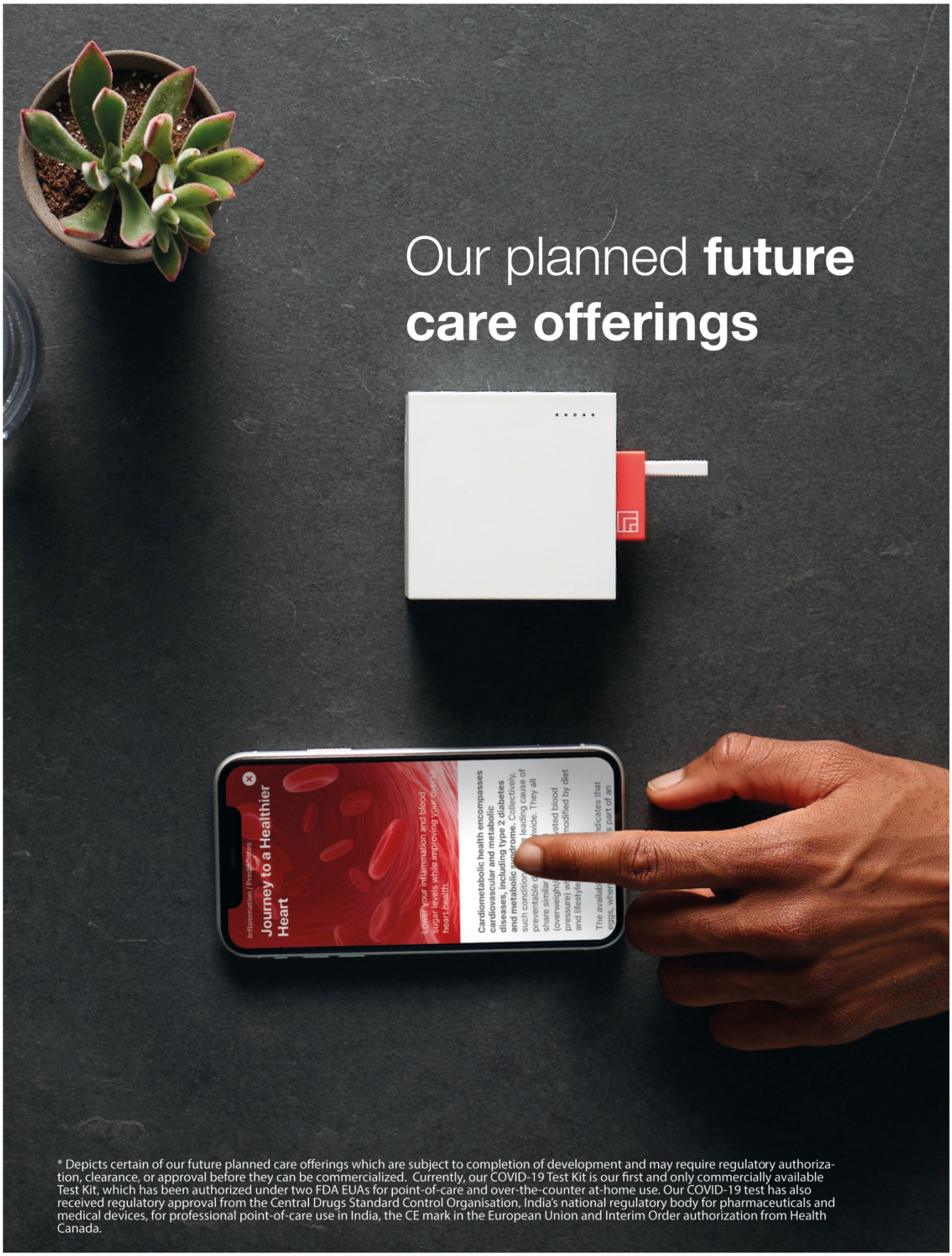

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Neither we nor the underwriters have authorized anyone to provide you with any information other than that contained in this prospectus, any amendment or supplement to this prospectus or in any free writing prospectus we may authorize to be delivered or made available to you. We and the underwriters take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of shares of our common stock. Our business, financial condition, results of operations and prospects may have changed since that date.

No action is being taken in any jurisdiction outside the United States to permit a public offering of our common stock or possession or distribution of this prospectus in that jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about and to observe any restrictions as to this offering and the distribution of this prospectus applicable to that jurisdiction.

Until , 2021 (the 25th day after the date of this prospectus), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligations to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus and does not contain all of the information that you should consider in making your investment decision. Before investing in our common stock, you should carefully read this entire prospectus, including our financial statements and the related notes thereto and the information set forth in the sections titled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." In this prospectus, unless otherwise indicated or the context otherwise requires, references to "Cue," "Cue Health," "we," "us," "our" and similar references refer to Cue Health Inc. and, as the context requires, our predecessor entity, Ruubix, that changed its name to Cue Inc. in 2014 and subsequently merged with Cue Health Inc. in 2017.

Overview

Reinventing How We Interact with Our Health

We are a health technology company, and our mission is to enable personalized, proactive and informed healthcare that empowers people to live their healthiest lives. Digital transformation has revolutionized nearly every industry except healthcare to create new, consumer-first experiences that are both personalized and empowering. We seek to usher in a new era in healthcare, what we call Healthcare 2.0, to transform how acute and chronic conditions are diagnosed and managed.

We believe the current healthcare system is challenged. Care delivery can often be uncontextualized and disconnected in an increasingly personalized and connected world. The vast majority of healthcare delivery still relies on in-person encounters at centralized locations while consumers and caregivers may often be forced to make important health decisions without complete or real-time information. The first step in many healthcare journeys is often diagnosis, a critical part of the healthcare value chain. Despite being a key basis for care decisions, we believe current diagnostic solutions are suboptimal because they are not timely, convenient, or connected to care delivery. The COVID-19 pandemic exposed the shortcomings of our healthcare system and of diagnostics in particular. A centralized and rigid testing infrastructure, the reliance on in-person encounters, and the lack of timely information illustrate how current diagnostic solutions are not built for modern care delivery to hundreds of millions of people. We believe consumers want the same tech-enabled convenient, connected, and customized experiences that have transformed their daily lives to transform their care journeys.

We are now witnessing what we believe is the beginning of a transformational shift as consumers take control of their own health. In industry after industry, disruptors are using technology to transform the consumer experience. From the way we consume content to the way we travel, we believe consumers and organizations are increasingly looking for a simple, convenient and digital first approach. We further believe that healthcare is finally ripe for a digital transformation and that it will begin with diagnostics, since approximately 70% of all clinical decisions are made utilizing diagnostic data.

We are helping pioneer this healthcare digital transformation, beginning with diagnostics. We started from consumer-centric principles and designed our proprietary platform, the Cue Integrated Care Platform, with a relentless focus on user experience, convenience, and accuracy. The Cue Integrated Care Platform consists of hardware and software components: (1) our revolutionary Cue Health Monitoring System, made up of a portable, durable and reusable reader, or Cue Reader, a single-use test cartridge, or Cue Cartridge, and a sample collection wand, or Cue Wand, (2) our Cue Data and Innovation Layer, with cloud-based data and analytics capability, (3) our Cue Virtual Care Delivery Apps, including our consumer-friendly Cue Health App and our Cue Enterprise Dashboard, and (4) our Cue Ecosystem Integrations and Apps, which allow for integrations with third-party applications and sensors.

Our platform has been designed to work seamlessly to deliver and manage health data both within the healthcare system and within the home. Through our application programming interfaces, or APIs, our platform has been engineered so that it can be directly integrated into existing workflows and on-demand services, such as telemedicine, e-prescription services, and electronic medical record, or EMR, systems. For example, we implemented an integration with one of the U.S.'s leading EMR systems on behalf of one of our customers, a leading healthcare system, to enable a seamless workflow from test ordering to test result, with our mobile app and the Cue Health Monitoring System. But beyond designing our platform to be able to integrate within the traditional healthcare system, we have built our platform to enable fast, frequent, lab-quality diagnostics by anyone, anywhere, intended to facilitate a new continuous care model of personalized and contextualized healthcare. Our first commercially available diagnostic test for use with our Cue Health Monitoring System, our COVID-19 Test Kit, which has been

authorized by two Emergency Use Authorizations, or EUAs, from the U.S. Food & Drug Administration, or the FDA, for point-of-care and over-the-counter and at-home use, is an example of this. Users can run a COVID-19 test anywhere using the Cue Reader and a COVID-19 Test Kit, and have lab-quality test results delivered digitally to the user's mobile device in about 20 minutes. While our COVID-19 Test Kit is our only commercially available Test Kit and our future tests remain subject to technical development, clinical studies and regulatory authorization, clearance or approval, we have five additional Test Kits in late-stage technical development (influenza A/B, or flu, respiratory syncytial virus, or RSV, fertility, pregnancy and inflammation) for which we expect to begin submitting for FDA authorization or clearance in the second half of 2022. Based on the working prototypes we have developed for technical development, as well as other Test Kits we currently have in development, and the clinical and other development work we have performed to date with respect to our Test Kits in development, we expect that all of our Test Kits currently in development will work within our Cue Health Monitoring System in a manner similar to our COVID-19 Test Kit and will be able to be utilized with our Cue Health App and the Cue Enterprise Dashboard and be capable of being integrated with existing workflows, including EMRs, and with other planned on-demand services. We believe our model, driven by our platform, will empower our users to actively manage their health, which we believe will result in improved health outcomes and a more resilient, connected, and efficient healthcare ecosystem for all. We further believe that our platform positions us to be at the center of the broader healthcare ecosystem as it continues to undergo a massive virtual and digital shift. Through our connected diagnostic solution, we seek to enable the shift of care to virtual settings, while also connecting the physical care paradigm to the new digital ecosystem.

As the COVID-19 pandemic was closing the global economy and filling hospitals in the first quarter of 2020, we rapidly focused our team on developing a COVID-19 Test Kit and did so in a matter of a few months, building on a decade of research and development on our adaptive and flexible system. Our COVID-19 test (consisting of our Cue Reader and COVID-19 Test Kit) has been validated via an independent clinical study conducted by researchers at the Mayo Clinic that demonstrated our COVID-19 test has 97.8% concordance with tests performed by central labs using reverse transcription polymerase chain reaction, or RT-PCR technology, the current "gold standard" for central lab testing. Our platform has been designed to uniquely offer fast results and ease-of-use combined with the high-quality results of central lab technology, all in a device that fits in the palm of your hand.

Our first commercially available diagnostic test for use with our Cue Health Monitoring System is our COVID-19 Test Kit for ribonucleic acid, or RNA, of SARS-CoV-2, the virus that causes COVID-19. In June 2020, the FDA granted an EUA for our molecular COVID-19 test for point-of-care use under the supervision of qualified medical personnel. In March 2021, the FDA granted us an additional EUA for over-the-counter and at-home use of our COVID-19 test without a prescription. Our COVID-19 test is authorized for use by both symptomatic and asymptomatic individuals, and by adults and children aged two and older with adult assistance. While commercial sales of our COVID-19 Test Kit are authorized pursuant to our two EUAs, we cannot predict how long our EUAs will remain in effect and, to date, we have not obtained any clearances under Section 510(k) of the Federal Food, Drug and Cosmetic Act of 1938, as amended, or 510(k), for our COVID-19 Test Kit, which such clearance would be required to sell our COVID-19 Test Kit in the event that the FDA terminates or revokes our EUAs. In order to be eligible to receive 510(k) clearance from the FDA, we will need to conduct additional clinical studies with larger subject enrollment and more COVID-19 positive tests. We are moving forward on the additional steps we believe are required to enable us to seek 510(k) clearance, and intend to seek 510(k) clearance as soon as feasible once we have completed these steps. See "Business—Our First Product Offering—Cue COVID-19 Test Kit—Regulatory Status of the Cue COVID-19 Test Kit" for additional information regarding what is required for the regulatory clearance process for our COVID-19 Test Kit.

While our Cue COVID-19 Test Kit is our first, and currently only, commercially available test, our vision was always to build a broad platform that would reinvent how we interact with our health. Since our early days, we developed our platform to be able to address the majority of diagnostic tests routinely conducted in clinical laboratories because we believe that users will not only demand a simple, personalized, convenient and connected solution but also a single platform to address their healthcare needs. We are developing solutions to broaden the diagnostic use cases for our platform, such as our five tests we consider to be in late-stage technical development. Our additional planned care offerings include tests in the categories of respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management. We are also working to expand

the functionality of our platform by adding capabilities which will enable telehealth, e-prescription and the ability to connect to third-party services to facilitate an end-to-end healthcare journey. Our focus is on creating experiences with the user at the center, enabling high satisfaction, measurable health outcomes, and more cost-effective care for the entire ecosystem.

We believe the power of our platform has been demonstrated by our substantial growth, the quality of our customers, the clinical validation of our COVID-19 Test Kit, and the several regulatory authorizations we have received for our COVID-19 Test Kit, including being the first company ever to have a product authorized by the FDA for molecular-based infectious disease testing available over-the-counter for home use. Our platform was trusted by the National Basketball Association, or NBA, to help it perform COVID-19 testing in its highly publicized "Bubble" in the 2020 basketball season. Our products are used by the Mayo Clinic in their hospital network and in their laboratories. In October 2020, we entered into a $480.9 million agreement or the U.S. DoD agreement, with the U.S. Department of Defense, or U.S. DoD, and the U.S. Department of Health and Human Services, or U.S. HHS, to scale up our production and deliver 6,000,000 COVID-19 Test Kits and 30,000 Cue Readers. Our customers also include certain major technology and other enterprises who are providing our solution to their employees for use in their homes as part of return to work initiatives and ongoing employee health benefits. Today our platform is relied upon every day for vital COVID-19 testing across schools, enterprises, nursing homes, hospitals, physicians' offices, dental clinics, sports and other live event venues, federal and state agencies, and other settings around the country as well as by individual end-users testing in their homes. As of August 31, 2021, we had 49 active customers, which includes our largest customer by product volume to date, the U.S. DoD. We define an active customer as an entity that has entered into an agreement with us to purchase the Cue Health Monitoring System or Test Kits in the past 12 months.

Prior to March 31, 2021, we were required, pursuant to the U.S. DoD agreement, to deliver to the U.S. government all of our manufacturing output of COVID-19 Test Kits, subject to limited exceptions. The U.S. DoD agreement initially contemplated a ramp-up in our production to 100,000 COVID-19 Test Kits per day for a seven-day period and final delivery of the required Cue Readers and Cue COVID-19 Test Kits by March 31, 2021. However, in March 2021, the production ramp up target and final product delivery dates were extended by mutual agreement to October 12, 2021. In April 2021, the U.S. DoD granted us a waiver whereby, effective May 1, 2021, we are permitted to sell up to 50% of our manufacturing output of COVID-19 Test Kits to additional customers. Notwithstanding the waiver granted to us by the U.S. DoD, we are still required under the U.S. DoD agreement to deliver 30,000 Cue Readers, 6,000,000 COVID-19 Test Kits and 60,000 COVID-19 Control Swab Packs by October 2021. As of August 31, 2021, we have delivered all of the required Cue Readers and over three and a half million Cue COVID-19 Test Kits pursuant to the U.S. DoD agreement. We are further required to ramp up our production capacity to approximately 100,000 Cue COVID-19 Test Kits per day for a seven-day period by October 12, 2021. As of August 31, 2021, our daily manufacturing capacity was on average over 43,000 COVID-19 Test Kits per day over a seven-day period, with a single day peak of nearly 60,000 COVID-19 Test Kits. We believe that the receipt of our waiver from the U.S. DoD will allow us to more widely commercialize our COVID-19 Test Kit. Since we received the waiver from the U.S. DoD and our second FDA EUA for over-the-counter and at-home testing for our COVID-19 Test Kit, we have been able to add several new enterprise customers and extend our business with existing customers. For example, we have added certain major technology and other enterprises as customers who are providing our solution to their employees for use in their homes as part of return to work initiatives and ongoing employee health benefits. In addition, for the 2021 NBA basketball season, we have been able to extend our relationship with the NBA to provide our testing solution for use by players, their families and referees, at home and on the road.

We believe our platform will allow us to develop and commercialize new tests quickly and scale rapidly, driven by our flexible technology and our in-house, vertically-integrated and automated manufacturing facilities. Our platform has the potential to perform a variety of different tests by accommodating different sample types, including saliva, blood, urine and swabs, and detecting nucleic acids, small molecules, proteins or cells. Because we developed our manufacturing facilities and processes in tandem with our technology, we were able to scale our production to produce a rate of millions of Test Kits per year using fully automated production pods. A production pod is a free standing, modular environmentally-controlled structure containing an automated test cartridge production line. Additionally, we produce our critical biochemistry in-house, including enzymes, antibodies and primers for our Cue Cartridges. As of August 15, 2021, we were manufacturing Cue Cartridges at a rate equivalent to over 15 million per year and we anticipate growing our manufacturing capacity to a rate equivalent to tens of millions of Cue Cartridges per year by the end of 2021.

We first began generating revenue from product sales in August 2020 following the receipt of our first EUA from the FDA for our COVID-19 test in June 2020. We generated approximately $201.9 million of revenue in the six months ended June 30, 2021, all of which was from product sales. Of that amount, $167.1 million, or approximately 83%, of our product revenue was from public sector entities, substantially all of which was from the U.S. DoD, with the remaining $34.8 million of product revenue generated from other customers (of which a single enterprise customer accounted for $28.9 million). We generated $23.0 million of revenue for the year ended December 31, 2020, of which approximately $15.4 million was from product sales. Of this amount, $8.9 million of product revenue was from public sector entities, substantially all of which was from the U.S. DoD, and the remaining $6.5 million of product revenue was generated from other customers. The U.S. DoD and Henry Schein accounted for approximately 80% of our product revenue in 2020. In 2019, we generated $6.6 million of revenue, none of which was from product sales. After the conclusion of the initial U.S. DoD agreement, we anticipate that the percentage of our revenue derived from non-public sector customers will increase as we continue to ramp up our manufacturing and distribution capabilities and are able to sell more of our products to other customers, including enterprises and healthcare providers. For the six months ended June 30, 2021, our net income was $32.8 million. In 2020 and 2019, we incurred net losses of $47.4 million and $20.6 million, respectively.

Healthcare 1.0

We believe the current healthcare system suffers from centralization, and is disconnected, analog and access-limited. We call the current system Healthcare 1.0. Globally, healthcare has become increasingly complex and we believe continues to suffer from significant fragmentation of care, while costs have continued to expand faster than the growth of the economy. Rising healthcare costs have not necessarily resulted in improved outcomes, as exemplified through the increasing prevalence of chronic conditions in the United States despite the country's approximately $4.0 trillion annual spend, the highest per capita healthcare spend in the world.

Key characteristics of Healthcare 1.0 include:

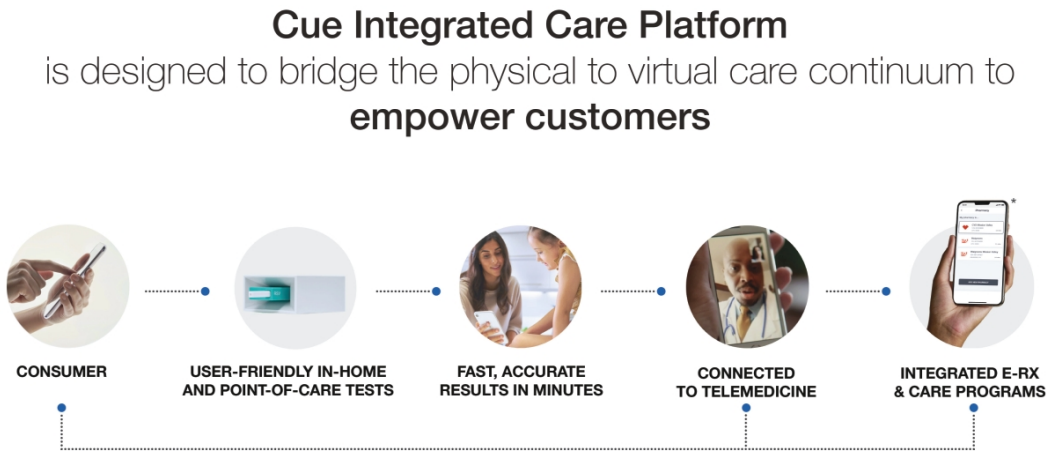
- **Centralized Care Limits Access:** We believe healthcare that is delivered through centralized, physical locations limits access due to the inconvenience and time-consuming nature of visiting hospitals, doctors' offices, and urgent care clinics.
- **The Centralized Diagnostic Testing Framework is Challenged**: In the United States today, there are hundreds of thousands of diagnostic access points to serve hundreds of millions of people. The lack of real-time, convenient, and readily accessible diagnostic solutions is a direct result of the legacy central lab testing model.

- **Legacy Infrastructure Is Not Built for Virtual Care**: The current centralized diagnostic and care infrastructure is even less well suited for the growing virtual care delivery model. For care to truly be virtual, we believe patients need the ability to obtain a diagnostic result from anywhere and at any time, rather than from a central laboratory with high latency.
- **Lack of Capabilities to Identify Health Threats**: We believe the disconnected and high-latency diagnostic system is not able to deliver the information that public health agencies and other healthcare providers need to identify, mitigate and monitor outbreaks of highly contagious diseases, such as COVID-19 or influenza.

  Further, Healthcare 1.0 does not meet the evolving needs of healthcare consumers who we believe are demanding:

  - control over how they manage their acute and chronic conditions as well as their overall health;
  - access to actionable clinical insights;
  - affordable and transparent pricing; and
  - customer-centric user experiences that connect the entire care journey.

Healthcare 2.0



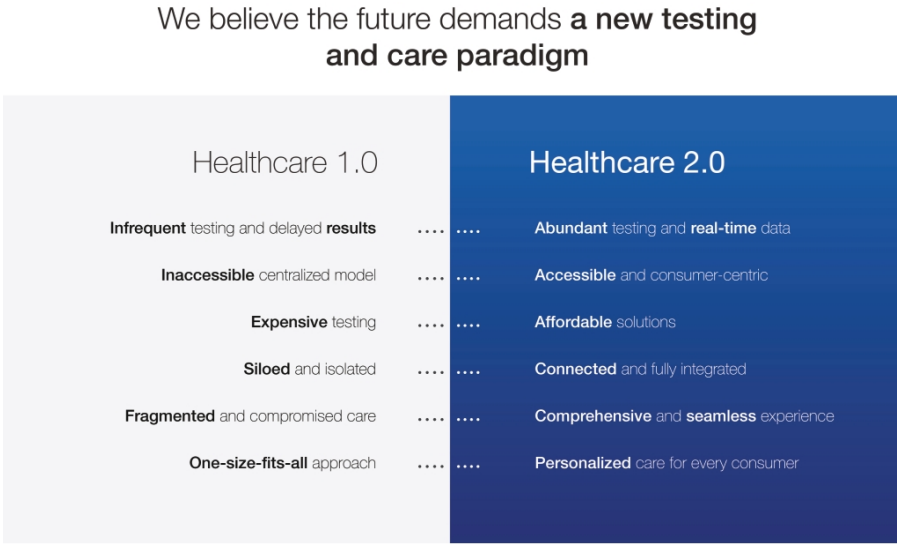
* Depicts future product developments.

Digital transformation has revolutionized nearly every industry, except for healthcare, to create new, consumer-first experiences that are both personalized and empowering. We believe a new era in healthcare is beginning, Healthcare 2.0. We envision that Healthcare 2.0 will be a connected and distributed care ecosystem with seamless coordination across the physical and virtual care continuums and we believe that abundant and timely testing and real-time data will be at the center of personalized and informed care. As diagnostics-led care moves away from centralized, geographically defined settings and toward distributed, virtual modalities, we believe a connected diagnostics platform is needed to bring testing to the user, when and where they need it most.

We believe the healthcare paradigm is shifting and that we are well positioned to be at its center.

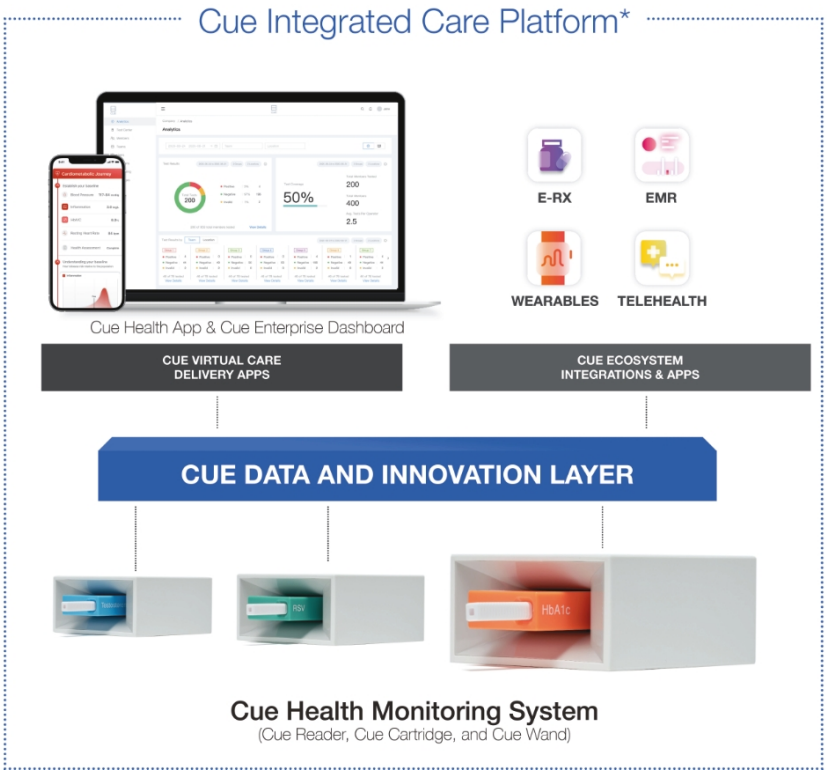
- **Healthcare is Shifting to Consumer-Focused Care and Delivery**: Across multiple industries, new disruptors have used technology to transform the consumer experience. We believe a paradigm shift is occurring in healthcare as consumers are both increasingly informed and focused on the user experience. We believe this shift will become one of the most important factors that shapes the next decade of healthcare.
- **Diagnostics is at the Center of Healthcare 2.0**: We believe diagnostic data is the key to unlocking the full potential of personalized and virtually delivered care. Without an at-home testing solution, we believe telehealth solutions will still be burdened by long turnaround times, and require individuals to visit, or mail samples to, centralized testing laboratories.

- **We are well positioned to be at the Center of Healthcare 2.0**: We believe we have the potential to become the new standard of care in diagnostics, with the ability to bridge the physical to virtual care continuum and benefit everyone by keeping people healthy and productive. Just as monitoring combined with data-driven insights helps people with chronic conditions live healthier lives, we believe our platform will transform the way people manage their health through real-time, actionable and connected health data.



Our Solution – The Cue Integrated Care Platform

Our Cue Integrated Care Platform is designed to harness the power of the cloud and provide consumers and enterprises with real-time access to their data and the broader healthcare ecosystem as part of our planned end-to-end solution.



* Depicts future product developments.

Development of the Cue Integrated Care Platform is guided by our focus on the user, whether that be a clinician in a provider office or an individual at home, with a simple goal of enabling individuals and clinicians to have reliable information at their fingertips to make faster and more informed healthcare decisions. We believe we will be able to transform disease prevention and detection globally by making important healthcare data available to anyone, anywhere, at any time. Our system is designed to put consumers in control of their information and place diagnostic information at the center of care, where it belongs.

For consumers, we expect our platform will eliminate the friction of taking a test and communicating the results to providers. We believe increasing consumer testing at home will lead to better outcomes. By making our platform widely available to consumers over-the-counter for use anywhere and at any time, we aim to redefine the care workflow such that over time we believe our platform will become the standard of care.

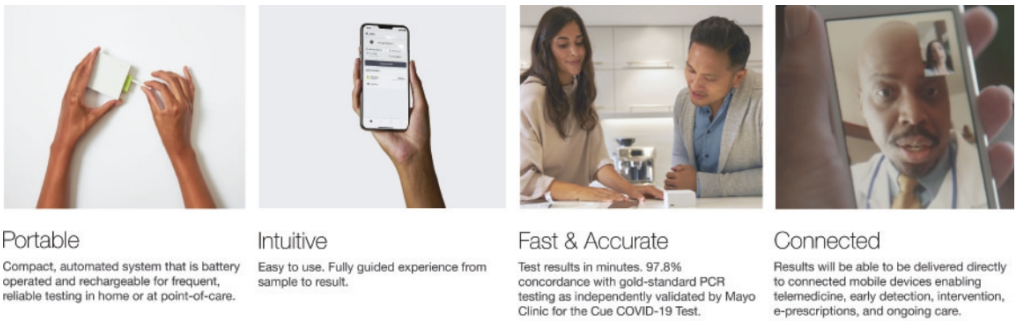
Cue Reader | Cue Cartridge | Cue Wand | Cue Health App | Cue Enterprise Dashboard

Cue Health Monitoring System

Our Cue Health Monitoring System is designed to deliver a broad menu of tests through one system, enabling two major testing modalities, nucleic acid amplification tests, or NAAT, and immunoassays, in one device. Our system is designed to handle different sample types, including saliva, blood, urine and swabs, and can detect nucleic acids, small molecules, proteins and cells. We believe this flexible design will enable us to address many of the diagnostic tests conducted in clinical laboratories, such as tests addressing indications in respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management.

Our Cue Health Monitoring System is comprised of the following elements:

- *Cue Reader:* The Cue Reader is an elegantly designed, automated analyzer of test results and is used with Cue Test Kits and the Cue Health App. The Cue Reader runs the Cue Cartridge and communicates the result of the test digitally via Bluetooth to the Cue Health App.
- *Cue Test Kit:* Each Cue Test Kit is comprised of a Cue Cartridge and a Cue Wand.
  - *Cue Cartridge:* Our sample-specific, single-use cartridges are designed to handle different chemistries, which allows us to create a broad menu of tests. Cue Cartridges are designed to be seamlessly inserted into the Cue Reader.
  - *Cue Wand:* Cue Wands are single-use and sterile sample collection devices that are designed to be universally compatible with the Cue Cartridges. The Cue Wand is designed to permit collection of multiple sample types, including saliva, blood, urine and swabs, with only minor modifications.



Cue Data and Innovation Layer

Our cloud-native Cue Data and Innovation Layer stores and curates the data from our Cue Health Monitoring System and provides a secure environment for users to access current and historical health data. Our Data and Innovation Layer has the ability to collate unstructured and structured data from a wide variety of data sources, which we believe will give us the ability in the future to store and analyze more holistic sets of health data, including from other testing modalities and wearables. The Cue Integrated Care Platform was built with data security and regulatory compliance, including the Health Insurance Portability and Accountability Act of 1996, or HIPAA, at its core.

The Cue Data and Innovation Layer provides the foundation for our Cue Virtual Care Delivery Apps and has enabled the development of our Cue Ecosystem Integrations and Apps. The Cue Data and Innovation Layer currently contains an API that allows for the data from tests performed on the Cue Health Monitoring System to be received, stored, and retrieved by the end user. For enterprises deploying the Cue Enterprise Dashboard, the Cue Data and Innovation Layer enables the creation of a network of users affiliated by roles with the enterprise. Within this network of users, the Cue Data and Innovation Layer provides the engine behind test analytics, creation of groups, scheduling and compliance, reporting, and enterprise-specific privacy policy management. The Cue Data and Innovation Layer powers integration with EMR providers.

Cue Virtual Care Delivery Apps

- *Cue Health App:* Our mobile app creates a secure interface between the user and their health data. For consumers, it allows a single point of entry for their health data; for healthcare professionals, it is designed to provide a unified platform for managing patient histories and, in the future, is expected to allow for

telemedicine and e-prescription services. By connecting the diagnostic test results with interventions and outcomes, we believe the Cue Health App will allow users to be more engaged and satisfied with their healthcare experience, which can ultimately drive better outcomes for users. To run a Test Kit on the Cue Reader, a user will need to download and utilize the Cue Health App. As of August 31, 2021, through our 49 active customers, over 45,000 unique accounts have used the Cue Health App to run our COVID-19 Test Kit. These unique accounts include both organizations and individuals who may take tests episodically, healthcare providers running a large number of tests for multiple patients, and enterprises running a large number of tests for their entire organization, as established by the customer on a customer-by-customer basis.

- *Cue Enterprise Dashboard:* Our dashboard is designed to allow enterprises, payors, healthcare providers and public health entities to manage population health at the organizational level and has the potential to track the efficacy of various population health programs. Accessible online, the Cue Enterprise Dashboard has the potential to help organizations manage a patient's journey from onboarding to scheduling, care management and inventory management. The Cue Enterprise Dashboard was built with a focus on user experience, simplifying the sharing of communications, such as results, records, and histories with patients and across providers and streamlining reporting requirements. Powered by our analytics engine and role-based access capabilities, it is designed to provide chief medical officers, environmental health and safety officials, and benefits managers with insight into their organization's population health, helping to facilitate efficient decision making. As of August 31, 2021, we had 60 active public sector, enterprise and provider accounts on the Cue Enterprise Dashboard. An account on the Cue Enterprise Dashboard is considered to be active if the customer has signed into their account and utilized the programs within the last six months. A customer may have more than one active account on the Cue Enterprise Dashboard.

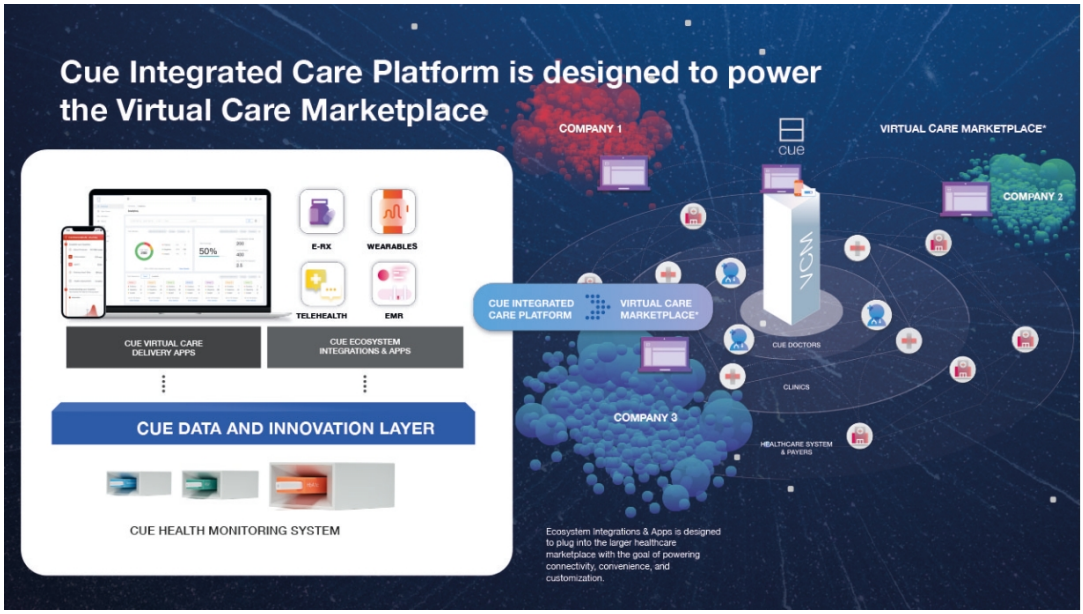
Cue Ecosystem Integrations and Apps

We believe that placing our APIs at the core of our integrated care platform will enable us to become foundational within Healthcare 2.0. Our Cue Data and Innovation Layer is designed to be able to securely connect with on-demand services, such as telemedicine and e-prescription services, which we believe will enable a truly digital and seamless user experience. In the future, we plan on enhancing our platform to enable third-party application development and offerings that complement our solutions.

In addition, our ability to integrate with anchor EMR systems, such as Epic Systems Corporation, or Epic, allows our customers to integrate our platform with their existing systems, creating an agile and responsive workflow for patient monitoring for ongoing care, better intelligence and reporting, and more efficient provider-level health management.

The Cue Virtual Care Marketplace

Our current customers can be categorized as both care consumers, including enterprises and the employees that comprise them, and care providers, including doctor's offices, healthcare systems and urgent care clinics. We believe that as both care consumers and care providers take advantage of our Cue Integrated Care Platform to better diagnose and manage health, our networked Virtual Care Delivery Apps will allow us to create a marketplace where virtual care takes place, centered around objective clinical diagnostic information. We believe that the Cue Integrated Care Platform will help improve access to care while driving down healthcare costs and improving outcomes. In turn, we anticipate payors will begin to reimburse for our tests and other products offered under our Cue Integrated Care Platform. We believe that all of these dynamics will help create what we call the Cue Virtual Care Marketplace.



* Depicts future product developments.

Our Key Differentiators

We believe the following attributes differentiate us from other diagnostic solutions and digital health companies:

- ***Consumer-centric.*** The Cue Integrated Care Platform is intended to revolutionize the way individuals and healthcare providers access diagnostic testing at home, at work, or at the point-of-care. Our Cue Integrated Care Platform is designed to deliver a superior user experience in any setting, one that is fully-guided, fast, accurate, and easy to use and that puts the consumer in control of their health data.
- ***Lab-quality diagnostics anywhere in minutes.*** Combining the sophistication and accuracy of complex molecular testing systems with the simplicity, convenience and speed of a consumer electronic device, our Cue Health Monitoring System has been developed to deliver highly specific and sensitive results within minutes.
- ***Extensible platform approach.*** We designed our technology, platform and infrastructure to be versatile in accommodating a wide range of tests by addressing both main analytical modalities used in diagnostic testing, immunoassays and NAAT. We believe our flexible platform will permit our planned future menu of tests to cover a large portion of diagnostic solutions typically offered by a traditional lab.
- ***Vertically-integrated, automated and scalable production infrastructure.*** Our proprietary technology was designed to allow us to optimize our system across the full product life cycle from design to manufacturing. Our integrated cartridge manufacturing and bio-production, including enzymes and chemistry, ensure the quality of our finished product.
- ***Scaled and growing installed base.*** We have shipped over 115,000 Cue Readers across the United States as of August 31, 2021, including Cue Readers placed through our agreement with the U.S. DoD and through our other customer agreements, resulting in a broad and active installed base, diversified across industries, locations and end-markets such as schools, essential businesses, nursing homes, hospitals, physicians' offices, dental clinics, sports and other live event venues, and other settings around the country.

Our Market Opportunity

We believe that there is substantial market opportunity for a consumer-oriented care platform that sits at the nexus of healthcare and technology. We estimate that global healthcare expenditures in 2021 will reach $8.8 trillion. We estimate that the total addressable markets, or TAM, for digital health and diagnostics were approximately $120 billion and $85 billion, respectively, in 2020. Of the estimated $85 billion diagnostics market, we estimate that

at-home and point-of-care testing solutions accounted for approximately $30 billion, of which, according to our internal estimates, approximately $20 billion was attributable to point-of-care testing solutions while approximately $10 billion was attributable to at-home testing solutions. We further estimate that the TAM for point-of-care diagnostics will grow to up to $51 billion by 2025. In 2021, we estimate the COVID-19 point-of-care diagnostic market alone to be approximately $12 billion. We believe that the digital health and diagnostics markets that we are targeting are not only capable of being quickly disrupted by our Cue Integrated Care Platform, but that our TAM will continue to expand as individuals increasingly seek convenience and accessibility in their healthcare services, as awareness of our brand and platform offering grows, and as we build out our planned integrated service offering, including telehealth and e-prescription capabilities. Additionally, we believe healthcare providers and payors will continue to look for creative solutions to optimize care and cost efficiency, while employers will aim to maintain productivity and continuity.

Our Growth Strategy

Key elements of our growth strategy include:

- ***Expand our menu of tests and continue to innovate and enhance our platform.***
- ***Drive ecosystem adoption.***
- ***Continue to expand our installed base and distribution network to enable pull-through of our future extended care offerings.***
- ***Increase adoption through value-based selling and payor reimbursement.***
- ***Continue to build the Cue brand.***
- ***Scale manufacturing capabilities to capitalize on demand.***
- ***Expand our global footprint.***

Our Go-To-Market Strategy

Our go-to-market strategy is powered by an in-house direct sales team focused on target customer segments including: the public sector, healthcare providers, large enterprises, and individual consumers. Our go-to-market strategy is further complemented by our marketing team's strategy to raise Cue's overall brand awareness and value proposition.

Our marketing strategy is focused on building strong brand awareness for the Cue Integrated Care Platform as a molecular at-home diagnostic solution, with relevant, measurable value for all of our customer segments. Our marketing drives across our owned media channels (website and social networks), press releases, scientific publications, industry engagement with key stakeholders, partnerships with key opinion and market leaders, and targeted marketing through digital and non-digital channels. We anticipate investing further, using account-based marketing strategies to accelerate brand awareness and increase demand, and thus sales opportunities, across our targeted markets.

Our direct sales team engages with prospective clients and seeks to identify the best sales channel based on each client's needs. Our go-to-market strategy is focused on allowing us access to the end user, through our Cue Integrated Care Platform, even if the individual was acquired via our direct sales organization or through an outside sales channel. For example, if an individual obtained a Cue Health Monitoring System through their self-insured employer's COVID-19 return-to-work efforts or as a result of government-supported distribution, we can nonetheless directly engage with the end user through the Cue Health App and potentially convert them to using our planned future tests and other products we may develop. As a result, we expect that we will be able to fulfill market demand through our internal and external sales channels, while maintaining an important direct customer relationship for our future product enhancements and care offerings.

Additionally, our relationship with the U.S. DoD formed an important foundation of our initial go-to-market strategy. Our relationship with U.S. DoD helped establish our domestic manufacturing infrastructure as a critical component of ongoing national healthcare infrastructure. Our relationship with the U.S. DoD also helped commercialize the Cue Health Monitoring System as part of a critical, decentralized, national diagnostic infrastructure for ongoing pandemic management. In addition, the development of Cue Readers alongside our COVID-19 Test Kits has significantly accelerated our installed base growth, which we believe will enable continued

distribution of our COVID-19 Test Kit as well as pull-through of our planned future products to key federal, state and other government agencies. Through our U.S. DoD agreement, the Cue Health Monitoring System and COVID-19 Test Kits have been deployed to over 280 school districts, nursing homes, hospitals, public health facilities and organizations, essential businesses, correctional facilities and other public sector users, as of August 31, 2021.

Demand for our COVID-19 Test Kits currently exceeds our manufacturing capacity. As a result, and in light of our existing commitments under the U.S. DoD agreement and to existing customers, we are strategically selecting new customers based on the following considerations: order volume, industry diversification and potential interest in our expected future test menu.

Our direct sales team is comprised of experienced sales professionals focused on the following four categories:

- **Public Sector Sales**: Our public sector sales team identifies new opportunities within federal, state and local government agencies. While we expect that revenue from other categories of customers will become a larger component of revenue over time, our public sector sales strategy continues to look to identify opportunities with new and existing federal, state and local government agency customers.
- **Enterprise Sales**: Our enterprise sales team identifies major self-insured enterprises such as Fortune 500 companies with large covered employee populations as well as small-to-medium sized businesses with healthcare plan partners and employee benefits offerings. We believe that enterprise customers will want to utilize our integrated care solutions for their employees and their families, both on-premise and at-home.
- **Healthcare Provider Sales**: Our healthcare provider sales strategy targets major healthcare systems and healthcare professionals such as hospital systems, private clinics and concierge health systems, and physicians' offices. Relationships with these customers, such as our current relationship with the Mayo Clinic, help validate our platform, and we believe will help accelerate marketplace adoption of our products.
- **Direct-to-Consumer Sales**: Our direct-to-consumer sales team identifies opportunities through online and offline retail channels such as e-commerce and in-store sales.

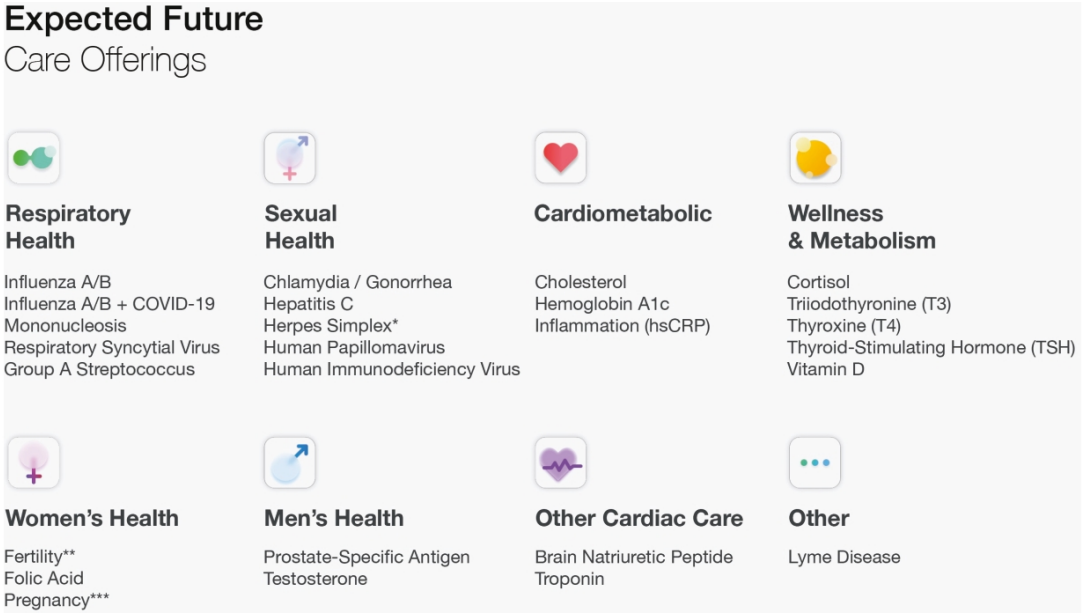
Our First Product Offering – Cue COVID-19 Test

Our COVID-19 test, consisting of our Cue Reader and COVID-19 Test Kit (Cue COVID-19 Cartridge and Cue Wand), is our first commercially available test. It is designed to detect SARS-CoV-2, the virus that causes COVID-19. Our COVID-19 test was the first FDA-authorized molecular diagnostic test for at-home and over-the-counter use without physician supervision or a prescription. Internationally, we have also received the CE mark in the European Union, as well as Interim Order authorization from Health Canada, which is the department of the Government of Canada responsible for national health policy, for both professional point-of-care and self-testing, which is similar to over-the-counter EUA authorization in the United States. In June 2021, our COVID-19 test also received regulatory approval from the Central Drugs Standard Control Organisation, or CDSCO, India's national regulatory body for pharmaceuticals and medical devices, for professional point-of-care use in India. Our COVID-19 test provides highly accurate, lab-quality results, including for emerging variants, directly to connected mobile smart devices in about 20 minutes. A recent independent study conducted by researchers at the Mayo Clinic found that the overall concordance between our COVID-19 test and clinical laboratory tests using NAAT was 97.8%. In December 2020, our COVID-19 test was ranked by the FDA Reference Panel testing as the most sensitive among direct nasal swab point-of-care tests.

Our COVID-19 test is authorized for use by both symptomatic and asymptomatic individuals, adults and children aged two and older with adult assistance. With an easy-to-use, fully guided experience, our COVID-19 test offers convenience, privacy, and the ability to test frequently.

Our Expected Future Care Offerings

The following graphic illustrates our expected future care offerings:



* HSV-1 & HSV-2

** Luteinizing Hormone (LH)

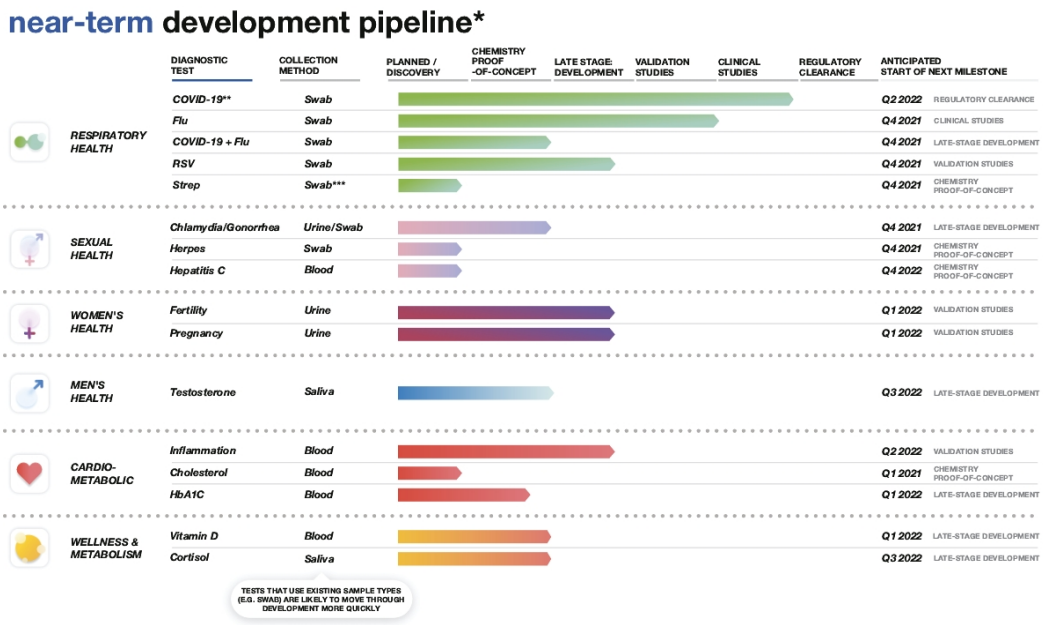
*** Human chorionic gonadotropin (hCG)

Our COVID-19 Test Kit is currently our only commercially available test. Our expected future care offerings include tests and other products across multiple categories, including respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management. We are currently developing both the diagnostic tests and the accompanying software solutions in the virtual care delivery applications to support our planned holistic care offerings as part of our Cue Integrated Care Platform. We expect to begin submitting additional tests for FDA authorization or clearance in the second half of 2022. Further, over time, we intend to pursue future authorizations, clearances and approvals globally, including in the European Union, Australia, Brazil, Canada, India, Japan, within the Middle East, Singapore and the United Kingdom, and other countries. In public communications, FDA officials have indicated that they may be more amenable to approving tests for many diseases for home use as a result of lessons learned from the COVID-19 pandemic, especially testing solutions with telehealth capabilities.

We believe our expected future test menu expansion benefits from:

- our technical development capabilities that have led to an authorized COVID-19 test and multiple tests in late-stage technical development;
- our understanding of the regulatory pathways, including FDA authorization or clearance, for the various diagnostic tests; and
- our test-agnostic production capacity that we believe will provide us the flexibility to meet our customers' needs.

The graphic below illustrates our near-term development pipeline:



* This graphic does not reflect our full development pipeline but rather those of our tests that are furthest along in development. This graphic reflects progress towards 510(k) clearance.

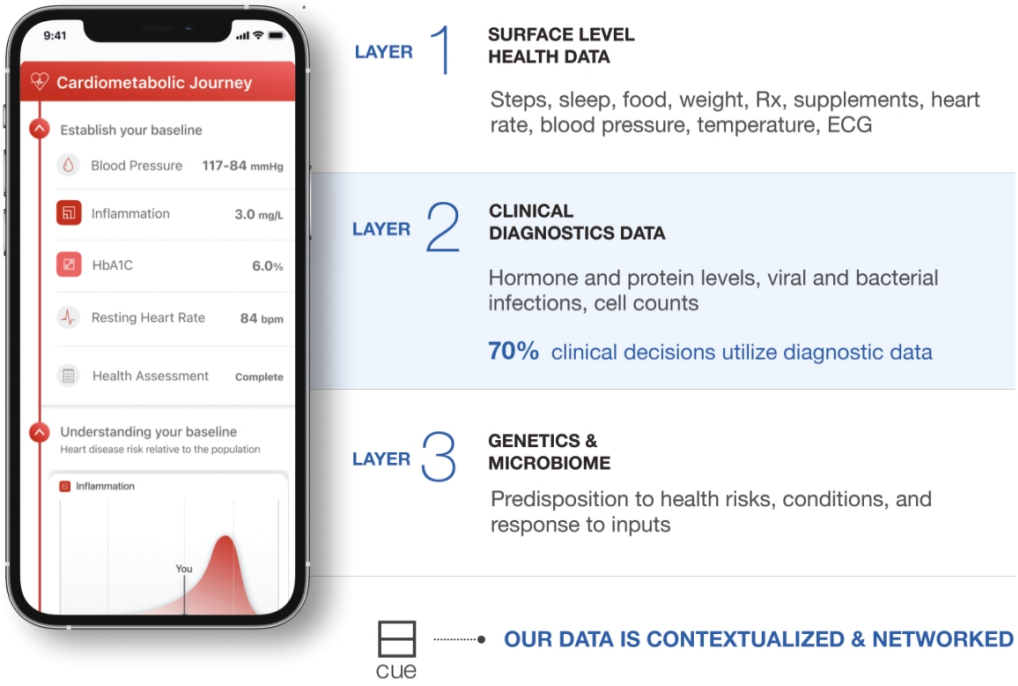
** Our COVID-19 test has been authorized by the FDA under two EUAs. This graphic reflects progress towards 510(k) clearance. Our COVID-19 test has also received regulatory approval from the CDSCO for professional point-of-care use in India, the CE mark in the European Union and Interim Order authorization from Health Canada.

*** Throat swab sample may be required.

We currently have five tests that we consider to be in late-stage technical development: flu, RSV, pregnancy, fertility, and inflammation. We consider a test to be in late-stage technical development when we have developed a working prototype Cue Cartridge in its final form factor, capable of running its intended sample type using its relevant Cue Wand. When a test is in late-stage technical development, we believe that all or the majority of the technical risk has been eliminated, and the test performance is expected to meet regulatory and marketplace requirements. At this stage, the relevant test is ready or nearly ready for verification and validation studies. In addition to completing late-stage technical development, all of our planned tests will be required to complete validation and clinical studies. With the exception of our fertility test for over-the-counter at-home use, we generally expect that our expected future tests will then need to receive regulatory authorization, clearance or approval before they can be commercialized. See the section titled “Business—Expected Future Care Offerings” for additional information regarding our current and planned tests.

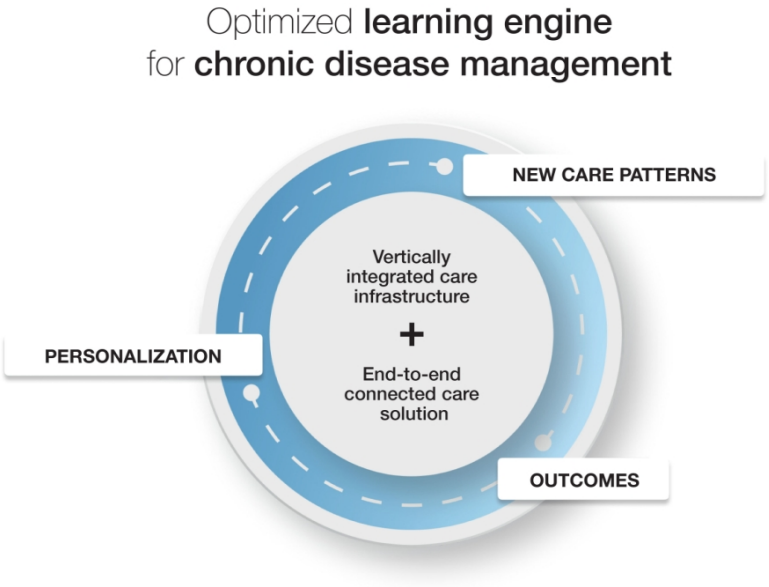
Chronic Disease Management

We believe chronic disease management will benefit from an integrated care platform that pulls in multiple layers of health information and connects them to digital health coaching and other interventions. In addition to assisting in initial diagnosis of chronic disease, diagnostic tests help measure the impact of interventions and can help optimize care patterns over time. Pulling in genetic information and other data streams can personalize and optimize care for sub-cohort patient populations. The graphic below illustrates one example of how we anticipate that the Cue Integrated Care Platform will be able to be used for chronic disease management.



* Depicts future product developments.

The Cue Integrated Care Platform has the potential to streamline how consumers with chronic conditions access the diagnostic data they need and the associated provider consultations. By making it more convenient to obtain the diagnostic information that measures the present state of a chronic condition, we believe the platform will be able to help drive adherence as people can see the impact more quickly of the various interventions such as medications and digital health coaching. In addition, we anticipate that our integrated care platform will facilitate ongoing care management by allowing people to have a more comprehensive picture of their health through the planned integration of third-party sensors and applications that will help monitor activity levels, diet, and sleep.



Risks Associated with Our Business

Our business is subject to a number of risks of which you should be aware before making an investment decision. These risks are discussed more fully in the "Risk Factors" section of this prospectus. These risks include, but are not limited to, the following:

- We have a limited operating history, which may make it difficult to evaluate our current business and predict our prospects and likelihood of success.
- We have incurred significant losses since our inception, and only recently started generating revenue from commercial sales. We may incur additional significant losses in the future, and we may never become profitable on a sustainable basis.
- If the FDA or other regulatory bodies revoke or terminate our EUAs or other regulatory authorizations for our COVID-19 test, we will be required to stop commercialization of our Cue Readers and COVID-19 Test Kits unless we can obtain 510(k) or other clearance or approval for our COVID-19 test and its currently authorized uses.
- Our near-term success is dependent on the continued commercialization of our COVID-19 test. If our COVID-19 test is unable to attain or maintain market acceptance or be successfully commercialized, our business could be materially adversely affected.
- Our long-term success will depend on the success of our COVID-19 test and a number of other factors, including widespread market adoption of our Cue Health Monitoring System, Cue Virtual Care Delivery Apps and the overall Cue Integrated Care Platform and our ability to introduce new tests for use with our Cue Health Monitoring System.
- Our revenue for at least the near term will almost exclusively depend on sales of our COVID-19 test until we can develop, obtain regulatory clearance or other appropriate authorization for, and commercialize additional tests.

- We currently rely upon the U.S. DoD and a very small number of other customers for almost all of our current product revenue. As a result, unless and until we can further diversify our customer base and sources of revenue, the loss of any of these customers, or a decline in the amount of our COVID-19 tests purchased by or sold to these customers, could materially adversely affect our business, financial condition and results of operations.
- We may encounter difficulties in managing our growth, which could adversely affect our operations.
- The diagnostic testing market is extremely competitive and rapidly evolving, making it difficult to evaluate our business and future prospects.
- If the Cue Health Monitoring System fails to achieve broad adoption by or support from the medical and professional community, key opinion leaders and other key participants in the healthcare system, our business and prospects may be materially adversely affected.
- We have identified material weaknesses in our internal control over financial reporting and may identify material weaknesses in the future or otherwise fail to maintain an effective system of internal controls in the future, as a result of which, we may not be able to accurately report our financial condition or results of operations, which may adversely affect investor confidence in us and, as a result, the value of our common stock.
- The COVID-19 pandemic could materially adversely affect our business, financial condition and results of operations.
- We have limited experience manufacturing our products in commercial quantities; if we are unable to manufacture our products in the required quantities in a timely manner, our business could be materially adversely affected.
- If we, our suppliers or our contract manufacturers experience significant disruptions to our or their manufacturing capabilities or ability to source needed supplies and materials, our business may be materially adversely affected.
- Our patent or other intellectual property protection for the Cue Health Monitoring System, products and Cue Integrated Care Platform may not be sufficient to prevent competitors from developing and commercializing tests and platforms similar to or otherwise comparable to our Cue Test Kits, products and Cue Integrated Care Platform, which could materially adversely affect our business and prospects.

Corporate Information

We were incorporated in February 2010 as Ruubix, a California corporation, and changed our name to Cue Inc. in April 2014. In December 2017, we reincorporated in the State of Delaware and changed our name to Cue Health Inc. Our principal executive offices are located at 4980 Carroll Canyon Road, Suite 100, San Diego, California, 92121, and our telephone number is (858) 412-8151. Our website address is http://www.cuehealth.com. The information contained on, or that can be accessed through, our website is not a part of this prospectus. We have included our website address in this prospectus solely as an inactive textual reference.

Trademarks and Tradenames

We own or have rights to, or have applied for, trademarks, service marks and trade names that we use in connection with the operation of our business, including our corporate name, logos and website names. Other trademarks, service marks and trade names appearing in this prospectus are the property of their respective owners. Solely for convenience, some of the trademarks, service marks and trade names referred to in this prospectus are listed without the ® and ™ symbols, but we will assert, to the fullest extent under applicable law, our rights to our trademarks, service marks and trade names.

Channels for Disclosure of Information

Following the completion of this offering, we intend to announce material information to the public through filings with the Securities and Exchange Commission, or the SEC, our website (http://www.cuehealth.com), press releases, public conference calls, and public webcasts. We use these channels, as well as social media, to communicate with our members, clients, and the public about our company, our services and other issues. It is

possible that the information we post on social media could be deemed to be material information. As such, we encourage investors, the media, and others to follow the channels listed above and to review the information disclosed through such channels.

Any updates to the list of disclosure channels through which we will announce information will be posted on the investor relations page on our website.

Implications of Being an Emerging Growth Company

We are an "emerging growth company" as defined in the federal securities laws. As a result, we may take advantage of reduced reporting requirements that are otherwise applicable to public companies, including delaying auditor attestation of internal control over financial reporting, providing only two years of audited financial statements and related Management's Discussion and Analysis of Financial Condition and Results of Operations in this prospectus and reduced executive compensation disclosures. We may remain an emerging growth company until the end of 2026. However, if certain events occur prior to the end of 2026, including if we become a "large accelerated filer," our annual gross revenue exceeds $1.07 billion, or we issue more than $1.0 billion of non-convertible debt in any three-year period, we will cease to be an emerging growth company.

We have elected to take advantage of certain of the reduced disclosure obligations in the registration statement of which this prospectus is a part and may elect to take advantage of other reduced reporting requirements in future filings. In particular, in this prospectus, we have provided only two years of audited financial statements and have not included all of the executive compensation related information that would be required if we were not an emerging growth company. As a result, the information that we provide to our stockholders may be different than what you might receive from other public reporting companies in which you hold equity interests. In addition, an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. We have elected not to "opt out" of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, we can adopt the new or revised standard at the time private companies adopt the new or revised standard and may do so until such time that we either (1) irrevocably elect to "opt out" of such extended transition period or (2) no longer qualify as an emerging growth company.

The Offering

Common stock offered by us	shares.
Underwriters' option to purchase additional shares	shares.
Common stock to be outstanding immediately following this offering	shares (or shares if the underwriters exercise their option to purchase additional shares in full).
Use of proceeds	We estimate that the net proceeds from this offering will be approximately $ million (or approximately $ million if the underwriters exercise their option to purchase additional shares in full), based on the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We currently intend to use the net proceeds from this offering, together with our existing cash and cash equivalents, for the continued commercial scale up of our activities and build out our corporate infrastructure, other than the scale up of manufacturing facilities and capabilities, including the hiring and training of sales and marketing personnel and to fund marketing initiatives and for the hiring and training of other personnel; the continued scale up of our manufacturing facilities and capabilities; research and development to continue to develop each of our planned tests in our near-term development pipeline; and the remainder, if any, for working capital and other general corporate purposes. We may use a portion of the net proceeds for acquisitions or strategic investments in complementary businesses, services, products or technologies. However, we do not have agreements or commitments to enter into any such acquisitions or investments at this time. See the section titled "Use of Proceeds" for more information.
Directed share program	At our request, the underwriters have reserved up to 5.0% of the shares offered by this prospectus for sale at the initial public offering price to certain individuals through a directed share program, including our directors, officers and employees. Shares purchased through this program by our directors, officers and employees will be subject to the 180-day lock-up period under the lock-up agreements described under "Shares Eligible for Future Sale—Lock-up Agreements." The sales will be made at our direction by Morgan Stanley & Co. LLC and its affiliates through a directed share program. The number of shares of our common stock available for sale to the general public in this offering will be reduced to the extent that such persons purchase such reserved shares. Any reserved shares not so purchased will be offered by the underwriters to the

	general public on the same terms as the other shares of our common stock offered by this prospectus. See the section titled "Underwriting" for additional information.
Risk factors	See the section titled "Risk Factors" for a discussion of factors to consider carefully before deciding to invest in shares of our common stock.
Proposed Nasdaq Global Market symbol	"HLTH"

The number of shares of our common stock to be outstanding immediately after this offering is based on shares of our common stock outstanding as of June 30, 2021 (including the automatic conversion of all outstanding shares of our redeemable convertible preferred stock as of June 30, 2021 into an aggregate of 83,526,065 shares of common stock immediately prior to the completion of this offering and the automatic conversion of $235.5 million in aggregate principal amount of our outstanding convertible promissory notes, or Convertible Notes, into shares of common stock upon the closing of this offering, based on interest accrued through , 2021 and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus), but excludes:

- 9,994,197 shares of common stock issuable upon exercise of stock options outstanding as of June 30, 2021, with a weighted-average exercise price of $4.93 per share;
- 1,049,043 shares of common stock subject to restricted stock units, or RSUs, outstanding as of June 30, 2021;
- 75,744 shares of common stock issuable upon exercise of warrants outstanding as of June 30, 2021 to purchase shares of common stock, with an exercise price of $0.40 per share;
- 79,882 shares of common stock issuable upon exercise of warrants outstanding as of June 30, 2021 to purchase redeemable convertible preferred stock that will automatically become warrants to purchase 79,882 shares of common stock immediately prior to the completion of this offering, with a weighted-average exercise price of $1.12 per share;
- 1,138,635 shares of common stock reserved for future issuance under our 2014 Equity Incentive Plan, as of June 30, 2021, of which our board of directors expects to grant stock awards covering 128,000 shares of common stock to certain of our non-employee directors effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part;
- additional shares of common stock that will become available for future issuance under our 2021 Stock Incentive Plan, which will become effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, as well as any automatic increases in the number of shares of common stock reserved for future issuance under the 2021 Stock Incentive Plan, of which our board of directors expects to grant awards covering shares of common stock to certain of our employees, executive officers and non-employee directors effective prior to the commencement of trading of our common stock on the Nasdaq Stock Market; and
- additional shares of common stock that will become available for future issuance under our 2021 Employee Stock Purchase Plan, which will become effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, as well as any automatic increases in the number of shares of common stock reserved for future issuance under the 2021 Employee Stock Purchase Plan.

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

- the automatic conversion of all outstanding shares of our redeemable convertible preferred stock outstanding as of June 30, 2021 into 83,526,065 shares of our common stock immediately prior to the completion of this offering;
- the automatic conversion of our outstanding $235.5 million in aggregate principal amount of Convertible Notes into shares of common stock upon the closing of this offering, based on accrued interest through , 2021 and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus;

- the conversion of outstanding warrants to purchase 79,882 shares of our redeemable convertible preferred stock into warrants to purchase 79,882 shares of common stock, which will occur automatically immediately prior to the completion of this offering;
- no exercise of the outstanding stock options or settlement of outstanding RSUs described above;
- no exercise of the outstanding warrants described above;
- no exercise by the underwriters of their option to purchase additional shares of our common stock; and
- the adoption, filing and effectiveness of our amended and restated certificate of incorporation and our amended and restated bylaws immediately prior to the completion of this offering.

See the section titled “Capitalization” for more information.

Summary Financial Data

The following tables set forth a summary of our historical financial data as of and for the periods indicated. We have derived the summary statement of operations data for the years ended December 31, 2019 and 2020 and the summary balance sheet data as of December 31, 2020 from our audited financial statements that are included elsewhere in this prospectus. The summary statement of operations data for the six months ended June 30, 2020 and 2021 and the summary balance sheet data as of June 30, 2021 have been derived from our unaudited interim condensed financial statements included elsewhere in this prospectus. Our unaudited interim condensed financial statements have been prepared on a basis consistent with our audited financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, necessary for a fair presentation of the financial information set forth in those statements. Our historical results are not necessarily indicative of the results that may be expected for any other period in the future and our interim results are not necessarily indicative of our expected results for the year ending December 31, 2021. You should read the following summary financial data together with our financial statements and the related notes included in this prospectus and in the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations." The summary financial data included in this section are not intended to replace the audited financial statements and related notes thereto included elsewhere in this prospectus and are qualified in their entirety by the audited financial statements and related notes thereto included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that may be expected in the future.

	Year Ended December 31,		Six Months Ended June 30,	
	2019	2020	2020	2021
(in thousands, except share and per share data)			(unaudited)	
Revenue:				
Product revenue	$ —	$ 15,391	$ —	$ 201,922
Grant and other revenue	6,626	7,562	4,960	—
Total revenue	6,626	22,953	4,960	201,922
Operating costs and expenses:				
Cost of product revenue[1][2]	—	14,951	—	85,177
Sales and marketing[1]	88	714	45	1,959
Research and development[1]	21,405	28,478	19,680	12,071
General and administrative[1]	5,900	23,936	3,764	23,252
Total operating costs and expenses	27,393	68,079	23,489	122,459
Income (loss) from operations	(20,767)	(45,126)	(18,529)	79,463
Interest expense	(152)	(974)	(788)	(9,964)
Change in fair value of redeemable convertible preferred stock warrants	4	(1,289)	(20)	(190)
Change in fair value of convertible notes	—	—	—	(23,254)
Other income (expense), net	309	47	59	61
Net income (loss) before income taxes	(20,606)	(47,352)	(19,278)	46,116
Income tax expense	—	—	—	(13,276)
Net income (loss)	$ (20,606)	$ (47,352)	$ (19,278)	$ 32,840
Basic net income (loss) per share attributable to common stockholders[3]	$ (1.31)	$ (2.90)	$ (1.21)	$ 0.23
Weighted-average number of shares of common stock used in basic net income (loss) per share attributable to common stockholders[3]	15,760,246	16,315,730	15,909,439	18,617,247
Diluted net income (loss) per share attributable to common stockholders[3]	$ (1.31)	$ (2.90)	$ (1.21)	$ 0.22

(in thousands, except share and per share data)	Year Ended December 31, 2019	Year Ended December 31, 2020	Six Months Ended June 30, 2020	Six Months Ended June 30, 2021
			(unaudited)	
Weighted-average number of shares of common stock used in diluted net income (loss) per share attributable to common stockholders[3]	15,760,246	16,315,730	15,909,439	26,036,337
Pro forma basic net income (loss) per share attributable to common stockholders (unaudited)				
Pro forma weighted-average number of shares of common stock used in basic net income (loss) per share attributable to common stockholders (unaudited)				
Pro forma diluted net income (loss) per share attributable to common stockholders (unaudited)				
Pro forma weighted-average number of shares of common stock used in diluted net income (loss) per share attributable to common stockholders (unaudited)				

(1) Includes stock-based compensation expense as follows:

(in thousands)	Year Ended December 31, 2019	Year Ended December 31, 2020	Six Months Ended June 30, 2020	Six Months Ended June 30, 2021
			(unaudited)	
Cost of product revenue	$ —	$ —	$—	$ 343
Sales and marketing	—	1	—	26
Research and development	45	98	13	1,444
General and administrative	291	3,064	84	3,778
Total stock-based compensation expense	$336	$3,163	$97	$5,591

During the six months ended June 30, 2021, $0.1 million of stock-based compensation expense was capitalized to inventory during the manufacturing process.

(2) Includes $2.1 million and $10.5 million of depreciation and amortization expense for the year ended December 31, 2020, and for the six months ended June 30, 2021, respectively.

(3) See Note 14 to our audited financial statements and to our unaudited interim condensed financial statements, each included elsewhere in this prospectus, for details on the calculation of basic and diluted net income (loss) per share attributable to common stockholders, and the weighted-average number of shares used in the computation of the per share amounts.

(in thousands)	As of June 30, 2021 Actual	Pro Forma(1) (unaudited)	Pro Forma As Adjusted(2)(3)
Balance Sheet Data:			
Cash and cash equivalents	$246,326	$	$
Working capital(4)	233,965		
Restricted cash, non-current	6,000		
Total assets	631,312		
Redeemable convertible preferred stock warrant liabilities	1,521		
Convertible notes	258,734		
Finance lease liabilities, net of current portion	1,694		
Total liabilities	516,321		
Redeemable convertible preferred stock	176,323		
Additional paid-in capital	16,264		
Accumulated deficit	(77,596)		
Total stockholders' (deficit) equity	(61,332)		

(1) The pro forma balance sheet data gives effect to (i) the filing and effectiveness of our amended and restated certificate of incorporation, which will be in effect immediately prior to the completion of this offering, (ii) the automatic conversion of all of our outstanding $235.5 million aggregate principal amount convertible promissory notes, or Convertible Notes, into shares of common stock upon the completion of this offering, based on interest accrued through , 2021 and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, (iii) the automatic conversion of all outstanding shares of our redeemable convertible preferred stock into an aggregate of 83,526,065 shares of our common stock immediately prior to the completion of this offering, and (iv) the automatic conversion of all of our outstanding warrants to purchase redeemable convertible preferred stock into warrants to purchase common stock, and the related reclassification of our redeemable convertible preferred stock warrant liabilities to additional paid-in capital immediately prior to the completion of this offering.

(2) The pro forma as adjusted balance sheet data reflect: (i) the pro forma adjustments set forth above, and (ii) the issuance and sale of shares of our common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the estimated price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted information discussed above is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing.

(3) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, working capital, total assets and total stockholders' (deficit) equity by $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. An increase (decrease) of 1.0 million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, working capital, total assets and total stockholders' (deficit) equity by $ million, assuming no change in the assumed initial public offering price per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

(4) We define working capital as current assets less current liabilities, including current finance lease liabilities of $1.3 million. See our financial statements and the related notes included elsewhere in this prospectus for further details regarding our current assets and current liabilities.

RISK FACTORS

Investing in shares of our common stock involves a high degree of risk. You should carefully consider the following risks and uncertainties, together with all of the other information contained in this prospectus, including our financial statements and related notes included elsewhere in this prospectus, before making an investment decision. The risks described below are not the only ones facing us. The occurrence of any of the following risks, or of additional risks and uncertainties not presently known to us or that we currently believe to be immaterial, could materially and adversely affect our business, financial condition, reputation, or results of operations. In such case, the trading price of shares of our common stock could decline, and you may lose all or part of your investment.

Risks Related to Our Business and Strategy

We have a limited operating history, which may make it difficult to evaluate our current business and predict our prospects and likelihood of success.

We have a limited operating history. We were incorporated in 2010, but prior to commercialization of our COVID-19 Test Kit for use with our Cue Health Monitoring System in the third quarter of 2020, our activities were largely focused on our research and development efforts and we only started realizing revenue from commercial product sales in August 2020. Our COVID-19 test is currently our only commercially available test. Our limited commercial operating history may make it difficult to evaluate our current business and predict our future performance. Any assessment of our future revenue potential, profitability or prospects for our future success is subject to significant uncertainty. We have encountered and will continue to encounter significant risks and difficulties frequently experienced by early commercial-stage companies in rapidly evolving industries. If we do not address these risks successfully, it could have a material adverse effect on our business, financial condition, results of operations and future prospects.

We have incurred significant losses since our inception, and only recently started generating revenue from commercial sales. We may incur additional significant losses in the future, and we may never become profitable on a sustainable basis.

We have incurred significant losses since our inception in 2010, including net losses of $20.6 million and $47.4 million for the years ended December 31, 2019 and 2020, respectively. For the six months ended June 30, 2021, we had a net income of $32.8 million. As of June 30, 2021, we had an accumulated deficit of $77.6 million. While we were profitable for the first time in the first quarter of 2021, we cannot assure you that we will be able to continue to be profitable on an ongoing basis, either in the near term or longer term. We may continue to incur losses both in the near term and longer term as we continue to invest significant additional funds to scale up our business, including continuing to build out our commercial organization and corporate infrastructure, continuing to build out our manufacturing capabilities and engaging in continued research and development as we work to expand our menu of available tests and also as we incur additional costs associated with operating as a public company. Prior to August 2020, we had never generated any revenue from the commercial sale of products, and we had devoted substantially all of our resources to the research and development of our Cue Health Monitoring System. We only first started realizing revenue from commercial product sales in August 2020 following receipt of our first Emergency Use Authorization, or EUA, from the U.S. Food and Drug Administration, or FDA, in June 2020 for our COVID-19 test. Our COVID-19 test includes a Cue Reader and a COVID-19 Test Kit comprised of a Cue COVID-19 Cartridge and a Cue Wand. Since receiving our first FDA EUA, we have incurred significant additional expenses in connection with the commercial scale up of our business, including costs associated with scaling up our manufacturing operations, costs associated with the production of our COVID-19 test, sales and marketing expenses, and costs associated with the hiring of new employees, the growth of our business and building out our corporate infrastructure. In addition, we will incur significant additional expenses as we become a public company, further grow our business and continue to roll out our COVID-19 tests to the marketplace, pursue new customers and look to develop and commercialize new tests and other products for use with our Cue Integrated Care Platform. Therefore, our losses may continue to increase for at least the near term, if not longer. We are unable to predict whether or when we will become profitable on a sustained basis. Our ability to sustain profitability is based on numerous factors, many of which are beyond our control, including, among other factors, market acceptance of our products, the length of the COVID-19 pandemic, future product development, our market penetration and margins and our ability to expand our menu of tests. We may not be able to sustain or increase profitability in the future. Our inability to achieve and maintain profitability, whether in the near term or longer term, may make it difficult to continue to grow our business and accomplish our strategic objectives, and could materially adversely affect our business, financial condition, results of operations and future prospects.

If the FDA or other regulatory bodies revoke or terminate our EUAs or other regulatory authorizations for our COVID-19 test, we will be required to stop commercialization of our Cue Readers and COVID-19 Test Kits unless we can obtain 510(k) or other clearance or approval for our COVID-19 test and its currently authorized uses.

Our COVID-19 test is currently marketed in the United States pursuant to two EUAs we received from the FDA in June 2020, for point-of-care use, and in March 2021, for at-home and over-the-counter use without a prescription. We cannot predict how long either of these EUAs will remain in effect, and we may not receive advance notice from the FDA regarding revocation of either or both of our EUAs. If our EUAs are terminated or revoked, we will be required to cease commercialization of our COVID-19 Test Kit, unless and until we have obtained marketing authorization from the FDA through another regulatory pathway. In addition, changing policies and regulatory requirements could require us to obtain a 510(k) or other marketing authorization from the FDA for our COVID-19 test, which could limit, delay or prevent further commercialization of our COVID-19 Test Kit and could materially adversely impact our business, financial condition, results of operations and future prospects.

We also received Interim Order authorization from Health Canada for professional use in April 2021. We have begun commercialization activity in Canada, distributing to professional users. In August 2021, we received an amendment to the Interim Order authorization from Canada Health to include self-testing, which is similar to our EUA over-the-counter authorization in the United States. If the Interim Order authorization is revoked or terminated, we would lose our ability to expand into the Canadian market and would need to obtain additional authorization or approvals before we are permitted to sell any of our current or future products.

Our near-term success is dependent on the continued commercialization of our COVID-19 Test Kit. If our COVID-19 Test Kit is unable to attain or maintain market acceptance or be successfully commercialized, our business could be materially adversely affected.

Our near-term success is dependent on the continued commercialization of our COVID-19 Test Kit, which currently is our only commercially available test. The continued commercial success of our COVID-19 Test Kit will depend on many factors, some of which are outside of our control, including the following:

- our ability to continue to scale up our manufacturing and commercial capabilities so we can timely manufacture our Cue Readers, Cue Cartridges and Cue Wands in sufficient capacity to meet customer requirements and market demand;
- acceptance by key opinion leaders, healthcare systems and providers, governments and regulatory authorities, enterprise and health plan customers, consumers and others of the convenience, accuracy and other benefits offered by our COVID-19 test and our Cue Integrated Care Platform;
- the ability of our COVID-19 test to accurately detect different strains of SARS-CoV-2, the virus that causes COVID-19, created by genetic mutation or otherwise, such as the five SARS-CoV-2 variants of concern known as the Alpha, Beta, Gamma and Delta variants or other new variants that have emerged or may emerge;
- the ability of consumers and other customers to pay for or otherwise obtain payment coverage or reimbursement from third-party payors for our Cue Readers and/or our COVID-19 Test Kits;
- the length of the COVID-19 pandemic and the extent to which widespread vaccinations in the U.S. reduces demand for our COVID-19 test;
- our ability to maintain our EUAs received from the FDA or otherwise obtain requisite future regulatory approval, as well as our ability to obtain and maintain regulatory authorizations, clearances and approvals in other jurisdictions; and
- our ability to comply with all regulatory requirements applicable to our COVID-19 test, including applicable FDA marketing, manufacturing and post-market surveillance requirements and other requirements of our EUAs.

If our COVID-19 test does not gain broad market acceptance in the marketplace, it could have a material adverse effect on the broader commercial success of the Cue Health Monitoring System and our future tests.

In addition, the COVID-19 diagnostic testing market is characterized by rapid technological developments. If our COVID-19 test is rendered uncompetitive or obsolete, even if it were to gain widespread market acceptance initially, the demand for our COVID-19 test could be greatly reduced. Further, market adoption of our COVID-19

test may also be materially affected by the availability and efficaciousness of vaccines or the emergence of therapeutic treatments for COVID-19. As current or newly developed vaccines become widely administered and as current or newly developed therapeutic treatments are approved and become widely used, then market interest and the commercial opportunity for our COVID-19 test may significantly lessen or potentially even disappear.

Our long-term success will depend on the success of our COVID-19 test and a number of other factors, including widespread market adoption of our Cue Health Monitoring System, Cue Virtual Care Delivery Apps and the overall Cue Integrated Care Platform and our ability to introduce new tests for use with our Cue Health Monitoring System.

Our long-term commercial success will depend on a number of factors, some of which are beyond our control, including:

- the success of our COVID-19 test;
- the successful completion of validation and clinical studies for our anticipated future tests;
- the timely receipt of marketing authorizations, clearances and approvals from the FDA and other similar regulatory authorities for our anticipated future tests and, if required, additional marketing authorizations, clearances and approvals for our COVID-19 test;
- perceptions by the public and members of the medical community, including healthcare stakeholders, as to the convenience, accuracy and the sufficiency of clinical evidence supporting the performance of the Cue Integrated Care Platform;
- demand from the public and members of the medical community for the Cue Health Monitoring System and adoption of our anticipated menu of tests;
- the availability, perceived advantages, relative cost, relative convenience and relative accuracy of the Cue Health Monitoring System compared to products produced by our competitors;
- positive or negative media coverage of the Cue Health Monitoring System or competing products, as to its convenience, accuracy and the sufficiency of clinical evidence supporting its performance;
- the effectiveness of our marketing and sales efforts;
- unanticipated delays in manufacturing our COVID-19 Test Kits;
- our ability to raise additional capital on acceptable terms, or at all, if needed to support the continued growth of our business and the development and commercialization of additional tests;
- unanticipated delays in manufacturing, developing or launching additional tests for our Cue Health Monitoring System;
- our ability to comply with all regulatory requirements applicable to our Cue Health Monitoring Systems and our current and anticipated future tests;
- our ability to price our Test Kits, including our COVID-19 Test Kit, at an acceptable price;
- our ability to obtain, maintain enforce, protect and defend our intellectual property rights;
- our ability to produce a continued supply of Cue Readers and Cue Test Kits;
- our ability to meet the demands and the requirements of our agreements with our largest customers, including the U.S. DoD;
- limitation on use or warnings required by the FDA in our product labeling; and
- availability of, or changes in, coverage or reimbursement rates for any of our current or future tests from government or other enterprise or healthcare payors.

Our future success also depends upon customers and end users of our products having a positive experience with the Cue Integrated Care Platform in order to increase demand for our COVID-19 test as well as drive interest in our future tests. If our COVID-19 test does not meet the expectations of customers and end users, it could discourage

them from purchasing additional COVID-19 tests from us or from referring our COVID-19 test to others or utilizing our future tests. Further, dissatisfied customers and end users may express negative opinions through social media or word of mouth. Any failure to meet customer and end user expectations and any resulting negative publicity could harm our reputation and future sales.

Our revenue for at least the near term will almost exclusively depend on sales of our COVID-19 test until we can develop, obtain regulatory clearance or other appropriate authorization for, and commercialize additional tests.

We expect that sales of our COVID-19 test will account for almost all or the substantial majority of our revenue until at least such time as we can commercialize additional tests or other products. As a result, our ability to execute our growth strategy and become profitable in the near term will depend upon consumer adoption of the Cue Health Monitoring System and positive experiences with our COVID-19 test. We currently have a relatively small number of customers, and our ability to acquire new customers is largely constrained by the terms of our U.S. DoD agreement through the completion of our performance of that agreement, subject to exceptions. We may not be able to successfully acquire new customers in a timely manner or at all. If we are unable to expand our customer base, we may not be able to increase our revenue. Adoption and use of our COVID-19 test will depend on several factors, including, but not limited to the accuracy, affordability and ease of use of our Cue Health Monitoring System as compared to other products, and coverage and reimbursement policies with respect to our Cue Health Monitoring System, our COVID-19 Test Kit, and products that compete with our COVID-19 test.

Because we expect virtually all of our revenue for at least the near term to be generated from sales of our COVID-19 test, the failure of our COVID-19 test to gain market acceptance or retain regulatory authorization under our EUAs may have a material adverse effect on our business, operating results and financial condition.

In addition, we are currently committing substantial financial resources, manufacturing capacity and personnel to the commercialization and manufacturing of our COVID-19 test. Allocating our available resources in such manner may negatively impact our research and development efforts for our other planned future tests, and result in a delay in our ability to bring new tests to market.

We currently rely upon the U.S. DoD and a very small number of other customers for almost all of our current product revenue. As a result, unless and until we can further diversify our customer base and sources of revenue, the loss of any of these customers, or a decline in the amount of our COVID-19 tests purchased by or sold to these customers, could materially adversely affect our business, financial condition and results of operations.

For the year ended December 31, 2020 and the six months ended June 30, 2021, the U.S. DoD accounted for approximately 58% and 83% of our product revenue, respectively, and the U.S. DoD is expected to continue to be a significant source of our revenue during the term of the U.S. DoD agreement. In addition, for the year ended December 30, 2020, sales of our Cue Readers and our COVID-19 Test Kits through Henry Schein accounted for approximately 22%. A single non-government enterprise customer accounted for approximately 14% of our product revenue during the six months ended June 30, 2021. We anticipate our initial U.S. DoD agreement will be completed in October 2021, which is when we expect to receive our final payment from the U.S. DoD under the agreement. As a result, we anticipate that our revenue may decline significantly upon conclusion of this agreement (at least in the short term, if not longer), and that we will be largely dependent on new and other existing customers for our revenue at such time. See “Business—Certain Key Factors Affecting Our Performance—U.S. Department of Defense Agreement” for additional information about the potential renewal of the U.S. DoD agreement via a federal acquisition regulation-based contract, or FAR-based contract. Once the U.S. DoD agreement has been completed, and if we do not enter into a new FAR-based contract, we will be unrestricted in terms of who we can sell our Cue Test Kits to. Should we enter into a FAR-based contract upon termination of the U.S. DoD agreement, the U.S. DoD will have the right to purchase up to 45% of our quarterly production for the duration of the contract at a specified discount to the lowest price offered by us to a commercial customer for the same products, equivalent quantities and comparable terms of sale, subject to a price floor. Any such additional contract with the U.S. DoD could constrain our ability to grow our business with non-U.S. government customers. 29 other customers were responsible for the remainder of our product revenue during the six months ended June 30, 2021, excluding certain customers who purchased our COVID-19 Test Kits and Cue Readers through our relationship with Henry Schein, and we expect an equal or greater number of customers to be responsible for the remainder of our 2021 product revenue. We will need to significantly expand our customer base in order for our business to succeed. Unless and until we can further expand and diversify our customer base and sources of revenue, the loss of the U.S. DoD or any of our other major customers, or a significant reduction in the amount of our products purchased by the U.S. DoD or any of our other major

customers, would have a material adverse effect on our business, financial condition and results of operations and could have a material adverse effect on our future prospects. Our ability to acquire new customers is largely constrained by the terms of our U.S. DoD agreement through the completion of our performance of that agreement, subject to exceptions.

If the U.S. DoD terminates or fails to renew our agreement, whether due to our inability to meet our obligations under the agreement or for any other reason, including without cause, our business, results of operations, financial condition and future prospects may be materially adversely affected.

Our agreement with the U.S. DoD may be terminated by the U.S. government for convenience, without cause, or if we materially fail to comply with the provisions of the agreement, including the production requirements under the agreement. We cannot assure you that the agreement will not be terminated by the U.S. DoD prior to its completion.

In order to meet our contractual obligations under the U.S. DoD agreement, we must deliver 30,000 Cue Readers, 6,000,000 Cue COVID-19 Test Kits and 60,000 COVID-19 Control Swab Packs, which includes six quality control swabs (three positive and three negative) in each pack, to the U.S. government pursuant to an agreed upon delivery schedule, as well as achieve a sustained average of daily manufacturing capacity of approximately 100,000 Cue COVID-19 Test Kits per day over seven consecutive days by October 2021. Under our agreement with the U.S. DoD, we are required to deliver to the U.S. government all of our manufacturing output of Cue COVID-19 Cartridges, subject to certain exceptions for existing contracts and for future contracts we are able to obtain waivers from the U.S. DoD. In April 2021, we received a waiver from the U.S. DoD, or the U.S. DoD Waiver, effective May 1, 2021, allowing us to distribute commercially up to 50% of our COVID-19 Test Kit production, measured monthly in arrears on a calendar month basis, to non-U.S. federal government customers and other recipients. The U.S. DoD Waiver is currently expected to remain in effect for the duration of the U.S. DoD agreement; however, the U.S. government may modify the waiver upon timely written notice to reasonably accommodate changes in U.S. government requirements.

The date originally specified in the agreement to meet our delivery requirements was April 11, 2021. However, we were unable to meet these requirements in the given timeframe, and therefore, in March 2021, the U.S. DoD agreed to extend this date to October 12, 2021. As of December 31, 2020, our daily manufacturing capacity for Cue COVID-19 Test Kits was approximately 2,000 cartridges per day. As of March 31, 2021, our daily manufacturing capacity for Cue COVID-19 Test Kits increased to approximately 20,000 per day. As of August 31, 2021, our daily manufacturing capacity for Cue COVID-19 Test Kits was on average over 43,000 cartridges per day over a seven-day period with a single day peak of nearly 60,000 COVID-19 Test Kits. While we have been rapidly expanding our manufacturing capacity since the fall of 2020 and are continuing to do so by adding additional production pods, we will need to create significant additional manufacturing capacity to meet our production target of approximately 100,000 Cue COVID-19 Cartridges per day for a seven-day period by October 12, 2021. We complied with our obligation to deliver all of the Cue Readers as required under the U.S. DoD agreement. While we currently believe we will also be able to comply with the obligation to deliver 6,000,000 Cue COVID-19 Test Kits and 60,000 COVID-19 Control Swab Packs by October 12, 2021, it is possible that we will be unable to do so due to any number of internal or external factors such as delays in production, delays in the construction of any of our new production pods or issues in obtaining key components from any of our third-party suppliers needed to produce our Cue COVID-19 Test Kits. If we are unable to fulfill any of the requirements of our agreement, the agreement may be terminated or not renewed by the U.S. DoD. However, in the event the U.S. DoD was to terminate our agreement based on our inability to fulfill the delivery or production requirements under the agreement, we believe such termination is unlikely to be considered a termination for cause. Even if we are able to fulfill the requirements of the agreement, it may still be terminated or not renewed by the U.S. DoD. If the agreement is terminated or not renewed after we satisfy our delivery obligations under the agreement, our business, results of operations, financial condition and future prospects may be materially adversely affected. In addition, if the U.S. DoD agreement is terminated by the U.S. DoD for cause, the U.S. Government may be entitled to certain remedies, including penalty payments and the grant of a non-exclusive, paid up, perpetual license from us and certain intellectual property rights for the purpose of developing the products with other contractors, potentially competitors. In addition, the U.S. government could have the right to be the exclusive purchaser of our production capacity until we meet this obligation. Upon conclusion of the U.S. DoD agreement, we anticipate that our revenue may decline significantly (at least in the short term, if not longer), and that we will be largely dependent on new and other existing customers for our revenue at such time.

Our obligations to the U.S. DoD may limit our ability to sell our COVID-19 test to other customers in the near term, including to healthcare systems and healthcare providers, enterprise customers, consumers and strategic partners.

Under our agreement with the U.S. DoD, the U.S. government is entitled to all of our manufacturing output during the term of the agreement, subject to certain exceptions for existing agreements and our ability to obtain waivers from the U.S. DoD. In April 2021, we received the U.S. DoD Waiver, which, effective May 1, 2021, allows us to distribute commercially up to 50% of our COVID-19 Test Kit production, measured monthly in arrears on a calendar month basis, to non-U.S. federal government customers and other recipients. We anticipate that the U.S. DoD Waiver will remain in effect for the duration of the U.S. DoD agreement; however, the U.S. government may modify the waiver upon timely written notice to reasonably accommodate changes in U.S. government requirements. Because of our obligations to the U.S. DoD under the U.S. DoD agreement, we have been and may continue to be delayed in our ability to widely roll out our COVID-19 test to other customers, including healthcare systems and healthcare providers, enterprise customers, and consumers, especially if we aren't able to obtain additional waivers from the U.S. DoD for future customer agreements. Any delay by us in making Cue Readers and our COVID-19 Test Kits available to these other customer groups could cause us to lose any advantage we may have otherwise had as a result of our being the first company to receive an EUA from the FDA for at-home and over-the-counter use without a prescription and may allow other companies to gain market share at our expense.

We may encounter difficulties in managing our growth, which could adversely affect our operations.

From January 1, 2020 to August 31, 2021, the number of our employees increased from 99 to 1,254 as we have been rapidly scaling up our manufacturing and corporate infrastructure during this time. We anticipate continued growth in our business operations. Our recent rapid growth has, and our continued growth is expected to, place significant strain across our organizational, administrative, and operational infrastructure. Our ability to manage our growth properly will require us to implement additional operational, financial, and managerial controls, as well as our reporting systems and procedures, and to continuously improve these controls, systems and procedures.

Our growth requires us to continue to expand our manufacturing capacity, our corporate infrastructure, hire significant additional personnel in a wide range of areas, implement new technology systems and automate equipment processes. In addition, we will need to continue to implement customer service, billing, and general process improvements and expand our internal quality assurance program. Among other areas, customer service could prove to be particularly important to us given that the Cue Health Monitoring System has only very recently been introduced to the commercial market and the lack of experience some of our potential customers will have with our products and its benefits. While we are currently undertaking improvements to our facilities, including development of additional production pods, as part of our rapid growth, such improvements may be delayed for reasons that are outside of our control. As a result of the foregoing, we cannot assure you that we will be successful in implementing any necessary increases in scale, expansion of personnel, equipment, facilities, systems or process enhancements.

In addition, needed components and supplies may not be available when required on terms that are acceptable to us, or at all, and our suppliers, as well as our contract manufacturers of Cue Readers and Cue Wands may not be able to allocate sufficient capacity in order to meet our requirements, which could adversely affect our business, financial condition and results of operations.

Given our very short history of operating a business at commercial scale and our very recent rapid growth, we cannot assure you that we will be able to successfully manage the expansion of our operations or recruit and train additional qualified personnel in an effective manner. Failure to manage our growth could, among other things, result in increased costs, product quality and customer service issues, and hinder our ability to respond to competitive challenges. A failure in any one of these or other areas could make it difficult for us to meet market expectations for our products and could damage our reputation, which in turn could have a material adverse effect on our business, financial condition, results of operations and future prospects.

Our business model is predicated on the idea that the healthcare industry is ripe for innovative disruption and the emergence of a new healthcare paradigm. The healthcare system, particularly in the United States, has historically been very slow to change, and we cannot assure you that we will be successful in our efforts to bring about disruptive change.

The healthcare system, particularly in the United States, has historically been very slow to change. We cannot assure you that we will be successful in our goal to bring about innovative disruption and the emergence of a new

healthcare paradigm. There are many different constituencies that make up the healthcare system, many of whom may have a significant interest in trying to maintain the status quo. We cannot assure you that we will not face resistance from certain participants in the healthcare system as we seek to bring about change. To the extent we encounter any such challenges, the market potential for the Cue Integrated Care Platform and our products and other current and future offerings may be more limited than we anticipate. Our success and future growth largely depend on our ability to increase awareness of the Cue Integrated Care Platform and our products and other offerings with consumers, healthcare providers, enterprises, payors and other stakeholders in the healthcare system, and on the willingness of these stakeholders to utilize the Cue Health Monitoring System, including our current and future tests, the Cue Virtual Care Delivery Apps, and the overall Cue Integrated Care Platform. Diagnostic testing in the United States and elsewhere in the world continues to rely significantly on a centralized clinical testing model. We cannot assure you that we will be successful in changing historical practices in the way diagnostic testing is done, or in our efforts to bring about connectivity within the healthcare system. Consumers and other stakeholders in the healthcare system may be slow in changing their habits and may be hesitant to use the Cue Integrated Care Platform for a variety of reasons, including:

- lack of experience with our company, Cue Integrated Care Platform and products, and concerns about the newness of our technology or that we are relatively new to the industry;
- perceived health, safety or quality risks associated with the use of a new platform and the process of an individual conducting a diagnostic test at home;
- perception that diagnostic testing can only be administered by a healthcare provider;
- traditional or existing relationships between and among healthcare stakeholders that administer, process and sell diagnostic testing;
- concerns about the privacy and security of patient information and data that is available on and that can be shared with or through our Cue Integrated Care Platform;
- competition and negative selling efforts from competitors, including competing tests and platforms and other providers of healthcare technology platforms and services; and
- perception regarding the complexity of using the Cue Health Monitoring System or Cue Virtual Care Delivery Apps.

If we are unsuccessful in bringing about the disruptive change we are seeking to achieve, the opportunity for our company may be more limited than we currently anticipate.

The diagnostic testing market is extremely competitive and rapidly evolving, making it difficult to evaluate our business and future prospects.

The market for diagnostic testing is extremely competitive. Further, the diagnostic testing industry, as well as the manner in which healthcare services are delivered more broadly, is currently experiencing rapid change, technological and scientific breakthroughs, new product introductions and enhancements and evolving industry standards, as well as the emergence of telehealth and other changes in the way healthcare services are delivered. All of these factors could affect the degree to which our products gain market acceptance or approval or result in our products being less marketable or becoming obsolete. Our future success will depend on our ability to successfully compete with established and new market participants and to keep pace with scientific and technological changes and the evolving needs of customers and the healthcare marketplace.

We will be required to continuously enhance the Cue Health Monitoring System and develop new tests to keep pace with evolving standards of care. If we do not update our products to keep pace with technological and scientific advances, our products could become obsolete and sales of our products could decline or fail to grow as expected.

Central labs continue to represent the most significant portion of the diagnostic testing market, and as a result we will be competing against very large and well-established lab companies such as Quest Diagnostics, Inc. and Laboratory Corporation of America. These companies have also expanded beyond centralized laboratory testing into home sample collection. In addition, we also face intense competition from other companies that develop or already have molecular tests, whether at point-of-care or at-home, as well as companies that have or are developing antigen and antibody tests. Competitors with diagnostic testing platforms include private and public companies, such as Abbott Laboratories, Becton, Dickinson and Company, BioMerieux SA, Bio-Rad Laboratories, Inc., Danaher Corp., Ellume Limited, Everly Health, Inc., F. Hoffman-La Roche Ltd., Fluidigm Corporation, GenMark Diagnostics Inc.,

Ginkgo Bioworks, Inc., Mammoth Biosciences, Inc., LetsGetChecked, Lucira Health, Inc., Mesa Biotech, Inc., Qiagen N.V., Quidel Corporation, Sherlock Biosciences, Inc., Siemens AG, Talis Biomedical Corporation, Thermo Fisher Scientific, Inc. and Visby Medical, Inc. as well as several retailers, such as The Kroger Company, Walmart Inc. and Alberstons Companies, Inc.

In addition, we may also experience competition from technology-enabled health companies such as 1Life Healthcare, Inc. (d/b/a as OneMedical), American Well Corporation, Hims and Hers Health, Inc., and Teledoc Health, Inc. We may also face competition from other companies, including other technology companies. For example, it has been publicly reported that Amazon.com, Inc. may be considering launching an at-home diagnostic testing business.

Many of our current or potential competitors, either alone or with their collaboration partners, have significantly greater financial resources and expertise than we do in research and development, manufacturing, obtaining regulatory clearances and approvals and regulatory compliance, and sales and distribution. Mergers and acquisitions involving diagnostic testing or other healthcare companies may result in even more resources being concentrated among a smaller number of our competitors. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies or customer networks. Our commercial opportunity could be reduced or eliminated if our competitors develop and commercialize diagnostic products or services that are more accurate, more convenient to use or more cost-effective than our products. Our competitors also may obtain FDA or other regulatory clearance or approval for their products more rapidly than we may obtain clearance or approval for our products, which could result in our competitors establishing a strong market position before we are able to enter a particular market.

Further, some of our competitors' products may be sold at prices that may be lower than our pricing, which could adversely affect our sales or force us to reduce our prices, which could harm our revenue, operating income or market share. If we are unable to compete successfully, we may be unable to increase or sustain our revenue or achieve profitability and our future growth prospects may be materially harmed.

To remain competitive, we will need to expand our test menu and continually develop improvements to our products and other offerings. We cannot assure you that we will be able to successfully compete in the marketplace or develop and commercialize new tests or improvements to our products and other offerings on a timely basis. Our competitors may develop and commercialize competing or alternative products or services and improvements faster than we are able to do so, which would negatively affect our ability to increase or sustain our revenue or achieve profitability and could materially adversely affect our future growth prospects.

If the Cue Health Monitoring System fails to achieve broad adoption by or support from the medical and professional community, key opinion leaders and other key participants in the healthcare system, our business and prospects may be materially adversely affected.

The success of the Cue Integrated Care Platform and our business model will depend on our ability to gain wide acceptance of the Cue Health Monitoring System in the marketplace. This will require us to obtain support from members of the professional and medical community, key opinion leaders and other key participants in the healthcare system.

Our ability to obtain the support of these constituencies will depend on a number of factors, including:

- our ability to demonstrate the accuracy, ease of use, and affordability of Test Kits using the Cue Health Monitoring System;
- our ability to demonstrate the comparability of test results using the Cue Health Monitoring System to other testing methodologies, including those utilized by centralized labs, such as polymerase chain reaction, or PCR, tests, reverse transcription PCR, or RT-PCR, tests, and loop-mediated isothermal amplification, or LAMP;
- any lack or perceived lack of sufficient clinical evidence supporting the accuracy and performance of our tests;
- a willingness of constituents in the healthcare system to adopt the Cue Integrated Care Platform and our current and future tests over other diagnostic products and tests;
- overcoming any biases these constituencies may have toward the Cue Integrated Care Platform and our current and future tests relative to other diagnostic products and tests;

- the cost and reimbursement from third-party payors or other payment coverage for Cue Readers and Cue Test Kits in relation to other diagnostic products and tests;
- satisfaction with the accuracy and ease of use of the Cue Health Monitoring System and overall customer experience;
- changes in pricing and promotional efforts by competitors;
- demand for point-of-care and over-the-counter diagnostic testing;
- the effectiveness of our sales, marketing and distribution efforts; and
- adverse publicity about the Cue Health Monitoring System, including any current or future developed test kits, competitive products, or the industry as a whole, or favorable publicity about competitive products.

If our tests fail to achieve broad support from members of the professional and medical community, key opinion leaders and other key participants in the healthcare system, our business and future prospects may be materially adversely affected.

Our sales cycle with institutional customers may be lengthy and variable, which may make it difficult for us to forecast revenue and other operating results.

We expect that our sales process with healthcare systems and providers, enterprise customers, strategic partners, governments and other institutional customers will require numerous interactions with multiple individuals within any given organization and involve in-depth analysis by potential customers of our products, preparation of extensive documentation and a lengthy review process. As a result of these factors and the budget cycles of these types of customers, coupled with the fact that our product involves new technology and a new model for diagnostic testing and care paradigm, the time from initial contact with a potential enterprise or other institutional customer to our receipt of a purchase order or subscription agreement may vary significantly and may be many months or longer. Given the length and uncertainty of this expected sales cycle, we may experience fluctuations in our product revenue on a period-to-period basis.

If the Cue Health Monitoring System does not perform as expected, including with respect to accuracy, errors, defects or reliability, our reputation and market acceptance of our products could be materially harmed, and our business and reputation could suffer.

Our success depends on customer confidence that we can provide reliable and highly accurate diagnostic tests and enable better patient care. We believe that healthcare stakeholders are likely to be particularly sensitive to defects, errors or reliability issues in our products, including if our products fail to accurately diagnose infections with high accuracy from patient samples, and there can be no guarantee that our products will meet their expectations. There is no guarantee that the accuracy and reproducibility we have demonstrated to date will continue as our product deliveries increase, our menu of tests expands and our other offerings through the Cue Integrated Care Platform continue to develop.

Our products use a number of complex and sophisticated biochemical and bioinformatics processes. Our diagnostic tests may contain errors or defects or be subject to reliability issues, and while we have made efforts to test them extensively, we cannot assure that our COVID-19 test, or any diagnostic test we develop in the future, will not have performance problems. An operational, technological or other failure in one of these complex processes or fluctuations in external variables may result in sensitivity or specificity rates that are lower than we anticipate or result in longer than expected turnaround times or they may cause our products to malfunction. In addition, our Cue Virtual Care Delivery Apps or other technology interfaces may contain undetected bugs, errors or defects. Due to the complexity of the Cue Health Monitoring System, it may be difficult or impossible to identify the reason for any performance errors or malfunctions or reliability issues. Performance issues could increase our costs and adversely affect our business, financial condition and results of operations. In addition, failure to maintain high-quality customer support, or a market perception that we do not maintain high-quality customer support, could adversely affect our reputation and our ability to sell our Cue Health Monitoring System. We may also be subject to warranty claims or breach of contract for damages related to errors, defects or reliability issues in our products.

Further, our products are designed to be used at the customer’s location by untrained individuals. We cannot provide assurance that our customers will always use our products in the manner in which we intend.

If our products do not perform, or are perceived to not have performed, as expected or favorably in comparison to competitive products, our operating results, reputation, and business may suffer, our future prospects may be materially adversely affected, and we may also be subject to legal claims arising from product limitations, errors, or inaccuracies.

Additionally, COVID-19 and many of the other pathogens for which we are developing tests are known to mutate over time. Such mutations may negatively affect the accuracy of our tests or even make our tests obsolete. The failure of our products to perform as expected could significantly impair our operating results and our reputation, including if we become subject to legal claims arising from any defects or errors in our products or test results.

Operational, technical and other difficulties adversely affecting test performance may harm our reputation, impact the commercial attractiveness of our products, increase our costs or divert our resources, including management's time and attention, from other projects and priorities. Any of the foregoing could have a material adverse effect on our business, financial condition and results of operations and adversely affect our prospects.

Our products may be subject to recalls. A recall of our products, either voluntarily or at the direction of the FDA or another governmental authority, or the discovery of serious safety issues with our products, could have a significant adverse impact on us.

The FDA has the authority to require the recall of commercialized products that are subject to FDA regulation. Manufacturers may also, under their own initiative, recall a product or service if any deficiency is found. For reportable corrections and removals, companies are required to make additional periodic submissions to the FDA after initiating the recall, and often engage with the FDA on their recall strategy prior to initiating the recall. A government-mandated or voluntary recall by us or a distributor could occur as a result of an unacceptable health risk, component failures, malfunctions, manufacturing errors, design or labeling defects, or other deficiencies and issues. Recalls of any of our commercialized products would divert managerial and financial resources and adversely affect our business, results of operations, financial condition and reputation. A recall of any component of the Cue Health Monitoring System could be required for any number of problems. Given the number of components, determining the cause of the malfunction may be particularly challenging and costly. In addition, any recall of any component of the Cue Health Monitoring System would decrease the market for our authorized tests given the decreased availability of such instruments. We may also be subject to liability claims, be required to bear other costs or take other actions that may negatively impact our future sales and our ability to generate profits. Companies are also required to maintain certain records of corrections and removals, even if these do not require reporting to the FDA. We may initiate voluntary recalls involving our commercialized products. The FDA or other agency could take enforcement action for failing to report the recalls when they were conducted. In addition, if we are required to make changes to our products to redress the deficiencies leading to the recall, we may be required to seek marketing authorization for the modified device prior to commercializing it. Any recall announcement by us or the FDA or any other governmental authority, or any changes that we make to our products as a result of such recall, could harm our reputation with customers and negatively affect our business, financial condition, and results of operations.

If we initiate a recall, including a correction or removal, for one of our commercialized products, issue a safety alert, or undertake a field action or recall to reduce a health risk, could lead to increased scrutiny by the FDA, other governmental and regulatory enforcement bodies, and our customers regarding the quality and safety of our products, and to negative publicity, including FDA alerts, press releases, or administrative or judicial actions. Furthermore, the submission of these reports could be used against us by competitors and cause customers to delay purchase decisions or cancel orders, which would harm our reputation.

The use of the Cue Health Monitoring System and Cue Virtual Care Delivery Apps requires users to follow instructions, and not adhering to such instructions may lead to negative outcomes, which could harm our business. In addition, if product users view our products as difficult to use or invasive, it could affect the degree of utilization and market adoption of our products.

The successful use of the Cue Health Monitoring System and Cue Virtual Care Delivery Apps depends on each user following the instructions provided. Any user, whether it be a healthcare stakeholder or customer at home, could experience difficulty performing a test using our Cue Health Monitoring System and Cue Virtual Care Delivery Apps if they fail to follow the instructions, or otherwise misuse the test. If healthcare stakeholders or other users utilize our tests incorrectly, or without adhering to our instructions, their test result outcomes may not be consistent with the outcomes achieved in our clinical trials. For example, if a user removes the Cue Wand from the Cue Cartridge while conducting a test on the Cue Health Monitoring System, which our instructions explicitly state not to do, they could

be exposed to genetic material and the result of the user's test could return a false positive. Additionally, healthcare stakeholders and customers could find the Cue Health Monitoring System difficult to use, invasive or ultimately prefer a different diagnostic testing system. This could harm our ability to achieve the broad degree of adoption necessary for commercial success or cause negative publicity and word-of-mouth as a result of our tests not meeting user expectations and accordingly, our operating results and financial condition could be adversely affected, which may delay, prevent or limit our ability to generate revenue and continue our business.

The Cue Health Monitoring System and the Cue Virtual Care Delivery Apps rely on access to the Internet, mobile networks and Bluetooth for connectivity.

The ability to conduct testing using the Cue Health Monitoring System and the availability of the Cue Virtual Care Delivery Apps depends on access to the Internet, mobile networks and Bluetooth connectivity and storage of data in the "cloud." Our services are designed to operate without interruption. If performance of our products is adversely affected due to lack of availability of Internet access, mobile networks or Bluetooth connectivity for any reason, or security concerns arise relating to our products reliance on these means of connectivity and data storage, our relationship with customers and users of our products and our reputation could be materially adversely affected.

The total addressable market opportunity for our current and future products may be much smaller than we estimate.

Our estimates of the total addressable market for the Cue Integrated Cate Platform are based on internal and third-party estimates as well as a number of significant assumptions. Market opportunity estimates and growth forecasts included in this prospectus are subject to significant uncertainty and are based on assumptions and estimates. These estimates, which have been derived from a variety of sources, including market research and our own internal estimates, may prove to be incorrect. Further, the continued development of, and approval or authorizations for, vaccines and therapeutic treatments may affect these market opportunity estimates. Our market opportunity may also be limited by new diagnostic tests or other products that enter the market. If any of our estimates prove to be inaccurate, the market opportunity for platform and products could be significantly less than we estimate. If this turns out to be the case, our potential for growth may be limited and our business and future prospects may be materially adversely affected.

If we are unable to obtain and maintain adequate levels of coverage and reimbursement from third-party payors for our Cue Readers and Cue Test Kits, the market opportunity for our tests may be less than we expect.

Our market success is dependent upon government and commercial third-party payors providing coverage and adequate reimbursement for our Cue Readers and Cue Test Kits. While the reimbursement status for COVID-19 tests generally is still evolving, our COVID-19 tests are not currently being reimbursed by federal or state health care programs or third-party payors for at-home and over-the-counter use in the United States. However, we expect that in the future healthcare providers that purchase our COVID-19 test will look to various third-party payors, such as Medicare, Medicaid, private commercial insurance companies, health maintenance organizations, accountable care organization, or ACOs, and other healthcare-related organizations, to cover and pay for our COVID-19 test. Decisions regarding the extent of coverage and amount of reimbursement to be provided are made on a payor-by-payor basis. Sales volumes and prices of our COVID-19 test will depend in large part on the availability of coverage and reimbursement from such third-party payors. These third-party payors decide which products will be covered and establish reimbursement levels for those products. Reimbursement by a third-party payor may depend upon a number of factors, including the third-party payor's determination that a clinical laboratory test is safe, effective and medically necessary; appropriate for the specific patient; cost-effective; supported by peer-reviewed medical journals; included in clinical practice guidelines; and neither cosmetic, experimental, nor investigational. Even if a third-party payor covers a particular test or procedure, the resulting reimbursement payment rates may not be adequate. Coverage criteria and reimbursement rates for diagnostic tests are subject to adjustment by payors, and current reimbursement rates could be reduced, or coverage criteria restricted in the future, which could adversely affect the market for our COVID-19 test or any test we may receive governmental or other regulatory approval for in the future. In addition, the reimbursement rate for our at-home test is uncertain. Third-party payors may require additional clinical or other data in order to cover any of our COVID-19 tests or any future test we may develop in certain settings.

Our operating results may fluctuate significantly, including without limitation, due to the prevalence of COVID-19 or other conditions addressed by our tests as well as due to seasonality, which may make our future operating results difficult to predict and could cause our operating results to fall below expectations or any guidance we may provide or may be provided by investment banking research analysts or other third parties.

Our quarterly and annual operating results may fluctuate significantly, which makes it difficult for us to predict our future operating results. These fluctuations may occur due to a variety of factors, many of which are outside of our control, including, but not limited to:

- the level of demand for any of our authorized or approved tests, which may vary significantly;
- authorization, approval and commercialization activities relating to our Cue Test Kits, which may change from time to time;
- the timing and cost of, and level of investment in, research, development, manufacturing, regulatory and commercialization activities related to our tests, which may change from time to time;
- the size, seasonality and customer mix of the COVID-19 diagnostic testing market;
- the effect of the COVID-19 pandemic and the end of the COVID-19 pandemic on our business;
- the effect of current and new therapeutic treatments for COVID-19 and vaccines;
- sales and marketing efforts and expenses;
- the rate at which we grow our sales force and the speed at which newly hired salespeople become effective;
- changes in the productivity of our sales force;
- positive or negative coverage in the media of, or clinical publications about, the Cue Health Monitoring System or any of our current or future tests or competitive products;
- the cost of manufacturing any of the components of the Cue Health Monitoring System;
- the introduction of new tests or enhancements or technologies by us or others in the diagnostic testing industry;
- pricing pressures;
- coverage and reimbursement policies with respect to our tests and products that compete with our tests;
- expenditures that we may incur to acquire, develop or commercialize tests for additional indications, if any;
- the degree of competition in our industry and any change in the competitive landscape of our industry;
- changes in governmental regulations or in the status of our regulatory approvals or applications;
- future accounting pronouncements or changes in our accounting policies; and
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

The cumulative effect of the factors discussed above could result in large fluctuations and unpredictability in our quarterly and annual operating results. As a result, comparing our operating results on a period-to-period basis may not be meaningful. Investors should not rely on our past results as an indication of our future performance. This variability and unpredictability could also result in our failing to meet the expectations of industry or financial analysts or investors for any period, which in turn could have a material adverse effect on our business, financial condition and results of operations.

If we are unable to accurately forecast inventory needs and manufacture sufficient quantities of any component of the Cue Health Monitoring System, we may experience shortages or excesses of inventory, which could result in us having insufficient capacity to meet customer demand or lead to write-downs or write-offs of inventory.

To ensure adequate supply, we must forecast inventory needs and manufacture the components of the Cue Health Monitoring System based on our estimates of future demand. Our ability to accurately forecast demand for the Cue Health Monitoring System, including the demand for any one or more of our current or future tests, could be negatively affected by many factors, including our failure to accurately manage our expansion strategy, product

introductions by competitors, an increase or decrease in customer and user demand for our tests or for products of our competitors, our failure to accurately forecast market acceptance of new products, unanticipated changes in general market conditions, including the production and distribution of additional efficacious vaccines or other treatments for COVID-19, seasonal demands, or regulatory matters and weakening of economic conditions or user confidence in future economic conditions. In addition, we anticipate that we will experience fluctuations in customer and user demand based on seasonality, which for COVID-19 remains unknown. However, for example, to the extent we are able to commercialize a test for influenza, we would expect our forecasts of inventory for the fall and winter seasons to reflect a significant increase in inventory for that product relative to our forecasts for the spring and summer seasons. If this expectation does not materialize, our inventory forecasts may be inaccurate, resulting in shortages or excesses of inventory. Inventory levels in excess of customer and user demand may result in inventory write-downs or write-offs, which would cause our gross margin to be adversely affected and could impair the strength of our brand.

In addition, if we experience a significant increase in demand, additional supplies of raw materials or additional manufacturing capacity may not be available when required on terms that are acceptable to us, or at all, or suppliers may not be able to allocate sufficient capacity in order to meet our increased requirements, which will negatively affect our business, financial condition and results of operations. Furthermore, our inability to meet manufacturing and production requirements could cause us to lose our existing customers or lose our ability to acquire new customers which would also negatively impact our business, financial condition and results of operations.

We will seek to maintain sufficient levels of inventory in order to protect ourselves from supply interruptions. As a result, we are subject to the risk that a portion of our inventory will become obsolete or expire. As an example, our Cue COVID-19 Cartridges sold in the United States and Canada currently have a nine-month shelf life within which they must be used before they expire, and in India they currently have a four-month shelf life. Any such expiration or obsoleteness of any of our products could have a material adverse effect on our earnings and cash flows due to the resulting costs associated with the inventory impairment charges and costs required to replace such inventory.

We may not be able to achieve or maintain satisfactory pricing and margins for our Cue Test Kits, which could harm our business and results of operations.

Manufacturers of diagnostic tests have a history of price competition, and we may not be able to achieve or maintain satisfactory prices for our Cue Readers or any of our current or future Cue Test Kits. The pricing of our Cue Readers or any of our Cue Test Kits could be impacted by several factors, including pressure to improve margins as a result of competitive or customer pricing pressure or a limit or decline in the amount that third-party payors reimburse our customers, which could make it difficult for customers to adopt the Cue Health Monitoring System.

Furthermore, at this time, in most cases we expect to receive payment for our over-the-counter at-home tests directly from point-of-care customers and not to bill third-party payors directly. Because our COVID-19 test is the first over-the-counter and at-home use FDA-authorized molecular diagnostic test that does not require physician supervision or a prescription, there is not a well-established market for this type of product and therefore the price that we are able to charge or the price that our customers are willing to pay may be less than what we have been able to charge to date.

If we are forced to lower the price we charge for any components of our Cue Health Monitoring System, our gross margins will decrease. In addition, if our costs increase and we are unable to offset such increase with an increase in our prices, our margins would also be adversely affected. We may be subject to significant pricing pressure, which could harm our business, financial condition and results of operations and our future prospects.

If we are not successful in developing and obtaining regulatory clearance or other authorization or approval for, and commercializing additional tests, our ability to expand our business and achieve our strategic objectives will be adversely affected.

We believe our flexible platform enables us to launch different tests for other infectious diseases in addition to COVID-19 as well as for additional clinical uses, including in the areas of respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management. Capitalizing on the flexibility of our Cue Integrated Care Platform is a key pillar to our strategy. We will be required to conduct significant additional research and development activities and obtain necessary regulatory clearances or other required authorizations or approvals before we are able to commercialize additional tests, and we do not expect to be able to

introduce any additional tests into the commercial market before the end of 2022, at the earliest. Developing new tests requires substantial technical, financial and human resources, whether or not any tests are ultimately developed or commercialized, which may divert management's attention away from other aspects of our business. We may pursue what we believe are promising opportunities only to discover that certain of our risk or resource allocation decisions were incorrect or insufficient, or that certain tests or the Cue Integrated Care Platform in general has risks that were previously unknown or underappreciated. In addition, even if we successfully develop new tests, we will not be able to commercialize them unless we obtain the necessary regulatory clearance or other required authorization or approval. If we are unable to successfully develop or commercialize new tests for whatever reason, we may not be able to realize what we anticipated to be the full potential of the Cue Integrated Care Platform and our business, financial condition, results of operations and future prospects may be materially adversely affected.

If the Cue Health Monitoring System does not perform as expected, our business, operating results, reputation and future prospects may suffer.

Our success depends on our ability to provide reliable tests that enable high-quality diagnostic testing with high accuracy, ease of use, and short turnaround times. The accuracy and reproducibility we have demonstrated to date with respect to our COVID-19 test may not continue or be indicative of actual future performance as the product attains more widespread usage.

The Cue Health Monitoring System uses a number of complex and sophisticated biochemical and bioinformatics processes, many of which are highly sensitive to external factors, including human error. An operational, technological, user or other failure in one of these complex processes or fluctuations in external variables may result in sensitivity or specificity rates that are lower than we anticipate or result in longer than expected turnaround times. Operational, technical, user and other difficulties may also adversely affect test performance. If our tests do not perform, or are perceived to not have performed, as expected or favorably in comparison to competitive products, our business, operating results, reputation, and future prospects may suffer, and we may also be subject to legal claims arising from product limitations, errors, or inaccuracies. Any of the foregoing could have a material adverse effect on our business, financial condition and results of operations.

We have identified material weaknesses in our internal control over financial reporting and may identify material weaknesses in the future or otherwise fail to maintain an effective system of internal controls in the future, as a result of which, we may not be able to accurately report our financial condition or results of operations, which may adversely affect investor confidence in us and, as a result, the value of our common stock.

We have been a private company since our inception and, as such, we have not had the internal control and financial reporting requirements that are required of a publicly-traded company. We are required to comply with the requirements of The Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, following the date we are deemed to be an "accelerated filer" or a "large accelerated filer," each as defined in the Exchange Act, which could be as early as our first fiscal year beginning after the effective date of this offering. As a result of becoming a public company, we will be required, under Section 404 of the Sarbanes-Oxley Act to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting beginning with our Annual Report on Form 10-K for the year ended December 31, 2022. This assessment will need to include disclosure of any material weaknesses identified in our internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of a company's annual and interim financial statements will not be detected or prevented on a timely basis.

In connection with the audits of our 2019 and 2020 annual financial statements, we identified material weaknesses in internal controls pertaining to information technology general controls, a lack of segregation of duties, documentation and design of formalized processes and procedures, insufficient complement of qualified resources with an appropriate level of knowledge, experience and training important to our financial reporting requirements, timely reconciliation and analysis of certain key accounts and the review of journal entries. These material weaknesses could result in material misstatements of our financial statement account balances or disclosures of our annual or interim financial statements that would not be prevented or detected. We have concluded that these material weaknesses in our internal controls over financial reporting occurred because, prior to this offering, we were a private company and did not have the internal controls necessary to satisfy the accounting and financial reporting requirements of a public company.

Beginning in the fourth quarter of 2020, we began to take steps to address our material weaknesses through our remediation plan, which included the hiring of a Chief Financial Officer in the first quarter of 2021, and the hiring of a Chief Accounting Officer and a Vice President and Treasurer in the second quarter of 2021, documenting and formally assessing our accounting and financial reporting controls, policies and procedures, and the continued engagement of external advisors to provide financial accounting assistance in the short term. We have hired and are in the process of hiring additional personnel to improve the segregation of duties in our financial closing and reporting process and timely review of key accounts and journal entries. In addition, we have engaged external advisors to evaluate and document the design and operating effectiveness of our internal controls and assist with the remediation and implementation of our internal controls as required. We are evaluating the longer-term resource needs of our various financial functions. We cannot assure you that our efforts to remediate the material weakness will be successful.

If we fail to remediate the identified material weaknesses or identify new material weaknesses by the time we have to issue our first Section 404(a) assessment on the effectiveness of our internal control over financial reporting, we will not be able to conclude that our internal control over financial reporting is effective, which may cause investors to lose confidence in our financial statements, and the trading price of our common stock may decline. If we fail to remedy any material weakness, our financial statements may be inaccurate, our access to the capital markets may be restricted and the trading price of our common stock may suffer.

Our management and independent registered public accounting firm did not perform an evaluation of our internal control over financial reporting during any period in accordance with the provisions of Sarbanes-Oxley Act. Had we performed an evaluation and had our independent registered public accounting firm performed an audit of our internal control over financial reporting in accordance with the provisions of Sarbanes-Oxley Act, additional material weaknesses may have been identified.

We are highly dependent on our senior management team and key personnel, and we will need to hire additional personnel in connection with the current scale up and growth of our business. Our business may be materially harmed if we are unable to attract and retain personnel necessary for our growth and success.

We are highly dependent on our senior management team and key personnel. Our success will depend on our ability to retain senior management and to attract and retain qualified personnel in the future, including sales and marketing professionals, commercial and manufacturing personnel, research and development personnel, finance and accounting personnel and other highly skilled personnel and to integrate current and additional personnel in all areas of our business. The loss of members of our senior management and other important employees could have a material adverse effect on our business. In particular, the loss of the services of our co-founders, Ayub Khattak, our Chief Executive Officer, and Clint Sever, our Chief Product Officer, could significantly delay or prevent the achievement of our strategic objectives and otherwise have a material adverse impact on our business. If we are not successful in attracting and retaining highly qualified personnel, it would have a negative impact on our business, financial condition and results of operations.

Competition for skilled personnel across virtually all areas where we need to attract additional personnel is intense and may limit our ability to hire and retain highly qualified personnel on acceptable terms, or at all. To induce valuable employees to remain at our company, in addition to salary and cash incentives, we have issued, and expect in the future to issue, stock options, restricted stock units or other equity awards. The value to employees of stock options, restricted stock units or other equity awards may be significantly affected by movements in our stock price, including due to events unrelated to our performance, and may at any time be insufficient to counteract more lucrative offers from other companies. Despite our efforts to retain valuable employees, members of our management and other employees may terminate their employment with us on short notice, even where we have employment agreements in place. We also do not maintain “key man” insurance policies on the lives of these people or the lives of any of our other employees.

Furthermore, in the last twelve months we have experienced significant growth and anticipate further significant growth as we continue to ramp up our business operations. We expect to continue to increase our headcount and to hire more specialized personnel as we grow our business. Rapid expansion in personnel could mean that less experienced people are performing important functions within our company, which could result in inefficiencies and unanticipated costs, reduced quality and disruptions to our operations. If our new hires perform poorly, if we are unsuccessful in hiring, training, managing and integrating these new employees or if we are not successful in retaining our existing employees, we may not be able to maintain the quality of our products or satisfy customer demand and our business may otherwise be materially harmed.

If we are unable to build-out our sales and marketing and customer support capabilities or enter into agreements with third parties for these services, we may not be successful in commercializing our COVID-19 test or our future products.

We currently have only a limited sales and marketing infrastructure, and have very limited experience in the sales, marketing, customer support or distribution of diagnostic or other commercial stage products. To achieve commercial success for our COVID-19 test or any of our future tests, we must build our sales, marketing, customer support, managerial and other capabilities or make arrangements with third parties to perform these services. We currently have limited internal sales and marketing and customer support teams in place and are in the process of hiring more employees in the near-term and plan to hire additional individuals in the future as we continue to grow our business.

Our future sales will depend in large part on our ability to develop, and substantially expand, our sales force and to increase the scope of our marketing efforts. We plan to take a measured approach to expand and optimize our sales infrastructure to grow our customer base and our business. Identifying and recruiting qualified personnel and training them in the use of the Cue Health Monitoring System, applicable federal and state laws and regulations and our internal policies and procedures, requires significant time, expense and attention. In addition, our EUA authorizations with respect to our COVID-19 test specify the scope and conditions of authorization, including limitations on distribution and conditions related to product advertising and promotion. It can take significant time before our sales representatives are fully trained and productive. Our business may be harmed if our efforts to expand do not generate a corresponding increase in revenue or result in a decrease in our operating margin. In particular, if we are unable to hire, develop and retain talented sales personnel or if new sales personnel are unable to achieve desired productivity levels in a reasonable period of time, we may not be able to realize the expected benefits of this investment or increase our revenue.

There are risks involved with both establishing our own sales and marketing capabilities and entering into arrangements with third parties to perform these services. For example, recruiting and training a sales force is expensive and time consuming and could delay any product launch. If any future authorized test for which we recruit a sales force and establish marketing capabilities is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization expenses. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel.

In addition, the introduction of our tests into our customers' existing workflows, and in the over-the-counter and at-home contexts requires us to maintain technical, customer and user support teams. Accordingly, we need trained technical and customer and user support personnel, the market for hiring these types of personnel is very competitive. If we are unable to attract, train or retain the number of qualified technical and customer and user support personnel that our business needs, our business and prospects will suffer.

If we enter into arrangements with third parties to perform sales and marketing and customer support services, our revenue or the profitability of the revenue to us may be lower than if we were to market and sell any current or future products that we develop ourselves. In addition, we may not be successful in entering into arrangements with third parties to sell and market our current or future products or may be unable to do so on terms that are favorable to us. We likely would have little control over such third parties, and any of them may fail to devote the necessary resources and attention to sell and market our current or future products effectively. If we do not establish sales and marketing capabilities successfully, either on our own or in collaboration with third parties, we will not be successful in commercializing our current or future products. Further, our business, results of operations, financial condition and future prospects may be materially adversely affected.

We rely on third-party vendors and consultants to assist with software and technology development and other aspects of our business. If any of these vendors or consultants do not perform as expected or if our relationship with any of them is terminated or otherwise changes, our business operations could be adversely affected.

We rely on third-party vendors and consultants to assist us with software and technology development and with other aspects of our business. We anticipate that we will continue to depend on these and other third-party relationships in order to grow our business for the foreseeable future. If our third-party vendors and consultants are unable or unwilling to provide the services necessary to support our business, or if our agreements with such vendors or consultants are terminated or we are otherwise unable to maintain these relationships, our business and operations could be adversely affected. If any of our relationships with existing third-party vendors or consultants are terminated, we may not be able to enter into similar relationships in the future on reasonable terms or at all. We may

also incur substantial costs, delays and disruptions to our business in transitioning such services to ourselves or other third-party vendors or consultants. In addition, third-party vendors and consultants may not be able to provide the services required in order to meet the changing needs of our business or scale as quickly as we require. Any of the foregoing could harm our business, financial condition, results of operations and competitive position.

If we are subject to orders from federal or state governments under the Defense Production Act of 1950, as amended, or the DPA, or similar federal or state legislation or other authorizations permitting the government to require companies to distribute goods, products or services or make manufacturing capacity available to or as directed by the government, our opportunity to grow our business may be adversely affected.

The DPA is a federal statute that confers upon the President of the United States a broad set of authorities to influence domestic industry in the interest of national defense. "National defense" can include emergency and disaster response and, since the start of the current COVID-19 crisis, this authority has been used on several occasions to address the public health crisis. Through the DPA, the executive branch has struck agreements with multiple companies to accelerate COVID-19 countermeasures, like N95 protective masks, testing swabs, and vaccine development, and, in September 2020, used the DPA to acquire point-of-care diagnostic testing instruments from two diagnostics industry competitors for placement in nursing homes. The government may apply the DPA, or another law or program, to our other existing contracts or a new contract to acquire our testing instruments or to direct us to distribute our products in a particular manner, and we may be likewise required to prioritize distribution to certain government agencies or other recipients, or to allocate inventory, supplies or facilities for government or government-directed use. The DPA provides that orders pursuant to the statute must "meet regularly established terms of sale or payment" and further provides that no person "shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order" under the DPA. However, compliance with the DPA could potentially cause business disruption, interfere with our commercial sales and marketing efforts, and depending on the demand, could even prevent or delay our ability to sell our products commercially, or may have other implications that significantly affect our commercialization and development efforts and general ability to conduct our business operations as planned. For example, government directed use of our products under such a program may result in our Cue Readers not being placed in settings where they will be used often for additional tests following the COVID-19 pandemic, which would adversely affect our long-term commercial plan that is based on increasing our installed base to roll out additional tests for use on the Cue Health Monitoring System. In addition, such government requirements may adversely affect our regular operations and financial results, result in differential treatment of customers and/or adversely affect our reputation and customer relationships. It is also possible that any change in the current administration could impact the manner in which the government uses the DPA and its other authorities, and result in additional or different risk to us.

The COVID-19 pandemic could materially adversely affect our business, financial condition and results of operations.

Like other companies, our business has been and will continue to be affected by the COVID-19 pandemic. For example, the spread of COVID-19 has caused us to modify our business practices (including on-site employee and visitor testing, employee travel, employee work locations, and the cancellation of physical participation in meetings, events and conferences) and delay our clinical study for our influenza test. We started our external influenza clinical study in January 2020. The study utilized a number of sites throughout the country. Many of these sites were research facilities that focused on clinical studies and do not provide clinical care. When the COVID-19 pandemic began spreading in the United States in early February and March 2020, many of these facilities began preventing potential enrollees from entering the sites if they exhibited any respiratory disease symptoms. This significantly impacted the enrollment of participants in our influenza test studies. We subsequently chose to pause, and ultimately stop, the study due to very low enrollment. Future planned clinical studies may also be postponed due to low infection prevalence and/or the shuttering of research facilities where clinical studies are conducted. Postponement of such studies may delay us from completing development and seeking regulatory clearances or approvals for our tests currently in development and future products. We may take further actions as may be required by government authorities or that we determine are in the best interests of our employees, consumers and partners. The degree to which COVID-19 will impact our business and operations going forward is unknown and will depend on future developments, which are highly uncertain and cannot be predicted, including, but not limited to, the continued duration and spread of the outbreak, the emergence of novel variants, the degree of severity of the outbreak and existing and new variants, the development and administration of existing and new therapeutic treatments and vaccines, the actions taken by national, regional, and local governments and health officials to contain the virus or treat its impact, how quickly and

to what extent normal economic and operating conditions can resume, whether the supply of components and raw materials will remain sufficient to satisfy demand and any impact on its pricing, and whether any of our third-party manufacturers experience any business interruptions which result in the delay of delivery of our products or components. Even after the outbreak of COVID-19 has subsided, we may experience material impacts to our business as a result of its global economic impact, including any recession or other negative widespread economic impacts that may occur as a result of the pandemic.

If we were to be sued for product liability, we could face substantial liabilities that exceed our resources.

The marketing, sale and use of the Cue Health Monitoring System and any of our current and future tests and products could lead to the filing of product liability claims where someone may allege that the Cue Health Monitoring System identified inaccurate or incomplete information or otherwise failed to perform as designed. We may also be subject to liability for errors in, a misunderstanding of or inappropriate reliance upon, the information we provide in the ordinary course of our business activities. In addition, we may be subject to product liability claims resulting from misuse or off-label use of the Cue Health Monitoring System. See the risk factor titled "—The misuse or off-label use of our tests may harm our reputation or the image of our tests in the marketplace, or result in injuries that lead to product liability suits, which could be costly to our business. Moreover, we could be subject to FDA sanctions if we are deemed to have engaged in off-label promotion." A product liability claim could result in substantial damages and be costly and time-consuming for us to defend. If we cannot successfully defend ourselves against product liability claims, we will incur substantial liabilities and reputational harm. In addition, regardless of merit or eventual outcome, product liability claims may result in:

- costs of litigation;
- distraction of management's attention from our primary business;
- the inability to continue commercializing the Cue Health Monitoring System or other new products;
- decreased demand for our Cue Readers or Cue Test Kits;
- damage to our business reputation;
- product recalls or withdrawals from the market;
- withdrawal of clinical trial participants;
- substantial monetary awards to patients or other claimants;
- loss of sales; or
- termination of existing agreements by our partners and potential partners failing to partner with us.

We maintain product liability insurance, but this insurance may not fully protect us from the financial impact of defending against product liability claims. Any product liability claim brought against us, with or without merit, could increase our insurance rates or prevent us from securing insurance coverage in the future.

While we may attempt to manage our product liability exposure by proactively recalling or withdrawing from the market any defective products, any recall or market withdrawal of any component of the Cue Health Monitoring System may delay the supply of those components to our customers and may impact our reputation. We may not be successful in initiating appropriate market recall or market withdrawal efforts that may be required in the future and these efforts may not have the intended effect of preventing product malfunctions and the accompanying product liability that may result. Such recalls and withdrawals may also be used by our competitors to harm our reputation for safety or be perceived by patients as a safety risk when considering the use of our tests, either of which could negatively affect our business, financial condition and results of operations.

Current or future litigation, government investigations and other legal proceedings may harm our business.

We have been, currently are and may in the future become, involved in legal proceedings that could have a negative impact on our reputation, business and financial condition and divert the attention of our management from the operation of our business. The types of legal proceedings we may be or become subject to include patent and other intellectual property claims, product liability claims, employee claims, tort or contract claims, federal or state regulatory investigations, securities class actions, and other legal proceedings, investigations or claims. For example, in February 2018, the staff of the SEC's Division of Enforcement issued a subpoena to us requesting certain

documents and information and we have been cooperating fully with the SEC's investigation. Litigation and other legal proceedings are inherently unpredictable and can result in excessive or unanticipated verdicts and/or injunctive relief that affect how we operate our business. We could incur judgments or enter into settlements of claims for monetary damages or for agreements to change the way we operate our business, or both. There may be an increase in the scope of these matters or there may be additional lawsuits, claims, proceedings or investigations in the future, which could harm our business, financial condition and results of operations. Adverse publicity about regulatory or legal action against us could damage our reputation and brand image, undermine our customers' confidence and reduce long-term demand for any of our products or other offerings under our Cue Integrated Care Platform, even if the regulatory or legal action is unfounded or not material to our operations. For additional information, see the section titled "Business—Legal Proceedings."

We depend on our information systems and those of third parties for the effective and efficient functioning of our business.

We depend on our information systems for the effective and efficient functioning of our business, including the manufacture, distribution and maintenance of the components of the Cue Health Monitoring System, as well as for accounting, data storage, compliance, purchasing and inventory management. Our information systems and those of third parties upon whom we rely may be subject to computer viruses, ransomware or other malware, attacks by computer hackers, failures during the process of upgrading or replacing software, databases or components thereof, power outages, damage or interruption from fires or other natural disasters, hardware failures, telecommunication failures and user errors, among other malfunctions and other cyber-attacks. We could be subject to an unintentional event that involves a third-party gaining unauthorized access to our systems, which could disrupt our operations, corrupt our data or result in the release of our confidential information. Additionally, theft of our intellectual property or proprietary business information could require substantial expenditures to remedy. Although the aggregate impact on our operations and financial condition has not been material to date, we have been the target of events of this nature and expect them to continue as cybersecurity threats have been rapidly evolving in sophistication and becoming more prevalent in the industry. Third parties upon whom we rely or with whom we have business relationships, including our customers, collaborators, suppliers, and others, are subject to similar risks that could potentially have an adverse effect on our business.

Technological interruptions could disrupt our operations, including our manufacturing operations, our ability to timely ship and track product orders, our ability to manage project inventory requirements, our ability to manage our supply chain and our ability to otherwise adequately service our customers or disrupt our customers' ability use the Cue Health Monitoring System or the Cue Integrated Care Platform.

In the event we experience significant disruptions in our information systems, we may be unable to address such disruptions in an efficient and timely manner. Accordingly, such events may disrupt or reduce the efficiency of our entire operation and harm our business, financial condition and results of operations. Any business interruption insurance carried by us may not be sufficient to protect us against any such business disruptions. Our information systems require an ongoing commitment of significant resources to maintain, protect and enhance our existing systems. Failure to maintain or protect our information systems and data integrity effectively could harm our business, financial condition and results of operations.

Security breaches, loss of data, and other disruptions could compromise sensitive information related to our business, or information of our customers, users of our products, healthcare stakeholders or others, or prevent us or our customers, users of our products, healthcare providers, healthcare payors or others from accessing critical information, all of which could result in a material adverse effect, including without limitation, a material operational or service interruption, harm to our reputation, significant fines, penalties and liability, breach or triggering of Data Protection Laws, Privacy Policies and Data Protection Obligations, loss of customers or sales, or customers curtailing or ceasing their use of our services.

In the ordinary course of our business, we and our third-party service providers will collect, use, generate, transfer, and disclose, or Process, sensitive data, including legally protected health information, or PHI, and medical information, personally identifiable information, intellectual property and proprietary business information owned or controlled by us or our customers. In addition, we offer online customer-facing portals accessible through private and web portals. It is critical that we Process sensitive data in a secure manner to maintain the confidentiality and integrity

of such confidential information. We manage and maintain our applications and data utilizing a combination of on-site systems, managed data center systems, and cloud-based data center systems. These applications and related data encompass a wide variety of business-critical information including research and development information, commercial and financial information.

Although we take measures designed to protect such information from unauthorized access, use or disclosure, our information technology and infrastructure, and that of our third-party service providers may be vulnerable to natural disasters, war, terrorism, telecommunications and electrical failures, ransomware, nation-state attacks, social engineering, denial-of-service attacks, phishing attacks, cyber-criminals, cyber-attacks by hackers or viruses, or breaches due to employee error, malfeasance or other disruptions. We also face the ongoing challenge of managing access controls to our information technology systems. If we do not successfully manage these access controls it further exposes us to risk of security breaches or disruptions. Any such security breaches or disruptions could compromise the security or integrity of our networks or result in the loss, misappropriation, and/or unauthorized access, use, modification or disclosure of, or the prevention of access to, sensitive data or confidential information (including trade secrets or other intellectual property, proprietary business information, and personal information). For example, any such event that leads to unauthorized access, use, or disclosure of personal information, including personal information regarding our customers or employees, could harm our reputation directly, compel us to comply with federal and/or state breach notification laws and foreign law equivalents, subject us to mandatory corrective action, and otherwise subject us to liability under laws and regulations that protect the privacy and security of personal information. If our or our vendors' information systems are breached, sensitive data are compromised, surreptitiously modified, rendered inaccessible for any period of time or maliciously made public, or if we fail to make adequate or timely disclosures to affected individuals, appropriate state and federal regulatory authorities or law enforcement agencies, if appropriate, following any such event, whether due to delayed discovery or a failure to follow existing protocols, it could result in significant fines, penalties, orders, sanctions and proceedings or actions against us by governmental bodies or other regulatory authorities, customers or third parties. Any of the foregoing could result in significant legal and financial exposure and reputational damages that could potentially have a material adverse effect on our business, financial condition, results of operations and prospects.

Cyber-attacks are increasing in frequency and evolving in nature, and this activity has increased even further during the COVID-19 pandemic. We are at risk of attack by a variety of adversaries, including state-sponsored organizations, organized crime, hackers or "hactivists" (activist hackers), through the use of increasingly sophisticated methods of attack, including long-term, persistent attacks referred to as advanced persistent threats. The techniques used to obtain unauthorized access or sabotage systems include, among other things, computer viruses, malicious or destructive code, ransomware, social engineering attacks (including phishing and impersonation), hacking and denial-of-service attacks. Our systems are also subject to compromise from internal threats, such as theft, misuse, unauthorized access or other improper actions by employees, vendors and other third parties with otherwise legitimate access to our systems. Third parties may also attempt to fraudulently induce our employees and contractors into disclosing sensitive information such as user names, passwords, or other information or otherwise compromise the security of our electronic systems, networks, and/or physical facilities in order to gain access to our data. Additionally, due to the COVID-19 pandemic, our employees are temporarily working remotely, which may pose additional data security risks. Given the unpredictability of the timing, nature and scope of information technology disruptions, there can be no assurance that any security procedures and controls that we or our third-party service providers have implemented will be sufficient to prevent cyber-attacks from occurring. The latency of a compromise is often measured in months, but could be years, and we may not be able to detect a compromise in a timely manner. New techniques may not be identified until they are launched against a target, and we may be unable to anticipate these techniques or detect an incident, assess its severity or impact, react or appropriately respond in a timely manner or implement adequate preventative measures, resulting in potential data loss or other damage to our information technology systems.

As the breadth and complexity of the technologies we use and the software and platforms we develop continue to grow, the potential risk of security breaches and cyber-attacks also increases. Our policies, employee training (including phishing prevention training), procedures and technical safeguards may be insufficient to prevent or detect improper access to confidential, proprietary or sensitive data, including personal data. In addition, the competition for talent in the data privacy and cybersecurity space is intense, and we may be unable to hire, develop or retain suitable talent capable of adequately detecting, mitigating or remediating these risks. As cybersecurity threats continue to evolve, we may be required to expend significant additional resources to continue to modify or enhance our protective measures or to investigate and remediate any information security vulnerabilities. The inability to implement, maintain and upgrade adequate safeguards could have a material adverse effect on our business. Additionally, federal, state, local, and international laws, rules,

regulations, guidance and opinions regarding privacy and information security, or collectively, Data Protection Laws, external and internal privacy and security policies, representations, certifications, standards, publications and frameworks, or collectively, Privacy Policies, and contractual obligations to third parties related to privacy and information security, or collectively, Data Protection Obligations, may require us to implement specific security measures or use industry-standard or reasonable measures to protect against security breaches, which may be costly or difficult to implement without adversely affecting our operations.

We expect that we may have numerous vendors and other third parties who receive personal data from us in connection with the products we offer our customers. In addition, we have migrated certain data, and may increasingly migrate data, to a cloud hosted by third-party vendors. Some of these vendors and third parties also have direct access to our systems. Due to applicable Data Protection Laws and Data Protection Obligations, we may be held responsible for any information security failure or cyber-attack attributed to our vendors as they relate to the information we share with them. In addition, because we do not control our vendors and our ability to monitor their data security is limited, we cannot ensure the security measures they take will be sufficient to protect confidential, proprietary, or sensitive data, including personal data, or prevent cyber-attackers from gaining access to our infrastructure or data through our vendors or other third parties.

Regardless of whether an actual or perceived cyber-attack is attributable to us or our third-party service providers, such an incident could, among other things, result in improper disclosure of information, harm our reputation and brand, reduce the demand for our products, lead to loss of customer confidence in the effectiveness of our security measures, disrupt normal business operations or result in our systems or products being unavailable. In addition, it may require us to spend material resources to investigate or correct the breach and to prevent future security breaches and incidents. The costs related to significant security breaches or disruptions could be material and exceed the limits of any cybersecurity insurance we maintain, increase our risk of regulatory scrutiny, expose us to legal liabilities, including litigation, regulatory enforcement, indemnity obligations or damages for contract breach, divert the attention of management from the operation of our business and cause us to incur significant costs, any of which could affect our financial condition, operating results and our reputation. Moreover, there could be public announcements regarding any such incidents and any steps we take to respond to or remediate such incidents, and if securities analysts or investors perceive these announcements to be negative, it could, among other things, have a substantial adverse effect on the price of our common stock. In addition, our remediation efforts may not be successful. Any of the foregoing events could have a material adverse effect on our business, financial condition and results of operations.

We may not have adequate insurance coverage to protect us against the various types of business risks we face.

We may not have adequate insurance coverage to protect us against the various types of business risks we face. This includes risks such as product liability risk, business interruption risk and other risks we may face. The successful assertion of one or more large claims against us that exceeds our available insurance coverage or for which we are self-insured, or results in changes to our insurance policies (including premium increases or the imposition of large deductible or co-insurance requirements), could have an adverse effect on our business. In addition, we cannot be sure that our existing insurance coverage and coverage for errors and omissions will continue to be available on acceptable terms or that our insurers will not deny coverage as to any future claim.

International expansion of our business exposes us to business, regulatory, political, operational, financial and economic risks associated with doing business outside the United States.

An element of our business strategy is to market our products outside the United States, if cleared, authorized or approved. Currently, we have a CE mark in the European Union, as well as Interim Order authorization from Health Canada, which is the department of the Government of Canada responsible for national health policy, for our COVID-19 test. In June 2021, our COVID-19 test also received regulatory approval from the CDSCO for professional point-of-care use in India. We expect to seek further authorizations, clearances and approvals outside of the United States. As a result, we expect that our business will be subject to risks associated with doing business outside the United States, including an increase in our expenses and diversion of our management’s attention from other aspects of our business. Accordingly, our business and financial results in the future could be adversely affected due to a variety of factors, including:

- failure by us or our distributors to obtain regulatory clearance, authorization or approval for the use of our products in various countries and other jurisdictions;

- multiple, conflicting and changing laws and regulations such as privacy security and data use regulations, tax laws, export and import restrictions, economic sanctions and embargoes, employment laws, anti-corruption laws, regulatory requirements, reimbursement or payor regimes and other governmental approvals, permits and licenses;
- additional potentially relevant third-party patent rights;
- pricing pressures and differing reimbursement regimes;
- complexities and difficulties in obtaining intellectual property protection and maintaining, defending and enforcing our intellectual property;
- difficulties in staffing and managing foreign operations;
- employment risks related to hiring employees outside the United States;
- logistics and regulations associated with shipping samples, including infrastructure conditions and transportation delays;
- limits in our ability to penetrate international markets;
- financial risks, such as longer payment cycles, difficulty collecting accounts receivable, the impact of local and regional financial crises on demand and payment for our products and exposure to foreign currency exchange rate fluctuations;
- regulatory authorities revoking or terminating our authorizations and approvals in Canada, the European Union and India, or other jurisdictions;
- natural disasters, political and economic instability, including wars, terrorism and political unrest, outbreak of disease, boycotts, curtailment of trade and other business restrictions;
- regulatory and compliance risks related to adherence with foreign privacy and data security laws, including the General Data Protection Regulation 2016/679 and other similar bodies of law;
- regulatory and compliance risks that relate to maintaining accurate information and control over sales and distributors' activities that may fall within the purview of the U.S. Foreign Corrupt Practices Act, or FCPA, its books and records provisions, or its anti-bribery provisions, or laws similar to the FCPA in other jurisdictions in which we may now or in the future operate, such as the United Kingdom's Bribery Act of 2010, or U.K. Bribery Act; and
- onerous anti-bribery requirements of several member states in the EU, the United Kingdom, and other countries that are constantly changing and require disclosure of information to which U.S. legal privilege may not extend.

Any of these factors or other risks associated with international operations could significantly harm our future international expansion and operations and, consequently, our revenue and results of operations.

We are subject to U.S. and certain foreign export and import controls, sanctions, embargoes, anti-corruption laws, and anti-money laundering laws and regulations. Compliance with these legal standards could impair our ability to compete in domestic and international markets. We can face criminal liability and other serious consequences for violations, which can harm our business.

We are subject to export control and import laws and regulations, including the U.S. Export Administration Regulations, U.S. Customs regulations, various economic and trade sanctions regulations administered by the U.S. Treasury Department's Office of Foreign Assets Controls, the U.S. Foreign Corrupt Practices Act of 1977, as amended, or FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the U.S. Travel Act, the USA PATRIOT Act, and other state and national anti-bribery and anti-money laundering laws in the countries in which we conduct activities. Anti-corruption laws are interpreted broadly and prohibit companies and their employees, agents, contractors, and other collaborators from authorizing, promising, offering, or providing, directly or indirectly, improper payments or anything else of value to recipients in the public or private sector. We may engage third parties to sell our products sell our products outside the United States, to conduct clinical trials, and/or to obtain necessary permits, licenses, patent registrations, and other regulatory approvals. We have direct or indirect interactions with officials and employees of government agencies or government-affiliated hospitals, universities, and other organizations. We can be held liable for the corrupt or other illegal activities of our employees, agents, contractors,

and other collaborators, even if we do not explicitly authorize or have actual knowledge of such activities. Any violations of the laws and regulations described above may result in substantial civil and criminal fines and penalties, imprisonment, the loss of export or import privileges, debarment, tax reassessments, breach of contract and fraud litigation, reputational harm, and other consequences.

We may acquire other businesses, which could require significant management attention, disrupt our business, dilute stockholder value and adversely affect our results of operations.

We may in the future make acquisitions or investments in complementary companies, technologies or products that we believe fit within our business model and can address the needs of our customers and potential customers. We may not be able to integrate any acquired companies, technologies or products in a successful manner. In addition, we may not be able to find suitable acquisition candidates, and we may not be able to complete such acquisitions on favorable terms, if at all. The pursuit of potential acquisitions may divert the attention of management and cause us to incur additional expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated. If we do complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals, including increases in revenue, and any acquisitions we complete could be viewed negatively by our customers, investors and industry analysts.

Future acquisitions may reduce our cash available for operations and other uses and could result in amortization expense related to identifiable assets acquired. We may have to pay cash, incur debt or issue equity securities to pay for any such acquisition, each of which could adversely affect our financial condition or the value of our common stock. The sale or issuance of equity to finance any such acquisitions would result in dilution to our stockholders. The incurrence of indebtedness to finance any such acquisition would result in fixed obligations and could also include covenants or other restrictions that could impede our ability to manage our operations. In addition, our future results of operations may be adversely affected by the dilutive effect of an acquisition, performance earn-outs or contingent bonuses associated with an acquisition. Furthermore, acquisitions may require large, onetime charges and can result in increased debt or contingent liabilities, adverse tax consequences, additional stock-based compensation expenses and the recording and subsequent amortization of amounts related to certain purchased intangible assets, any of which items could negatively affect our future results of operations. We may also incur goodwill impairment charges in the future if we do not realize the expected value of any such acquisitions.

We may not realize the intended benefits of any acquisition we may make. To the extent we pursue any strategic alliances or joint ventures, we may similarly fail to realize the intended benefits of any such transaction.

Risks Related to Our Financial Condition and Capital Requirements

We may in the future consider raising additional capital for any number of reasons, including to fund our operations, further develop our Cue Integrated Care Platform, develop and commercialize new tests and products, and expand our operations.

We may in the future consider raising additional capital for any number of reasons and to do so, we may seek to sell common or preferred equity or convertible debt securities, enter into one or more credit facilities or another form of third-party funding, or seek other debt financing. We may also need to raise capital sooner or in larger amounts than we anticipate for numerous reasons, including because of lower demand for our COVID-19 test, the cancellation of any of our contracts with our largest customers, through no fault of our own, or as a result of failure to obtain regulatory approvals for our other tests, or other risks described in this prospectus.

We may also consider raising additional capital in the future to expand our business, to pursue strategic investments, to take advantage of financing opportunities, or for other reasons, including to:

- increase our sales and marketing efforts to facilitate market adoption of our products and address competitive developments;
- fund development and marketing efforts of any future products;
- further expand our operations outside the United States;
- acquire, license or invest in technologies, including information technologies;
- satisfy any outstanding or future debt obligations;
- acquire or invest in complementary businesses or assets; and

- finance capital expenditures and general and administrative expenses.

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

- our ability to successfully commercialize the Cue Health Monitoring System, including our COVID-19 test;
- the costs of the sales and marketing activities associated with commercializing the Cue Health Monitoring System, including our COVID-19 test;
- the length of the COVID-19 pandemic;
- our ability to secure and maintain domestic and international regulatory authorization, clearance or approval for our products;
- our rate of progress in, and cost of the sales and marketing activities associated with, establishing adoption of our products;
- our rate of progress in, and cost of research and development activities associated with, products in research and early development;
- our ability to control our manufacturing and operating costs;
- our ability to satisfy any outstanding or future debt obligations;
- the effect of competing technological and market developments;
- litigation expenses we incur to defend against claims that we infringe the intellectual property of others or judgments we must pay to satisfy such claims;
- the potential cost of and delays in research and development as a result of any regulatory oversight applicable to our products; and
- the costs of responding to the other risks and uncertainties described in this prospectus.

The various ways we could raise additional capital carry potential risks. If we raise funds by issuing equity securities, our stockholders' ownership interests will be diluted. Any equity securities we issue could also provide for rights, preferences, or privileges senior to those of holders of our common stock. If we raise funds by issuing debt securities, those debt securities would have rights, preferences, and privileges senior to those of holders of our common stock.

Additional equity or debt financing might not be available on reasonable terms, if at all. If we cannot secure additional funding when needed, we may have to delay, reduce the scope of, or eliminate one or more research and development programs or sales and marketing initiatives. In addition, we may have to work with a partner on one or more of our development programs, which could lower the economic value of those programs to us.

Lastly, if we are unable to obtain the requisite amount of financing needed to fund our planned operations, it could have a material adverse effect on our business and ability to continue operating as a going concern.

Changes in tax laws or in their implementation or interpretation may adversely affect our business and financial condition

On December 22, 2017, the United States enacted the Tax Cuts and Jobs Act, or the TCJA, which significantly reformed the Code. The TCJA, among other things, contained significant changes to corporate taxation, including a reduction of the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%, the limitation of the tax deduction for net interest expense to 30% of adjusted taxable income (except for certain small businesses), the limitation of the deduction for net operating losses, or NOLs, arising in taxable years beginning after December 31, 2017 to 80% of current year taxable income and elimination of NOL carrybacks for losses arising in taxable years ending after December 31, 2017 (though any such NOLs may be carried forward indefinitely), the imposition of a one-time taxation of offshore earnings at reduced rates regardless of whether they are repatriated, the elimination of U.S. tax on foreign earnings (subject to certain important exceptions), the allowance of immediate deductions for certain new investments instead of deductions for depreciation expense over time, and the modification or repeal of many business deductions and credits.

As part of Congress's response to the COVID-19 pandemic, the Families First Coronavirus Response Act, or the FFCR Act, was enacted on March 18, 2020, the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, was enacted on March 27, 2020, and COVID relief provisions were included in the Consolidated Appropriations Act, 2021, or CAA, which was enacted on December 27, 2020. All contain numerous tax provisions. In particular, the CARES Act retroactively and temporarily (for taxable years beginning before January 1, 2021) suspends application of the 80% of-income limitation on the use of NOLs, which was enacted as part of the TCJA. It also provides that NOLs arising in any taxable year beginning after December 31, 2017 and before January 1, 2021 are generally eligible to be carried back up to five years. The CARES Act also temporarily (for taxable years beginning in 2019 or 2020) relaxes the limitation of the tax deductibility for net interest expense by increasing the limitation from 30% to 50% of adjusted taxable income.

Regulatory guidance under the TCJA, the FFCR Act, the CARES Act, and the CAA is and continues to be forthcoming, and such guidance could ultimately increase or lessen impact of these laws on our business and financial condition. Congress may enact additional legislation in connection with the COVID-19 pandemic, and, as a result of the changes in the U.S. presidential administration and control of the U.S. Senate, additional tax legislation may also be enacted, some of which could have an impact on our company. In addition, it is uncertain if and to what extent various states will conform to the TCJA, the FFCR Act, the CARES Act, or the CAA.

Our ability to use our net operating losses, or NOLs, and certain other tax attributes to offset future taxable income is subject to certain limitations.

As of December 31, 2020, we had federal and state NOL carryforwards of approximately $108.7 million and $90.8 million, respectively. The federal NOLs include $26.2 million that may be used to offset up to one hundred percent (100%) of future taxable income. The federal and state NOLs, if unused, will begin to expire in calendar year 2031. The NOL carryforwards subject to expiration could expire unused and be unavailable to offset future income tax liabilities.

In general, under Sections 382 and 383 of the Code and corresponding provisions of state law, a corporation that undergoes an "ownership change," generally defined as a greater than 50 percentage point change (by value) in its equity ownership by certain stockholders over a three-year period, is subject to limitations on its ability to utilize its pre-change NOLs to offset future taxable income. We have conducted a study and determined that, through December 31, 2020, such ownership changes occurred in 2014 and 2018. Accordingly, our ability to use certain of our NOLs and other tax attributes to offset our taxable income is limited by Sections 382 and 383. We may also experience such ownership changes in the future as a result of this offering and/or subsequent changes in our stock ownership (which may be outside our control). As a result, our ability to use our pre-change NOLs and other tax attributes to offset taxable income may be subject to limitations.

There is also a risk that due to regulatory changes, such as suspensions on the use of NOLs, or other unforeseen reasons, our existing NOLs could expire or otherwise become unavailable to offset future income tax liabilities. As described above in "Changes in tax laws or in their implementation or interpretation may adversely affect our business and financial condition," the TCJA, as amended by the CARES Act, includes changes to U.S. federal tax rates and the rules governing NOL carryforwards that may significantly impact our ability to utilize our NOLs to offset taxable income in the future. In addition, for state income tax purposes, there may be period during which the use of NOLs is suspended or otherwise limited, such as recent California legislation limiting the usability of NOLs for tax years beginning after 2019 and before 2023. Additionally, state NOLs generated in one state cannot be used to offset income generated in another state. For these reasons, we may be unable to use a material portion of our NOLs and other tax attributes.

Our business may be subject to additional obligations to collect and remit sales tax and other taxes, and we may be subject to tax liability for past sales.

Any successful action by state, foreign (if we start selling internationally) or other authorities to collect additional or past sales tax could harm our business. States and various local taxing jurisdictions have differing rules and regulations governing sales and use taxes, and these rules and regulations are subject to varying interpretations that may change over time. It is possible that we could face sales tax audits and that our liability for these taxes could exceed our estimates as state tax authorities could assert that we are obligated to collect additional amounts as taxes from our customers and remit those taxes to those authorities. We could also be subject to audits in states and foreign jurisdictions (if we start selling internationally) for which we have not accrued tax liabilities. A successful assertion

that we should be collecting additional sales or other taxes on our products in jurisdictions where we have not historically done so and do not accrue for sales taxes could result in substantial tax liabilities for past sales, discourage customers from purchasing our products or otherwise harm our business, financial condition and results of operations.

We file sales tax returns in certain states within the United States as required by law.

We file sales tax returns in certain states where we have been advised or have determined we have an obligation to do so, however, we do not collect sales or other similar taxes in all states, and one or more states (or foreign authorities if we start selling internationally) could seek to impose additional sales, use or other tax collection and record-keeping obligations on us or may determine that such taxes should have, but have not been, paid by us. Liability for past taxes may also include substantial interest and penalty charges. Any successful action by state, foreign or other authorities to compel us to collect and remit sales, use or other taxes, either retroactively, prospectively or both, could harm our business, financial condition and results of operations.

We hope to be a multinational organization, in which case we would be faced with increasingly complex tax issues in many jurisdictions, and we could be obligated to pay additional taxes in various jurisdictions.

If we become a multinational organization, we may be subject to taxation in several jurisdictions around the world with increasingly complex tax laws, the application of which can be uncertain. The amount of taxes we pay in these jurisdictions could increase substantially as a result of changes in the applicable tax principles, including increased tax rates, new tax laws or revised interpretations of existing tax laws and precedents, which could have a material adverse effect on our liquidity and results of operations. Furthermore, one or more jurisdictions in which we do not believe we are subject to tax payment, withholding or filing requirements could assert that we are subject to such requirements. Any of these claims or assertions could have a material impact on us and the results of our operations.

Risks Related to Manufacturing Our Products

We have limited experience manufacturing our products in commercial quantities; if we are unable to manufacture our products in the required quantities in a timely manner, our business could be materially adversely affected.

We have only limited experience in manufacturing our products in commercial quantities, and only first began commercializing the Cue Health Monitoring System in June 2020. We currently lease and operate three manufacturing facilities for the production of our Cue Cartridges: our Nancy Ridge facility, Vista facility and Waples facility. Given our limited commercial manufacturing experience and rapid ramp up of our manufacturing capabilities, we may be more susceptible to encountering production delays, interruptions or shortfalls than other companies with a longer track record of manufacturing products at commercial scale. Such production delays, interruptions or shortfalls may be caused by many factors, including the following:

- production issues that may arise out of the rapid expansion of our manufacturing capacity, including the opening of two new manufacturing facilities within the last 12 months;
- a setback in our anticipated timeline for finalizing the construction of our new production pods, which would result in manufacturing delays;
- key components of our products are provided by a single supplier or limited number of suppliers, and we do not maintain large inventory levels of these components such that, if we experience a shortage or quality issues in any of these components, we would need to identify and qualify new supply sources, which could increase our expenses and result in manufacturing delays;
- a delay in completing assembly of new controlled environment rooms at our manufacturing facility;
- state and federal regulations, including the FDA's Quality System Regulations, or QSR, for the manufacture of our products, noncompliance with which could cause an interruption in our manufacturing; and
- attraction and retention of qualified employees for our operations in order to significantly increase our manufacturing output.

We currently expect that customer demand for our COVID-19 test will exceed our manufacturing capacity in 2021. If we are unable to continue to keep up with demand for our products, our growth could be impaired, and

market acceptance for our products and our reputation could be harmed and customers and other users of our products may instead elect to use our competitors' products. Our inability to successfully manufacture our products in sufficient quantities would materially harm our business.

In addition, our manufacturing facility and processes and those of our third-party suppliers are subject to unannounced FDA and state regulatory inspections for compliance with the QSR. Developing and maintaining a compliant quality system is time consuming and expensive. Failure to maintain compliance with, or not fully complying with the requirements of the FDA and state regulators, could result in enforcement actions against us or our third-party suppliers, which could include the issuance of warning letters, seizures, prohibitions on product sales, recalls and civil and criminal penalties, any one of which could significantly impact our manufacturing supply and impair our financial results.

If we, our suppliers or our contract manufacturers experience significant disruptions to our or their manufacturing capabilities or ability to source needed supplies and materials, our business may be materially adversely affected.

Our operations, or those of our suppliers or third-party contract manufacturers, could become subject to earthquakes, power shortages, telecommunications failures, water shortages, floods, hurricanes, typhoons, fires, extreme weather conditions, medical epidemics and pandemics, including the COVID-19 pandemic, and other natural or man-made disasters or business interruptions. Our corporate headquarters and manufacturing facilities are located in San Diego, California, near major earthquake faults and fire zones, and our suppliers and contract manufacturers may be subject to similar risks, whether due to earthquakes, fires or other natural disasters or business interruption risks. Our ability to obtain components for our Cue Cartridges would be disrupted if the operations of our suppliers were affected by a man-made or natural disaster or other business interruption. In addition, we rely on third party contract manufacturers for the manufacture of our Cue Readers and for some of the production of our Cue Wands. The occurrence of any type of business disruption at any of our own facilities or those of our suppliers or contract manufacturers could materially harm our operations, financial condition and results of operations, as well as otherwise have a material adverse effect on our business. While we maintain business interruption insurance to protect us from some of these risks, such insurance may not cover us for all business interruption risks we face and, even where we do have coverage, such coverage may not be sufficient in amount.

Over time, we may add new manufacturing facilities or relocate manufacturing to one more additional facilities, which may include additional facilities located elsewhere within or outside of the United States. The use of a new facility or new manufacturing, quality control, or environmental control equipment or systems generally requires FDA review and approval. Because of the time required to authorize manufacturing in a new facility under FDA and non-U.S. regulatory requirements, we may not be able to commence production at such a facility on a timely basis. The inability to perform our manufacturing activities, combined with our limited inventory of materials and components and manufactured products, may cause us to be unable to meet customer demand, cause customers and other users of our products to discontinue using the Cue Health Monitoring System, or harm our reputation, and we may be unable to reestablish relationships with such customers and users in the future.

We contract with third parties for the manufacture of our Cue Readers, Cue Wands and certain other components of the Cue Health Monitoring System. This reliance on third parties increases the risk that we will not have sufficient quantities of our Cue Health Monitoring System or such quantities at an acceptable cost, which could delay, prevent or impair our development or commercialization efforts.

While we manufacture all of our Cue Cartridges in our own manufacturing facilities, we rely, and expect to continue to rely, on third parties for the manufacture of our Cue Readers, Cue Wands and Cue Control Swab Packs. This reliance on third parties increases the risk that we will not have sufficient quantities of our Cue Readers, Cue Wands or quality control swabs that are included in our Cue Control Swab Packs or, ultimately, of our Cue Health Monitoring System or such quantities at an acceptable cost or quality, which could delay, prevent or impair our development or commercialization efforts.

During the duration of our EUAs for our COVID-19 test, the FDA has waived certain current good manufacturing practices, or cGMP, requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of our COVID-19 test but excluding Subpart H (Acceptance Activities, 21 CFR 820.80 and 21 CFR 820.86), Subpart I (Nonconforming Product, 21 CFR 280.90), and Subpart O (Statistical Techniques, 21 CFR 820.250). This means that our third-party

manufacturing facilities will not need to, and may not, be compliant with all of the FDA's cGMPs. To the extent that we no longer have an EUA and need to seek FDA authorization for our COVID-19 test, we need to comply with cGMPs which may cause delays in production at our and our third-party manufacturing facilities.

In addition, while we audit and monitor our contract manufacturers to ensure they meet our contracted specifications, we have no control over the ability of our contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If the FDA or a comparable foreign regulatory authority finds deficiencies with the manufacture of our products or if it finds deficiencies or withdraws any such approval in the future, we may need to find alternative manufacturing facilities, which would significantly impact our ability to produce or market our COVID-19 tests and any future contemplated tests, if authorized for commercialization by the relevant regulatory agency.

If any contract manufacturing organization, or CMO, with whom we contract fails to perform its obligations, we may be forced to enter into an agreement with a different CMO, which we may not be able to do on reasonable terms, if at all. In such scenario, our Cue Health Monitoring System supply could be delayed significantly as we establish alternative supply sources for components of our Cue Health Monitoring System, such as Cue Readers or Cue Wands. In some cases, the technical skills required to manufacture our product components may be unique or proprietary to the original CMO and we may have difficulty, or there may be contractual restrictions prohibiting us from, transferring such skills to a back-up or alternate supplier, or we may be unable to transfer such skills at all. In addition, if we are required to change CMOs for any reason, we will be required to verify that the new CMO maintains facilities and procedures that comply with quality standards and with all applicable regulations. We will also need to verify, such as through a manufacturing comparability study, that any new manufacturing process will produce our product components according to the specifications previously submitted to the FDA or another regulatory authority. The delays associated with the verification of a new CMO could negatively affect our ability to develop products or commercialize our products in a timely manner or within budget. Furthermore, a CMO may possess technology related to the manufacture of our products that such CMO owns independently. This would increase our reliance on such CMO or require us to obtain a license from such CMO in order to have another CMO manufacture our products. In addition, changes in manufacturers often involve changes in manufacturing procedures and processes, which could require that we conduct bridging studies between our prior contract manufacturing organization used in our clinical trials and that of any new manufacturer. We may be unsuccessful in demonstrating comparability which could require the conduct of additional clinical trials.

Further, our failure, or the failure of our third-party manufacturers, to comply with applicable regulations could result in sanctions being imposed on us, including fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals or authorizations, license revocation, seizures or recalls of products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect our business and supplies of our products.

We may be unable to establish any additional agreements with third-party manufacturers or do so on acceptable terms. Reliance on third-party manufacturers entails additional risks, including:

- reliance on the third party for regulatory compliance and quality assurance;
- the possible breach of the manufacturing agreement by the third party;
- the possible delay or stoppage in production of certain components of the Cue Health Monitoring System that delays shipments of Cue Readers or Cue Test Kits to our customers;
- the possible misappropriation of our proprietary information, including our trade secrets and know-how; and
- the possible termination or nonrenewal of the agreement by the third party at a time that is costly or inconvenient for us.

Any products that we may develop may compete with our other products for access to manufacturing facilities.

Any performance failure on the part of our existing or future manufacturers could delay production and cause us to miss certain production targets. If our current contract manufacturers cannot perform as agreed, we may be required to replace such manufacturers. We may incur added costs and delays in identifying and qualifying any such replacement.

Our current and anticipated future dependence upon others for the manufacture of our products may adversely affect our future profit margins and our ability to commercialize any products that receive regulatory approval on a timely and competitive basis.

Our suppliers may fail to deliver components according to schedules, prices, quality and volumes that are acceptable to us, or we may be unable to manage these components effectively.

Our products contain components and raw materials that we purchase globally from mostly single-source direct suppliers, generally without long-term supply agreements. This exposes us to multiple potential sources of component shortages. Unexpected changes in business conditions, materials pricing, labor issues, wars, governmental changes, tariffs, natural disasters, health epidemics such as the global COVID-19 pandemic, trade and shipping disruptions and other factors beyond our or our suppliers' control could also affect these suppliers' ability to deliver components to us or to remain solvent and operational. For example, a global shortage of microchips has been reported since early 2021. The semiconductor supply chain is complex and has historically been characterized by wide fluctuations in the demand for, and supply of, its products. These fluctuations have resulted in circumstances where supply of and demand for semiconductors has been widely out of balance. Wafer foundries that support chipmakers have not invested enough in recent years to increase capacities to the levels needed to support demand from all of their customers. Wafers have a long lead time for production which further exacerbates the shortage. The full extent to which this global shortage might impact us is not yet known. The unavailability of any component or supplier could result in production delays, idle manufacturing facilities, product design changes and loss of access to important technology and tools for producing and supporting our products. Moreover, our ramp up in production of our Cue Cartridges, or product design changes by us have required and may in the future require us to procure additional components in a short amount of time. Our suppliers may not be willing or able to sustainably meet our timelines or our cost, quality and volume needs, or to do so may cost us more, which may require us to replace them with other sources. Finally, we have limited manufacturing experience outside of our Nancy Ridge manufacturing facility and we may experience supply chain and procurement issues at the Nancy Ridge Facility as well as at our new Vista and Waples facilities. While we believe that we will be able to secure additional or alternate sources or develop our own replacements for most of our components, there is no assurance that we will be able to do so quickly or at all. Additionally, we may be unsuccessful in our continuous efforts to negotiate with existing suppliers to obtain cost reductions and avoid unfavorable changes to terms, source less expensive suppliers for certain components and redesign certain parts to make them less expensive to produce. Any of these occurrences may harm our business, prospects, financial condition and operating results.

As the scale of our Cue Health Monitoring System production increases, we will also need to accurately forecast, purchase, warehouse and transport components and raw materials at high volumes to our own and our third-party manufacturing facilities and servicing locations, which includes locations in the U.S. and China. If we are unable to accurately match the timing and quantities of component purchases to our actual needs or successfully implement automation, inventory management and other systems to accommodate the increased complexity in our supply chain and parts management, we may incur unexpected production disruption, storage, transportation and write-off costs, which may harm our business and operating results.

Risks Related to Our Intellectual Property

Our patent or other intellectual property protection for the Cue Health Monitoring System, products and Cue Integrated Care Platform may not be sufficient to prevent competitors from developing and commercializing tests and platforms similar to or otherwise comparable to our Cue Test Kits, products and Cue Integrated Care Platform, which could materially adversely affect our business and prospects.

As with other diagnostic testing companies, our success depends in large part on our ability to obtain, maintain and solidify a proprietary position for our Cue Integrated Care Platform and our current and any future tests, which will depend upon our success in obtaining effective patent protection and other intellectual property, in the United States and other countries, with respect to, such tests, their manufacturing processes and their intended methods of use, as well as enforcing those patent claims once granted and other intellectual property rights. In some cases, we may not be able to obtain issued patent claims or other registered intellectual property covering various aspects of our technologies which are sufficient to prevent third parties, such as our competitors, from utilizing our Cue Integrated Care Platform. Any failure to obtain or maintain patent and other intellectual property protection with respect to our Cue Integrated Care Platform or our current and any future tests or other aspects of our business could harm our business, financial condition and results of operations.

Changes in either the patent laws or their interpretation in the United States and other countries may diminish our ability to protect our inventions, obtain, maintain and enforce our intellectual property rights and, more generally, could affect the value of our intellectual property or narrow the scope of our patents. Additionally, we cannot predict whether the patent applications we are currently pursuing will issue as patents in any particular jurisdiction or whether the claims of any issued patents will provide sufficient protection from competitors or other third parties.

The patent prosecution process is expensive, time-consuming and complex, and we may not be able to file, prosecute, maintain, enforce or license all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify patentable aspects of our research and development output in time to obtain patent protection. Although we enter into non-disclosure and confidentiality agreements with parties who have access to confidential or patentable aspects of our research and development output, such as our employees, corporate collaborators, outside scientific collaborators, suppliers, consultants, advisors and other third parties, any of these parties may breach the agreements and disclose such output before a patent application is filed, thereby jeopardizing our ability to seek and obtain patent protection. In addition, our ability to obtain and maintain valid and enforceable patents depends in part on whether the differences between our inventions and the prior art allow our inventions to be patentable over the prior art. Furthermore, the publication of discoveries in scientific literature often lags behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until 18 months after filing, or in some cases not at all. Therefore, we cannot be certain that we were the first to file for patent protection of such inventions.

Moreover, in some circumstances, we may not have the right to control the preparation, filing and prosecution of patent applications, or to maintain the patents, covering technology that we license from or license to third parties, and are therefore reliant on our licensors or licensees, and may be reliant on future licensors or licensees, to protect certain of our intellectual property used in our business. If such licensors or licensees fail to adequately protect this intellectual property or if we do not have exclusivity for the marketing of our tests, whether because our licensors do not grant us exclusivity or they do not enforce the intellectual property against our competitors, our ability to commercialize products could suffer.

Therefore, these and any of our patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business.

Defects of form in the preparation or filing of our patents or patent applications may exist, or may arise in the future, for example, with respect to proper priority claims, inventorship and the like, although we are unaware of any such defects that we believe are of importance. If we or any current or future licensors or licensees fail to establish, maintain, protect or enforce such patents and other intellectual property rights, such rights may be reduced or eliminated. If any current or future licensors or licensees are not fully cooperative or disagree with us as to the prosecution, maintenance or enforcement of any patent rights, such patent rights could be compromised. If there are material defects in the form, preparation or prosecution of our patents or patent applications, such patents or applications may be invalid and/or unenforceable. Any of these outcomes could impair our ability to prevent competition from third parties, which may materially harm our business.

The strength of patent rights generally, and particularly the patent position of medical device companies, involves complex legal and scientific questions and can be uncertain, and has been the subject of much litigation in recent years. This uncertainty includes changes to the patent laws through either legislative action to changes to statutory patent law or court action that may reinterpret existing law or rules in ways affecting the scope or validity of issued patents or the chances that patent applications will result in issued claims and the scope of any such claims. Our current or future patent applications may fail to result in issued patents in the United States or foreign countries with claims that cover our current and any future tests. Even if patents do successfully issue from our patent applications, third parties may challenge the validity, enforceability or scope of such patents, which may result in such patents being narrowed, invalidated or held unenforceable. Any successful challenge to our patents could deprive us of exclusive rights necessary for the successful commercialization of the Cue Health Monitoring System or our current and any future tests, which may harm our business. Furthermore, even if they are unchallenged, our patents may not adequately protect the Cue Health Monitoring System or our current and any future tests, provide exclusivity for our Cue Integrated Care Platform or such current or future tests or prevent others from designing around our claims. If the scope of any patent protection we obtain is not sufficiently broad, or if we lose any of our patent protection, our ability to prevent our competitors from commercializing similar or identical technology and tests

would be adversely affected. If the breadth or strength of protection provided by the patents we hold or pursue with respect to our current and any future tests is challenged, it could dissuade companies from collaborating with us to develop, or threaten our ability to commercialize, the Cue Health Monitoring System and our current and any future tests.

Patents have a limited lifespan. In the United States, the natural expiration of a utility patent is generally 20 years after its effective filing date and the natural expiration of a design patent is generally 14 years after its issue date, unless the filing date occurred on or after May 13, 2015, in which case the natural expiration of a design patent is generally 15 years after its issue date. However, the actual protection afforded by a patent varies from country to country, and depends upon many factors, including the type of patent, the scope of its coverage, the availability of regulatory-related extensions, the availability of legal remedies in a particular country and the validity and enforceability of the patent. Various extensions may be available; however, the life of a patent, and the protection it affords, is limited. Without patent protection for the components of our Cue Health Monitoring System, we may be open to competition, which may harm our business prospects. Further, if we encounter delays in our development efforts, the period of time during which we could market the Cue Health Monitoring System under patent protection would be reduced and, given the amount of time required for the development, testing and regulatory review of planned or future tests, patents protecting our current and any future tests might expire before or shortly after such tests are commercialized. For information regarding the expiration dates of patents in our patent portfolio, see the section titled “Business—Intellectual Property.” As our patents expire, the scope of our patent protection will be reduced, which may reduce or eliminate any competitive advantage afforded by our patent portfolio. As a result, our patent portfolio may not provide us with sufficient rights to exclude others from commercializing platforms or tests similar or identical to ours.

Moreover, the coverage claimed in a patent application can be significantly reduced before the patent is issued, and its scope can be reinterpreted after issuance. Even if patent applications we license or own, currently or in the future, issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors or other third parties from competing with us, or otherwise provide us with any competitive advantage. Any patents that we own now or in the future may be challenged, narrowed, circumvented or invalidated by third parties. Consequently, we do not know whether our current and any future tests or other technologies will be protectable or remain protected by valid and enforceable patents. Our competitors or other third parties may be able to circumvent our patents by developing similar or alternative technologies or tests in a non-infringing manner which could harm our business, financial condition and results of operations.

Some of our patents and patent applications may in the future be jointly-owned with third parties. If we are unable to obtain an exclusive license to any such third-party joint-owners’ interest in such patents or patent applications, such co-owners may be able to license their rights to other third parties, including our competitors, and our competitors could market competing platforms or tests and technology. In addition, we may need the cooperation of any such joint-owners of our patents in order to enforce such patents against third parties, and such cooperation may not be provided to us. Any of the foregoing could harm our business, financial condition and results of operations.

We have obtained license or service agreements from certain third-party intellectual property holders. If we breach our agreements, it could have a material adverse effect on our commercialization efforts for the Cue Health Monitoring System or our current and any future tests and services. Further, we may find it necessary or prudent to acquire or obtain licenses from third-party intellectual property holders. However, we may be unable to acquire or secure such licenses to any intellectual property rights from third parties that we identify as necessary for our current and any future tests. The acquisition or licensing of third-party intellectual property rights is a competitive area, and our competitors may pursue strategies to acquire or license third-party intellectual property rights that we may consider attractive or necessary. Our competitors may have a competitive advantage over us due to their size, capital resources and greater development and commercialization capabilities. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We also may be unable to acquire or license third-party intellectual property rights on terms that would allow us to make an appropriate return on our investment or at all. If we are unable to successfully obtain rights to required third-party intellectual property rights or maintain the existing intellectual property rights we have, we may have to abandon development of the relevant tests, which could harm our business, financial condition and results of operations.

Patents covering our current, and any future tests, the Cue Health Monitoring System, or our technologies could be challenged by third parties. If our patents are found to be invalid or unenforceable, our business could be materially adversely affected.

The issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, and our patents may be challenged in the courts or patent offices in the United States and abroad and may not provide us with adequate proprietary protection or competitive advantage against competitors with similar products. We may be subject to a third-party preissuance submission of prior art to the U.S. Patent and Trademark Office, or the USPTO, or become involved in opposition, derivation, revocation, reexamination, post-grant and inter partes review, or IPR, or interference proceedings or other similar proceedings challenging our patent rights. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, or invalidate or render unenforceable, such patent rights, allowing third parties to commercialize the Cue Health Monitoring System or our current and any future tests and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize the Cue Health Monitoring System or any current or future tests without infringing third-party patent rights. Moreover, we may have to participate in post-grant challenge proceedings, such as oppositions in a foreign patent office, that challenge features of patentability with respect to our patents and patent applications. Such challenges may result in loss of patent rights, in loss of exclusivity or in patent claims being narrowed, invalidated or held unenforceable, which could limit our ability to stop others from using or commercializing similar or identical technology and tests, or limit the duration of the patent protection of the Cue Health Monitoring System or our current and any future tests or technologies. Such proceedings also may result in substantial cost and require significant time from our management, even if the eventual outcome is favorable to us.

In addition, if we initiate legal proceedings against a third-party to enforce a patent covering the Cue Health Monitoring System or our current and any future tests, the defendant could counterclaim that such patent is invalid or unenforceable. In patent litigation in the United States, defendant counterclaims alleging invalidity or unenforceability are commonplace. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the USPTO or made a misleading statement during prosecution. Defenses of these types of claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. Third parties may also raise claims challenging the validity or enforceability of our patents before administrative bodies in the United States or abroad, even outside the context of litigation, including through re-examination, post-grant review, IPR, derivation proceedings and equivalent proceedings in foreign jurisdictions (such as opposition proceedings). Such proceedings could result in the revocation of, cancellation of or amendment to our patents in such a way that they no longer cover the Cue Health Monitoring System, our current and any future tests or technologies. The outcome for any particular patent following legal assertions of invalidity and unenforceability is unpredictable. With respect to the validity question, for example, we cannot be certain that there is no invalidating prior art, of which we and the patent examiner were unaware during prosecution. If a defendant or other third-party were to prevail on a legal assertion of invalidity or unenforceability, we would lose at least part, and perhaps all, of the patent protection on the Cue Health Monitoring System, our current and any future tests and technology. Such a loss of patent protection would harm our business, financial condition and results of operations.

We rely substantially on our trademarks and trade names. If our trademarks and trade names are not adequately protected, then we may not be able to build name recognition in our markets of interest and our business may be harmed.

We rely substantially upon trademarks to build and maintain the integrity of our brand. Our registered and unregistered trademarks or trade names may be challenged, infringed, circumvented, declared unenforceable or determined to be violating or infringing on other intellectual property rights. We may not be able to protect or enforce our rights to these trademarks and trade names, which we rely upon to build name recognition among potential partners and customers in our markets of interest. At times, competitors or other third parties may adopt trade names or trademarks similar to ours, thereby impeding our ability to build brand identity and possibly leading to market confusion. Asserting claims against such third parties may be prohibitively expensive. In addition, there could be potential trade name or trademark infringement or dilution claims brought by owners of other trademarks against us. Over the long term, if we are unable to establish name recognition based on our trademarks and trade names, then

we may not be able to compete effectively and our business may be adversely affected. Our efforts to enforce or protect our proprietary rights related to trademarks, trade secrets, domain names or other intellectual property may be ineffective, could result in substantial costs and diversion of resources and could harm our business, financial condition and results of operations.

The diagnostic testing industry is characterized by intellectual property litigation and in the future we could become subject to litigation that could be costly, result in the diversion of management's time and efforts, require us to pay damages or prevent us from marketing the Cue Health Monitoring System or our existing or future tests.

Litigation regarding patents, trademarks, trade secrets, and other intellectual property rights is prevalent in the medical device and diagnostic sectors and companies in these sectors have used intellectual property litigation to gain a competitive advantage. Our commercial success depends in part upon our ability and that of our contract manufacturers and suppliers to manufacture, market, and sell our planned tests, and to use our proprietary technologies without infringing, misappropriating or otherwise violating the proprietary rights or intellectual property of third parties. Because we have not conducted a comprehensive freedom to operate analysis for patents related to the Cue Health Monitoring System or our tests, we may not be aware of issued patents that a third-party, including a competitor, might assert are infringed by the Cue Health Monitoring System or our current or any future tests, which could materially impair our ability to commercialize the Cue Health Monitoring System or our current or any future tests. Even if we diligently search third-party patents for potential infringement by the Cue Health Monitoring System or our current or any future tests, we may not successfully identify patents that the Cue Health Monitoring System or our current or any future tests may infringe. If we are unable to secure and maintain freedom to operate, others could preclude us from commercializing the Cue Health Monitoring System or our current or future tests. We may in the future become party to, or be threatened with, adversarial proceedings or litigation regarding intellectual property rights with respect to our current and any future tests and technology, whether or not we are actually infringing, misappropriating or otherwise violating the rights of third parties. Like other companies operating in the diagnostic testing space, we have, from time to time, received demand letters from third parties claiming that our business allegedly infringes their patents; however, in each case we have investigated the alleged claims and, in our responses to the claimants, have disputed their allegations as lacking any merit, and to date, no legal proceeding has ever been initiated by such third parties. In addition, while we have not conducted a comprehensive freedom to operate analysis, we are aware of patent claims that could be alleged to cover the methodology and compositions used by the Cue Health Monitoring System. While we believe that the patent claims may not be valid and that they may be reasonably challenged for validity, there can be no assurance that any such challenge would be successful. In the future, other third parties may assert infringement claims against us based on existing or future intellectual property rights, regardless of merit. If we are found to infringe a third-party's intellectual property rights, we could be required to obtain a license from such third-party to continue developing and marketing the Cue Health Monitoring System, our current and any future tests and technology. We may also elect to enter into such a license to settle pending or threatened litigation. However, we may not be able to obtain any required license on commercially reasonable terms, or at all. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors access to the same technologies licensed to us, and could require us to pay significant royalties and other fees. We could be forced, including by court order, to cease commercializing the infringing technology or tests. In addition, we could be found liable for monetary damages, which may be significant. If we are found to have willfully infringed a third-party patent, we could be required to pay treble damages and attorneys' fees. A finding of infringement could prevent us from commercializing our planned tests in commercially important territories, or force us to cease some of our business operations, which could harm our business. A number of our employees were or may have been previously employed at, and a number of our current advisors and consultants are employed or may be employed by, universities or other biotechnology, medical device or pharmaceutical companies, including our competitors or potential competitors. Although we try to ensure that our employees, advisors and consultants do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we, or these employees, have used or disclosed intellectual property, including trade secrets or other proprietary information, of any such employee's former employer. These and other claims that we have misappropriated the confidential information or trade secrets of third parties can have a similar negative impact on our business to the infringement claims discussed above.

Even if we are successful in defending against intellectual property claims, litigation or other legal proceedings relating to such claims may cause us to incur significant expenses, and could distract our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments and if securities analysts or investors perceive these

results to be negative, it could have a substantial negative impact on the price of our common shares. Such litigation or proceedings could substantially increase our operating losses and reduce our resources available for development activities. We may not have sufficient financial or other resources to adequately conduct such litigation or proceedings. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their substantially greater financial resources. Uncertainties resulting from the initiation and continuation of litigation or other intellectual property related proceedings could harm our business, financial condition and results of operations.

Many countries 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 government agencies or government contractors. In these countries, the patent owner may have limited remedies, which could materially diminish the value of such patent. If we are forced to grant a license to third parties with respect to any patents relevant to our business, our competitive position may be impaired, and our business, financial condition and results of operations may be harmed.

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

Obtaining and maintaining our intellectual property, including patent, protection depends on compliance with various procedural measures, document submissions, fee payments and other requirements imposed by government agencies, and our intellectual property, including patent, protection could be reduced or eliminated for non-compliance with these requirements.

Periodic maintenance fees, renewal fees, annuity fees and various other government fees on intellectual property registrations and applications will be due to be paid to the applicable government agencies, including with respect to patents and patent applications the USPTO and similar agencies outside of the United States, over the lifetime of our intellectual property registrations and applications, including our patents and patent applications. The various applicable government agencies, including with respect to patents and patent applications the USPTO and similar agencies outside of the United States, require compliance with several procedural, documentary, fee payment and other similar provisions during the application process. In some cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with the applicable rules. There are situations, however, in which non-compliance can result in the abandonment or lapse of the intellectual property registration or application, resulting in a partial or complete loss of intellectual property rights in the relevant jurisdiction. Non-compliance events that could result in abandonment or lapse of an intellectual property registration or application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. In such an event, potential competitors might be able to enter the market with similar or identical platforms, tests or technology, which could harm our business, financial condition and results of operations.

We have foreign intellectual property rights and may not be able to protect our intellectual property and proprietary rights throughout the world, which could harm our business, financial condition and results of operations.

We have limited intellectual property rights outside the United States. Filing, prosecuting and defending patents or trademarks on the Cue Health Monitoring System, Cue Virtual Care Delivery Apps, Cue Data and Innovation Layer and our current and any future tests in all countries throughout the world would be prohibitively expensive, and the laws of foreign countries may not protect our rights to the same extent as the laws of the United States.

Consequently, we may not be able to prevent third parties from practicing our inventions or utilizing our trademarks in all countries outside the United States, or from selling or importing the Cue Health Monitoring System or tests made using our inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own platforms or tests and, further, may export otherwise infringing platforms or tests to territories where we have patent protection but enforcement is not as strong as that in the United States. These platforms and tests may compete with the Cue Health Monitoring System or our current and any future tests, and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trade secrets and other intellectual property protection, which could make it difficult for us to stop the infringement of our patents or marketing of competing tests in violation of our intellectual property and proprietary rights generally. Proceedings to enforce our intellectual property and proprietary rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly, could put our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property and proprietary rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

Changes in U.S. patent law could diminish the value of patents in general, thereby impairing our ability to protect the Cue Health Monitoring System or our current and any future tests.

Changes in either the patent laws or interpretation of the patent laws in the United States could increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents. Assuming that other requirements for patentability are met, prior to March 2013, in the United States, the first to invent the claimed invention was entitled to the patent, while outside the United States, the first to file a patent application was entitled to the patent. After March 2013, under the Leahy-Smith America Invents Act, or the America Invents Act, enacted in September 2011, the United States transitioned to a first inventor to file system in which, assuming that other requirements for patentability are met, the first inventor to file a patent application will be entitled to the patent on an invention regardless of whether a third-party was the first to invent the claimed invention. A third-party that files a patent application in the USPTO after March 2013, but before us could therefore be awarded a patent covering an invention of ours even if we had made the invention before it was made by such third-party. This will require us to be cognizant of the time from invention to filing of a patent application. Since patent applications in the United States and most other countries are confidential for a period of time after filing or until issuance, we cannot be certain that we were the first to file any patent application related to the Cue Health Monitoring System or our current and any future tests.

The America Invents Act also includes a number of significant changes that affect the way patent applications will be prosecuted and also may affect patent litigation. These include allowing third-party submission of prior art to the USPTO during patent prosecution and additional procedures to attack the validity of a patent by USPTO administered post-grant proceedings, including post-grant review, IPR and derivation proceedings.

Because of a lower evidentiary standard in USPTO proceedings compared to the evidentiary standard in U.S. federal courts necessary to invalidate a patent claim, a third-party could potentially provide evidence in a USPTO proceeding sufficient for the USPTO to hold a claim invalid even though the same evidence would be insufficient to invalidate the claim if first presented in a district court action. Accordingly, a third-party may attempt to use the USPTO procedures to invalidate our patent claims that would not have been invalidated if first challenged by the third-party as a defendant in a district court action. Therefore, the America Invents Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. In addition, future actions by the U.S. Congress, the federal courts and the USPTO could cause the laws and regulations governing patents to change in unpredictable ways. Any of the foregoing could harm our business, financial condition and results of operations.

In addition, recent U.S. Supreme Court rulings have made and will likely continue to make changes in how the patent laws of the United States are interpreted. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the validity and enforceability of patents, once obtained. Depending on future actions by the U.S. Congress, the federal courts, and the USPTO, the laws and regulations governing patents could change in unpredictable ways that could weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future. We cannot predict how this and future decisions by the courts, the U.S. Congress or the USPTO may impact the value of our patents. Any similar adverse changes in the patent laws of other jurisdictions could also harm our business, financial condition, results of operations and prospects.

We may be subject to claims challenging the ownership or inventorship of our patents and other intellectual property and, if unsuccessful in any of these proceedings, we may be required to obtain licenses from third parties, which may not be available on commercially reasonable terms, or at all, or to cease the development, manufacture and commercialization of one or more of our current and any future tests.

We may be subject to claims that current or former employees, collaborators or other third parties have an interest in our patents, trade secrets or other intellectual property as an inventor or co-inventor. For example, we may have inventorship disputes arise from conflicting obligations of employees, consultants or others who are involved in developing our current and any future tests. Litigation may be necessary to defend against these and other claims challenging inventorship of our patents, trade secrets or other intellectual property. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, intellectual property that is important to our current and any future tests. If we were to lose exclusive ownership of such intellectual property, other owners may be able to license their rights to other third parties, including our competitors. We also may be required to obtain and maintain licenses from third parties, including parties involved in any such disputes. Such licenses may not be available on commercially reasonable terms, or at all, or may be non-exclusive. If we are unable to obtain and maintain such licenses, we may need to cease the development, manufacture and commercialization of one or more of our current and any future tests. The loss of exclusivity or the narrowing of our patent claims could limit our ability to stop others from using or commercializing similar or identical technology and tests. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees. Any of the foregoing could harm our business, financial condition and results of operations.

Third-party claims of intellectual property infringement, misappropriation or other violation against us or our collaborators may prevent or delay the sale and marketing of Cue Health Monitoring Systems.

The diagnostic testing industry is highly competitive and dynamic. Due to the focused research and development that is taking place by several companies, including us and our competitors, in this field, the intellectual property landscape is in flux, and it may remain uncertain in the future. As such, we could become subject to significant intellectual property-related litigation and proceedings relating to our or third-party intellectual property and proprietary rights.

Our commercial success depends in part on our and any potential future collaborators' ability to develop, manufacture, market and sell the Cue Health Monitoring System, including any tests that we may develop and use our proprietary technologies without infringing, misappropriating or otherwise violating the patents and other intellectual property or proprietary rights of third parties. It is uncertain whether the issuance of any third-party patent would require us or any potential collaborators to alter our development or commercial strategies, obtain licenses or cease certain activities. The medical device industry is characterized by extensive litigation regarding patents and other intellectual property rights, as well as administrative proceedings for challenging patents, including interference, inter partes or post-grant review, derivation and reexamination proceedings before the USPTO or oppositions and other comparable proceedings in foreign jurisdictions.

Numerous third-party U.S. and foreign issued patents and pending patent applications exist in the point-of-care and at-home over-the-counter molecular diagnostic testing field, and such third parties, including our competitors, may currently have patents or obtain patents in the future and claim that the manufacture, use or sale of the Cue Health Monitoring System or our current and any future tests infringes upon these patents. Although no third party has initiated any legal proceedings asserting a claim of patent infringement against us as of the date of this registration statement, third parties may hold proprietary rights that could prevent the manufacture, use or sale of the Cue Health Monitoring System. For example, while we have not conducted a comprehensive freedom to operate analysis, we are aware of patent claims that could be alleged to cover the methodology and compositions used by the Cue Health Monitoring System. While we believe that the patent claims may not be valid and that they may be reasonably challenged for validity, there can be no assurance that any such challenge would be successful. Beyond the foregoing potential conflicts, we have not conducted an extensive search of patents issued or assigned to other parties, including our competitors, and can give no assurance that other patents containing claims covering the Cue Health Monitoring System or our current and any future tests, parts of the Cue Health Monitoring System or our current and any future tests, technology or methods do not exist, have not been filed or could not be filed or issued. In addition, because patent applications can take many years to issue and because publication schedules for pending applications vary by jurisdiction, there may be applications now pending of which we are unaware and which may result in issued patents which the Cue Health Monitoring System or our current or future tests infringe. Also, because the claims of published

patent applications can change between publication and patent grant, there may be published patent applications that may ultimately issue with claims that we infringe. As the number of competitors in our market grows and the number of patents issued in this area increases, the possibility of patent infringement claims against us escalates.

In the event that any third-party claims that we infringe their patents or that we are otherwise employing their proprietary technology without authorization and initiates litigation against us, even if we believe such claims are without merit, there is no assurance that a court would find in our favor on questions of infringement, validity, enforceability or priority. A court of competent jurisdiction could hold that these third-party patents are valid, enforceable and infringed by the Cue Health Monitoring System or our current and any future tests, which could harm our ability to commercialize the Cue Health Monitoring System or any test we may develop and any other technologies covered by the asserted third-party patents. In order to successfully challenge the validity of any such U.S. patent in federal court, we would need to overcome a presumption of validity. As this burden is a high one requiring us to present clear and convincing evidence as to the invalidity of any such U.S. patent claim, there is no assurance that a court of competent jurisdiction would invalidate the claims of any such U.S. patent. If we are found to infringe third-party intellectual property rights, including patents, and we are unsuccessful in demonstrating that such patents or other intellectual property rights are invalid or unenforceable, such third parties may be able to block our ability to commercialize the Cue Health Monitoring System, the applicable tests or technology unless we obtain a license under the applicable patents, or until such patents expire or are finally determined to be held invalid or unenforceable. Such a license may not be available on commercially reasonable terms, or at all. Even if we are able to obtain a license, the license would likely obligate us to pay significant license fees and/or royalties, and the rights granted to us might be non-exclusive, which could result in our competitors gaining access to the same technology. If we are unable to obtain a necessary license to a third-party patent on commercially reasonable terms, or at all, we may be unable to commercialize the Cue Health Monitoring System or our current and any future tests, or such commercialization efforts may be significantly delayed, which could in turn significantly harm our business.

Defense of infringement claims, regardless of their merit or outcome, would involve substantial litigation expense and would be a substantial diversion of management and other employee resources from our business, and may impact our reputation. In the event of a successful claim of infringement against us, we may be enjoined from further developing or commercializing the Cue Health Monitoring System, the infringing tests and/or have to pay substantial damages for use of the asserted intellectual property, including treble damages and attorneys' fees were we found to willfully infringe such intellectual property. Claims that we have misappropriated the confidential information or trade secrets of third parties could harm our business, financial condition and results of operations. We also might have to redesign the Cue Health Monitoring System, our infringing tests or technologies, which may be impossible or require substantial time and monetary expenditure.

Engaging in litigation to defend against third-party infringement claims is very expensive, particularly for a company of our size, and time-consuming. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a substantial negative impact on our common stock price. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of litigation or administrative proceedings more effectively than we can because of greater financial resources and more mature and developed intellectual property portfolios. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings against us could impair our ability to compete in the marketplace. The occurrence of any of the foregoing could harm our business, financial condition and results of operations.

We may become involved in lawsuits to protect or enforce our patents and other intellectual property rights, which could be expensive, time-consuming and unsuccessful.

Competitors may infringe our patents, or the patents of any future licensing partners, or we may be required to defend against claims of infringement. In addition, our patents or the patents of any such licensing partners also may become involved in inventorship, priority or validity disputes. To counter or defend against such claims can be expensive and time-consuming. In an infringement proceeding, a court may decide that our patent is invalid or unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents

do not cover such technology. An adverse result in any litigation proceeding could put one or more of our patents at risk of being invalidated or interpreted narrowly. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during litigation.

Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our management and other personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a substantial negative impact on our common stock price. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources and more mature and developed intellectual property portfolios. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could harm our ability to compete in the marketplace. Any of the foregoing could harm our business, financial condition and results of operations.

We may be subject to claims that our employees, consultants or advisors have wrongfully used or disclosed alleged trade secrets of their current or former employers or claims asserting ownership of what we regard as our own intellectual property. Such claims could harm our business, financial condition and results of operations.

As is common in the diagnostic testing industry, our employees, consultants and advisors may be currently or previously employed or engaged at universities or other medical device, healthcare and technology companies, including our competitors and potential competitors. Although we try to ensure that our employees, consultants and advisors do not use the proprietary information or know-how of others in their work for us, we may in the future become subject to claims that we or these people have, inadvertently or otherwise, used or disclosed intellectual property, including trade secrets or other proprietary information, of their current or former employer. Also, we may in the future be subject to claims that these people are violating non-compete agreements with their former employers. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel, which could harm our business, financial condition and results of operations. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

In addition, while it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that we regard as our own. The assignment of intellectual property rights may not be self-executing, or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property. Such claims could harm our business, financial condition and results of operations.

Intellectual property rights do not necessarily address all potential threats, and limitations in intellectual property rights could harm our business, financial condition and results of operations.

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

- others may be able to make systems or tests that are similar to the Cue Health Monitoring System or our current and any future tests or utilize similar technology but that are not covered by the claims of our patents or that incorporate certain technology in the Cue Health Monitoring System or our current and any future tests that is in the public domain;
- we, or our current and future licensors or collaborators, might not have been the first to file patent applications covering certain of our or their inventions;
- we, or our current and future licensors or collaborators, may fail to meet our obligations to the U.S. government regarding any future patents and patent applications funded by U.S. government grants, leading to the loss or unenforceability of patent rights;

- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- it is possible that our current or future pending patent applications will not lead to issued patents;
- it is possible that there are prior public disclosures that could invalidate our patents, or parts of our patents;
- it is possible that there are unpublished applications or patent applications maintained in secrecy that may later issue with claims covering our current and any future test or technology similar to ours;
- it is possible that our patents or patent applications omit people that should be listed as inventors or include people that should not be listed as inventors, which may cause these patents or patents issuing from these patent applications to be held invalid or unenforceable;
- issued patents that we hold rights to may be held invalid or unenforceable, including as a result of legal challenges by our competitors or other third parties;
- the claims of our patents or patent applications, if and when issued, may not cover our current and any future tests or technologies;
- the laws of foreign countries may not protect our proprietary rights or the rights of future licensors or collaborators to the same extent as the laws of the United States;
- the inventors of our patents or patent applications may become involved with competitors, develop test or processes that design around our patents, or become hostile to us or the patents or patent applications on which they are named as inventors;
- our competitors or other third parties might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive platforms or tests for sale in our major commercial markets;
- we have engaged in scientific collaborations in the past and will continue to do so in the future and our collaborators may develop adjacent or competing platforms or tests that are outside the scope of our patents;
- we may not develop additional proprietary technologies that are patentable;
- the patents of others may harm our business; or
- we may choose not to file a patent in order to maintain certain trade secrets or know-how, and a third-party may subsequently file a patent covering such intellectual property.

Any of the foregoing could harm our business, financial condition and results of operations.

Our reliance on third parties requires us to share our trade secrets, which increases the possibility that a competitor will discover them or that our trade secrets will be misappropriated or disclosed. If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.

In addition to seeking patent protection for the Cue Health Monitoring System and our current and any future tests, we also rely upon unpatented trade secrets, know-how and continuing technological innovation to develop and maintain a competitive position, especially where we do not believe patent protection is appropriate or obtainable. Trade secrets and know-how can be difficult to protect. We seek to protect such proprietary information, in part, through non-disclosure and confidentiality agreements with our employees, collaborators, contractors, advisors, consultants and other third parties and invention assignment agreements with our employees. We also have agreements with our consultants that require them to assign to us any inventions created as a result of their working with us. The confidentiality agreements are designed to protect our proprietary information and, in the case of agreements or clauses containing invention assignment, to grant us ownership of technologies that are developed through a relationship with employees or third parties.

We cannot guarantee that we have entered into such agreements with each party that has or may have had access to our trade secrets or proprietary information. Additionally, despite these efforts, any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor or other third-party, we would have no right to prevent them from using that technology or information to compete with us. If any of our trade secrets were to be

disclosed to, or independently developed by, a competitor or other third-party, our competitive position would be materially and adversely harmed. Furthermore, we expect these trade secrets, know-how and proprietary information to over time be disseminated within the industry through independent development, the publication of journal articles describing the methodology and the movement of personnel from academic to industry scientific positions.

We also seek to preserve the integrity and confidentiality of our data and trade secrets by maintaining physical security of our premises and physical and electronic security of our information technology systems. While we have confidence in these people, organizations and systems, agreements or security measures may be breached, and we may not have adequate remedies for any breach. In addition, our trade secrets may otherwise become known, or be independently discovered by, competitors. To the extent that our employees, consultants, contractors or collaborators 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, which could harm our business, financial condition and results of operations.

Risks Related to Government Regulation and Our Industry

We received two EUAs and intend to seek additional and/or amended EUAs for our COVID-19 test. The FDA may not timely grant any additional or amended EUAs, if at all. For our existing EUAs and any new EUA, the FDA may revoke any EUA where it is determined that the underlying health emergency no longer exists or warrants such authorization, which would adversely impact our ability to market our COVID-19 test in the United States.

The FDA has the authority to grant an EUA to allow unapproved medical products to be used in an emergency to diagnose, treat or prevent serious or life-threatening diseases or conditions when there are no adequate, approved and available alternatives. On January 31, 2020, the Secretary of the U.S. Department of Health and Human Services, or U.S. HHS, issued a declaration of a public health emergency related to COVID-19. On February 4, 2020, U.S. HHS determined that COVID-19 represents a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and, subsequently, declared on March 24, 2020, that circumstances exist to justify the authorization of emergency use of medical devices, including alternative products used as medical devices, during the COVID-19 pandemic, subject to the terms of any authorization as issued by the FDA. On February 29, 2020, the FDA issued an immediately in effect guidance with policy specific to development of in vitro diagnostic tests during the COVID-19 public health emergency. This guidance was updated on March 16, 2020, May 4, 2020 and May 11, 2020. It is uncertain whether the widespread availability of approved and effective vaccinations could expedite or influence any such decision making with respect to the underlying health emergency.

The speed at which companies and institutions are acting to create and test medical products for COVID-19 is unusually rapid, and evolving or changing plans or priorities within the FDA, including changes based on new knowledge of COVID-19 and how the disease affects the human body, may significantly affect the regulatory timelines for our COVID-19 test. Results from our continued development and planned clinical trials may raise new questions and require us to redesign proposed clinical trials with minimal lead time.

On June 10, 2020, we received an EUA from the FDA for our COVID-19 test for use at the point-of-care with specimens collected using the Cue Wand from individuals who are suspected of having COVID-19 by their healthcare provider. On August 20, 2020, the FDA granted an amendment to our EUA to add testing of previously collected nasal specimens in viral transport media from individuals who are suspected of having COVID-19 by their healthcare provider. On March 5, 2021, we received an EUA for our COVID-19 test for home and over-the-counter use by individuals aged two years or older with or without symptoms or other epidemiological reasons to suspect COVID-19 and without a prescription. We cannot predict how long the EUAs for our COVID-19 test will remain in place.

There can be no assurances that the FDA will authorize any request for additional and/or amended EUAs and if we do not receive the authorization, our business, financial condition, results of operations and future growth prospects could be materially and adversely affected.

Because the FDA may revoke an EUA where it is determined that the underlying health emergency no longer exists or warrants such authorization, we cannot predict how long our EUAs will remain in place. The FDA may also revoke an EUA when the circumstances justifying its issuance no longer exist, such as when an alternative is authorized for marketing through the standard procedures, such as through a 510(k) clearance. The FDA has stated that, given the magnitude of the COVID-19 health crisis and the testing capacity challenges in the United States, it has no intention of terminating EUAs for COVID-19 diagnostic tests based solely on a test receiving 510(k) clearance. However, the FDA may change this position at any time and without notice.

FDA policies regarding diagnostic tests, therapies and other products used to diagnose, treat or mitigate COVID-19 remain in flux as the FDA responds to new and evolving public health information and clinical evidence. Changes to FDA regulations or requirements could require changes to our authorized test, necessitate additional measures, or make it impractical or impossible for us to market our test. The revocation of an EUA, if granted, could necessitate that we pursue the lengthy and expensive 510(k) clearance process, if available, or another similarly burdensome marketing authorization process, such as a de novo classification. Indeed, FDA has recommended that manufacturers of tests subject to an EUA pursue pre-market submissions such as a 510(k), de novo classification, or pre-market approval, or PMA, as applicable, during the declared public health emergency so that their devices can remain on the market after the emergency terminates. As a result, any such revocation could adversely impact our business, financial condition and results of operations.

If the FDA revokes either of our existing EUAs prior to us having received regulatory approval to commercialize our COVID-19 test through a traditional approval pathway, we would be required to cease our commercialization efforts, which would substantially and negatively impact our business.

The Cue Health Monitoring System and our current and future tests require marketing authorizations, clearances or approvals from regulatory agencies before they can be marketed. Any such regulatory process would be expensive, time-consuming and uncertain both in timing and in outcome. If we fail to obtain or maintain necessary marketing authorizations, clearance, or approval, or if such authorizations, clearances or approvals for future products are delayed or not issued, it will negatively affect our business, financial condition and results of operations.

While we received two EUAs for our COVID-19 test, our strategy is to expand our product line to encompass products that are intended to be used at the point-of-care and at-home. Such products will be subject to regulation by the FDA as medical devices, including requirements for regulatory authorization, clearance or approval of such products before they can be marketed. Accordingly, we will be required to obtain marketing authorization, clearance, or approval, in order to sell our future products in a manner consistent with FDA laws and regulations. Such processes are expensive, time-consuming and uncertain; our efforts may never result in any marketing authorization, clearance, or approval; and failure by us to obtain or comply with such marketing authorizations, clearances or approvals could have an adverse effect on our business, financial condition or operating results. The regulations to which we are subject are complex and have tended to become more stringent over time. Regulatory changes could result in restrictions on our ability to carry on or expand our operations, higher than anticipated costs or lower than anticipated sales.

In the United States, before we can market a new medical device, or a new use of, or claim for, an existing product, we must first receive either 510(k) clearance, PMA approval or approval of a de novo application from the FDA, unless an exemption applies. The FDA also has authority to issue EUAs in times of crises such as pandemics (declaration of emergencies), which the FDA granted us for our COVID-19 test.

In the United States, outside of the context of the EUA application process, our tests will likely need to obtain clearance through the 510(k) premarket notification process. If the FDA requires us to go through a lengthier, more rigorous process for future products or modifications to existing products than expected, our product introductions or modifications could be delayed or cancelled, which could cause our sales to decline. In addition, the FDA may determine that future products will require the more costly, lengthy and uncertain PMA process. Although we do not currently market any devices under a PMA, the FDA may demand that we obtain a PMA prior to marketing certain of our future products. Further, even with respect to those future products where a PMA is not required, we may not be able to obtain the 510(k) clearances with respect to those products. The FDA can delay, limit or deny 510(k) clearance or PMA approval of a device for many reasons, including:

- we may not be able to demonstrate to the FDA's satisfaction that our tests are safe and effective for their intended uses;
- the data from our pre-clinical studies and clinical trials may be insufficient to support clearance or approval, where required;
- the manufacturing process or facilities we use or contract to use may not meet applicable requirements; and
- disruptions at the FDA caused by funding shortages or global health concerns, including the COVID-19 pandemic.

The FDA may refuse our requests for 510(k) clearance, de novo or PMA of new products, new intended uses or modifications to existing products.

From time to time, legislation is drafted and introduced in the United States that could significantly change the statutory provisions governing any regulatory approval or clearance that we receive in the United States. In addition, the FDA may change its clearance and approval policies, adopt additional regulations or revise existing regulations, or take other actions which may prevent or delay approval or clearance of our tests under development or impact our ability to modify our currently approved or cleared tests on a timely basis.

Modifications to our Cue Health Monitoring System and any current or future tests may require new regulatory authorizations, clearances or approvals or may require us to recall or cease marketing our Cue Health Monitoring System or any current or future tests until authorizations, clearances or approvals are obtained.

Once our Cue Health Monitoring System or any current or future tests are initially authorized, cleared or approved, modifications to such products may require new regulatory authorizations, approvals or clearances, including additional EUAs, 510(k) clearances or PMA approvals, or require us to recall or cease marketing the modified devices until these authorizations, clearances or approvals are obtained. The FDA requires device manufacturers to initially make and document a determination of whether or not a modification requires a new authorization, approval, supplement or clearance. A manufacturer may determine that a modification could not significantly affect safety or efficacy and does not represent a major change in its intended use, so that no new 510(k) clearance is necessary. However, the FDA can review a manufacturer's decision and may disagree. The FDA may also on its own initiative determine that a new clearance or approval is required. We may make modifications to our tests in the future. For example, we are developing additional software component to our tests, which may require new clearances or approvals from the FDA. If the FDA requires new authorizations, clearances or approvals for the modifications, we may be required to recall and to stop marketing our tests, as approved and as modified, which could require us to redesign our tests and harm our operating results. In these circumstances, we may be subject to significant enforcement actions.

If a manufacturer determines that a modification to an FDA 510(k)-cleared device could significantly affect its safety or efficacy, or would constitute a major change in its intended use, then the manufacturer must file for a new 510(k) clearance or possibly a PMA application. Where we determine that modifications to our products require a new 510(k) clearance or PMA, we may not be able to obtain those additional clearances or approvals for the modifications or additional indications in a timely manner, or at all. Obtaining authorizations, clearances and approvals can be a time-consuming process, and delays in obtaining required future clearances or approvals would adversely affect our ability to introduce new or enhanced tests in a timely manner, which in turn would harm our future growth.

We require a waived designation under the Clinical Laboratory Improvement Amendments of 1988 from the FDA for our products to be used at the point-of-care, and outside of the clinical laboratory setting.

A Clinical Laboratory Improvement Amendments of 1988, or CLIA,-waived designation by the FDA is required for our products to be used at the point-of-care, and outside of the clinical laboratory setting but is not required for our at-home and over-the-counter COVID-19 test. We are subject to CLIA and its implementing regulations in the United States which establish quality standards for all laboratory testing to ensure the accuracy, reliability and timeliness of patient test results regardless of where the test is performed. Laboratory tests regulated under CLIA are categorized by the FDA as waived, moderate complexity or high complexity based on set criteria. Tests that are waived by regulation, or cleared, approved, or otherwise authorized by the FDA for home use or a point-of-care test, are deemed waived following marketing authorization. Our COVID-19 test is currently marketed pursuant to EUAs we received from the FDA in June 2020, for point-of-care use, and in March 2021, for at-home and over-the-counter use without a prescription. If a test is not deemed waived, a manufacturer of a test categorized as moderate complexity may request categorization of the test as waived through a CLIA Waiver by Application submission to the FDA. The manufacturer must provide evidence to the FDA that a test meets the CLIA statutory criteria for waiver, including, among other things, that the test employs methodologies that are so simple and accurate as to render the likelihood of erroneous results by the user negligible. When a test is categorized as waived, it may be performed by laboratories with a Certificate of Waiver, which is issued by the Centers for Medicare & Medicaid Services, or CMS, the federal agency responsible for the oversight of clinical laboratories, which includes issuing waiver certificates. We are also required to maintain a license to conduct testing in California. California laws establish standards for day-to-day operation of our clinical laboratory, including the training and skills required of personnel and quality control. If, for future tests, we fail to obtain, or experience significant delays in obtaining, a waiver approval

by the FDA for our tests, our tests will only be able to be performed by CLIA certified or accredited and state licensed laboratories, which may limit our commercial success and have an adverse effect on our business, financial condition or operations. Further, if we fail to meet the requirements for our CLIA Waiver or California state laboratory license, we could be subject to significant fines, penalties, administrative sanctions, any of which could have an adverse effect on our business, financial condition or operations.

If we fail to comply with the FDA's QSR our manufacturing operations could be interrupted and our Cue Health Monitoring System sales and operating results could suffer.

Although full compliance may not be required under an EUA, we will be required to comply with some requirements of the FDA's QSR, which covers the methods used in, and the facilities and controls used for, the design, testing, manufacture, quality assurance, labeling, packaging, sterilization, storage and shipping of our tests. The FDA enforces the QSR through periodic announced and unannounced inspections of our manufacturing facilities. The failure by us or one of our current or future manufacturers or suppliers to comply with applicable statutes and regulations administered by the FDA and other regulatory authorities, or the failure to timely and adequately respond to any adverse inspectional observations, could result in, among other things, any of the following enforcement actions:

- untitled letters, warning letters, injunctions, civil penalties and criminal fines;
- customer notifications or repair, replacement, refunds, recall, detention or seizure of our tests;
- operating restrictions or partial suspension or total shutdown of production;
- refusing or delaying our requests for approval of a PMA or 510(k) clearance of new products, modified products or new indications of cleared products;
- withdrawing PMA approvals or reclassifying devices that have 510(k) clearances;
- refusal to grant export certificates for our tests; or
- criminal prosecution.

Any of these actions could impair our ability to produce our tests in a cost-effective and timely manner to meet our customers' demands once approved for marketing. Furthermore, our key suppliers may not currently be or may not continue to be in compliance with all applicable regulatory requirements, which could result in our failure to produce components of our Cue Health Monitoring System on a timely basis and in the required quantities, if at all.

Our Cue Health Monitoring System is and will continue to be, subject to extensive regulation and compliance obligations, which are costly and time-consuming, and such regulation may cause unanticipated delays or prevent the receipt of the required authorizations, clearances or approvals to commercialize our Cue Health Monitoring System and any current or future test.

The manufacture, labeling, advertising, promotion, record-keeping, post-market surveillance and marketing of medical devices are subject to extensive regulation and review by the FDA and numerous other governmental authorities in the United States as well as foreign countries where we may sell our tests. Even after we have obtained EUA approval, 510(k) clearance or PMA approval to market a product, we have ongoing responsibilities under FDA and other regulations. The FDA and other national governmental authorities have broad enforcement powers. The regulations to which we are subject are complex and have become more stringent over time. Regulatory changes could result in restrictions on our ability to continue or expand our operations, higher than anticipated costs or lower than anticipated sales. Our failure to comply with applicable regulatory requirements could result in enforcement actions such as:

- civil penalties;
- delays on or denials of pending requests for 510(k) clearance or PMA approval;
- recalls or seizures;
- withdrawals or suspensions of current PMA approvals or reclassification of 510(k) cleared devices, resulting in prohibitions on sales of our tests, if approved;
- warning letters or untitled letters;
- operating restrictions, including a partial or total shutdown of production on our tests for any indication;

- refusal to issue export approvals or certifications;
- obtaining injunctions preventing us from manufacturing or distributing our products;
- commencing criminal prosecutions; and
- total prohibitions on our sales.

The incurrence or commencement of any such action would harm our reputation and cause sales of our tests to suffer and may prevent us from generating revenue.

In order to facilitate the rapid and thorough public health response to the COVID-19 pandemic, the CARES Act requires every laboratory that performs or analyzes a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19 to report the results from each such test to the Secretary of U.S. HHS. The CARES Act also authorized the HHS Secretary to identify the form and manner, as well as the timing and frequency, of such reporting. Based on subsequent guidance issued by the U.S. HHS on June 4, 2020, all laboratories, including testing locations operating as temporary overflow or remote locations for a laboratory, and other facilities or locations performing testing at point-of-care or with at-home specimen collection related to SARS-CoV-2, will report data for all testing completed, for each individual tested, within 24 hours of results being known or determined, on a daily basis to the appropriate state or local public health department based on the individual's residence. If governmental authorities conclude that our reporting processes do not comply with applicable law, we may be subject to penalties and other damages.

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

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

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

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

Companies are required to maintain certain records of recalls and corrections, even if they are not reportable to the FDA. We may initiate voluntary withdrawals or corrections for our products in the future that we determine do not require notification of the FDA. If the FDA disagrees with our determinations, it could require us to report those actions as recalls and we may be subject to enforcement action. A future recall announcement could harm our

reputation with customers, potentially lead to product liability claims against us and negatively affect our sales. Any corrective action, whether voluntary or involuntary, as well as defending ourselves in a lawsuit, will require the dedication of our time and capital, distract management from operating our business and may harm our reputation and financial results.

The misuse or off-label use of our tests may harm our reputation or the image of our tests in the marketplace, or result in injuries that lead to product liability suits, which could be costly to our business. Moreover, we could be subject to FDA sanctions if we are deemed to have engaged in off-label promotion.

Our promotional materials and training methods must comply with FDA and other applicable laws and regulations, including the prohibition on the promotion of a medical device for an indication that has not been approved or cleared by the FDA, referred to as an off-label use. The FDA does not restrict or regulate a physician's use of a medical device within the practice of medicine, and we cannot prevent a physician from using our tests for an off-label use. If the FDA determines that our promotional materials constitute the unlawful promotion of an off-label use, it could subject us to regulatory or enforcement actions, including revocation of our existing EUA, additional civil money penalties, criminal fines and penalties, and exclusion from participation in federal health programs, among others. For example, in connection with our existing EUA, our COVID-19 test must comply with certain labeling requirements, including the label that our COVID-19 test has not been FDA cleared or approved but has been authorized by the FDA under an EUA and that our COVID-19 test has been authorized only for the detection of nucleic acid from SARS-CoV-2, and not for any other viruses or pathogens. Other federal, state or foreign governmental authorities might also take action if they consider our promotion or training materials to constitute promotion of an off-label use, which could result in significant fines or penalties under other statutory authorities. In that event, our reputation could be damaged and the use of our tests in the marketplace could be impaired.

Furthermore, the use of our tests for indications other than those that have been approved or cleared by the FDA may lead to performance issues or produce erroneous results, which could harm our reputation in the marketplace among physicians and consumers and increase the risk of product liability. Product liability claims are expensive to defend and could divert our management's attention from our primary business and result in substantial damage awards against us. Any of these events could harm our business, results of operations and financial condition.

Clinical trials necessary to support a future test submission will be expensive and may require the enrollment of large numbers of subjects, and suitable subjects may be difficult to identify and recruit. Delays or failures in our clinical trials will prevent us from commercializing any modified or new tests and will adversely affect our business, operating results and prospects.

Initiating and completing clinical trials necessary to support a future EUA, 510(k), PMA, or de novo submission, will be time consuming and expensive and the outcome uncertain. Moreover, the results of early clinical trials are not necessarily predictive of future results, and any test we advance into clinical trials may not have favorable results in later clinical trials.

We expect all of our tests in our expected future test menu to require clinical studies or trials.

Conducting successful clinical trials will require the enrollment of large numbers of subjects, and suitable subjects may be difficult to identify and recruit. Subject enrollment in clinical trials and completion of subject participation depends on many factors, including the nature of the trial protocol, the attractiveness of, or the discomforts and risks associated with, the indication of the underlying test, the availability of appropriate clinical trial investigators, support staff, and proximity of subjects to clinical sites and able to comply with the eligibility and exclusion criteria for participation in the clinical trial and subject compliance. In addition, subjects may not participate in our clinical trials if they choose to participate in contemporaneous clinical trials of competitive products.

In addition, our clinical trials may in the future be affected by the COVID-19 pandemic. For example, the COVID-19 pandemic may impact subject enrollment. In particular, some sites may pause enrollment to focus on, and direct resources to, COVID-19, while at other sites, subjects may choose not to enroll or continue participating in the clinical trial as a result of the pandemic. As a result, potential subjects in our clinical trials may choose to not enroll, not participate in follow-up clinical visits, or drop out of the trial as a precaution against contracting COVID-19. Further, some subjects may not be able or willing to comply with clinical trial protocols if quarantines impede subject movement or interrupt healthcare services. We are unable to predict with confidence the duration of any such potential subject enrollment delays and difficulties, whether related to COVID-19 or otherwise. Delays in subject

enrollment or failure of subjects to continue to participate in a clinical trial may cause an increase in costs and delays in the approval and attempted commercialization of our tests or result in the failure of the clinical trial.

Development of sufficient and appropriate clinical protocols to demonstrate safety and efficacy are required and we may not adequately develop such protocols to support clearance and approval. Further, the FDA may require us to submit data on a greater number of subjects than we originally anticipated and/or for a longer follow-up period or change the data collection requirements or data analysis applicable to our clinical trials. In addition, despite considerable time and expense invested in our clinical trials, the FDA may not consider our data adequate for approval. Such increased costs and delays or failures could adversely affect our business, operating results and prospects.

Changes in funding or disruptions at the FDA and other government agencies caused by funding shortages or global health concerns could hinder their ability to hire and retain key leadership and other personnel, or otherwise prevent new or modified products from being developed, approved or commercialized in a timely manner, or at all, or otherwise prevent those agencies from performing normal business functions on which the operation of our business may rely, which could negatively impact our business.

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

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

We expect to rely on third parties in conducting future clinical studies of diagnostic products that may be required by the FDA or other regulatory authorities, and those third parties may not perform such clinical studies satisfactorily.

We do not have the ability to independently conduct clinical studies that may be required to obtain FDA and other regulatory clearance or approval for future diagnostic products. Accordingly, we expect that we would rely on third parties, such as, laboratories, clinical investigators, CROs, consultants, and collaborators to conduct such studies if needed. Our reliance on these third parties for clinical and other development activities would reduce our control over these activities but will not relieve us of our responsibilities. We will remain responsible for ensuring that each of our clinical studies is conducted in accordance with the general investigational plan and protocols for the study. Moreover, the FDA requires us to comply with standards, commonly referred to as GCPs, for conducting, recording and reporting the results of clinical studies to assure that data and reported results are credible and accurate and that the rights, integrity, and confidentiality of patients in clinical studies are protected. Furthermore, these third parties may also have relationships with other entities, some of which may be our competitors. To the extent our collaborators or the CROs fail to enroll participants for our clinical trials, fail to conduct the study to current GCP

standards or are delayed for a significant time in the execution of trials, including achieving full enrollment, including on account of the outbreak of infectious disease, such as the COVID-19 pandemic, or otherwise, we may be affected by increased costs, program delays or both, any resulting data may be unreliable or unusable for regulatory purposes, and we may be subject to enforcement action.

If these third parties do not successfully carry out their contractual duties or regulatory obligations or meet expected deadlines, if the third parties need to be replaced or if the quality or accuracy of the data they obtain is compromised, our preclinical development activities or clinical trials may be extended, delayed, suspended or terminated, and we may not be able to obtain regulatory approval for, or successfully commercialize, our products on a timely basis, if at all, and our business, operating results and prospects may be adversely affected.

We are subject to stringent and changing Data Protection Laws, Privacy Policies and Data Protection Obligations. The actual or perceived failure by us or our third-party service providers or vendors, to comply with such obligations could harm our reputation, subject us to significant fines and liability, or otherwise adversely affect our business.

We are subject to numerous Data Protection Laws that govern the Processing of individually identifiable information and health information and Data Protection Obligations. The legislative and regulatory landscape for privacy and data protection continues to evolve in jurisdictions worldwide, and there has been an increasing focus on privacy and data protection issues with the potential to affect our business. Failure to comply with any of these Data Protection Laws could result in enforcement actions against us, including fines, imprisonment of company officials and public censure, claims for damages by affected individuals, damage to our reputation and loss of goodwill, any of which could have a material adverse effect on our business.

As we seek to expand our business, we are, and will increasingly become, subject to various Data Protection Laws as well as Data Protection Obligations, relating to the Processing of sensitive and personal information in the jurisdictions in which we operate. In many cases, these laws, regulations and standards apply not only to disclosures to third parties, but also to transfers of information between or among us and other parties with which we have commercial relationships. These Data Protection Laws may be interpreted and applied differently over time and from jurisdiction to jurisdiction, and it is possible that they will be interpreted and applied in ways that will materially and adversely affect our business, financial condition and results of operations. The regulatory framework for data privacy, data security and data transfers worldwide is rapidly evolving and, as a result, interpretation and implementation standards and enforcement practices are likely to remain uncertain for the foreseeable future.

There are numerous U.S. federal and state laws and regulations related to the privacy and security of personal information. These laws and regulations include the Health Insurance Portability and Accountability Act of 1996, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH, and their implementing regulations, or collectively referred to as the HIPAA Rules, which establish a set of national privacy and security standards to safeguard Protected Health Information, or PHI, by health plans, healthcare clearinghouses and certain healthcare providers, referred to as covered entities, and the business associates and their subcontractors with whom such covered entities contract for services that involve the creation, receipt, maintenance or transmission of PHI for or on behalf of a covered entity or another business associate. HIPAA requires covered entities and business associates to, among other things, develop and maintain policies and procedures with respect to PHI that is used or disclosed, including the adoption of administrative, physical and technical safeguards to protect such information and ensure the confidentiality, integrity and availability of electronic PHI. As this applies to our business, we are required to maintain security standards for any PHI that we create, receive, maintain or transmit. For example, we plan to offer cloud-based portal software to help our customers more efficiently use our products. The software will maintain security safeguards that are designed to be consistent with the HIPAA Rules, but we cannot guarantee that these safeguards will not fail or that they will not be deemed inadequate in the future. In addition, we could be subject to periodic audits for compliance with the HIPAA Privacy and Security Standards by the U.S. HHS, and our customers. The U.S. HHS Office for Civil Rights may impose significant penalties on entities subject to HIPAA for a failure to comply with a requirement of the HIPAA Rules. Penalties will vary significantly depending on factors such as the date of the violation, whether the entity knew or should have known of the failure to comply, or whether the entity’s failure to comply was due to willful neglect. A single breach incident may violate multiple standards. In addition, a person who knowingly obtains or discloses individually identifiable health information in violation of HIPAA may face significant criminal penalties and imprisonment. HIPAA also authorizes state attorneys general to file suit on behalf of their residents. Courts may award damages, costs and attorneys’ fees related to violations of HIPAA in such cases. While HIPAA does not create a private right of action

allowing individuals to sue us in civil court for violations of HIPAA, its standards have been used as the basis for duty of care in state civil suits such as those for negligence or recklessness in the misuse or breach of PHI. Additionally, if we are unable to properly protect the privacy and security of the PHI of our customers, we could be found to have breached our contracts. Determining whether PHI has been handled in compliance with applicable privacy standards and our contractual obligations can be complex and we cannot be sure how these regulations will be interpreted, enforced or applied to our operations.

In addition, many states in which we operate have laws that protect the privacy and security of sensitive and personal information, including health-related information. Certain state laws may be more stringent or broader in scope, or offer greater individual rights, with respect to sensitive and personal information than federal, international or other state laws, and such laws may differ from each other, which may complicate compliance efforts. For example, the California Confidentiality of Medical Information Act, or CMIA, which is a state version of the HIPAA Rules, that protects “medical information” held by providers of health care, health plans, and subcontractors, specifically regulates mobile applications used for, among other things, the diagnosis of medical conditions as “health care providers pursuant to Section 56.06 of the Civil Code. This means that we are subject to additional privacy requirements that are not otherwise applicable to business associates under the HIPAA Rules. If, for example, we were to disclose information to a third party where such disclosure is not permitted by CMIA, we could be subject to administrative fines and/or civil penalties per violation that vary based on whether the disclosure was due to negligence, was done knowingly and willfully, or was knowingly and willfully and “for purposes of financial gain,” The CMIA also imposes criminal penalties. Section 56.36 provides that any violation of the CMIA’s nondisclosure provisions that results in an economic loss or personal injury to a patient is punishable as a misdemeanor. Moreover, unlike HIPAA, CMIA authorizes a private right of action for any violation of its provisions, including inappropriate access to, use, or disclosure of “medical information.” Actual injuries are not required to bring an action under CMIA. The courts may award nominal damages of $1,000 per person, plus costs and attorney’s fees for a negligent disclosure and may award compensatory and punitive damages, plus attorneys costs and attorneys fees for economic losses or personal injury resulting from the disclosure. This private right of action may increase the likelihood of, and risks associated with, litigation in association with any data breach.

Another recent California law, the California Consumer Privacy Act of 2018, or CCPA, increases privacy rights for California residents and imposes stringent data privacy and security obligations on companies that process their personal information, came into effect on January 1, 2020. The CCPA provides for civil penalties for violations, as well as a private right of action for certain data breaches that result in the loss of personal information but does not apply to health care providers subject to CMIA or business associates subject to HIPAA. In addition, laws governing online privacy, such as the California Online Privacy Protection Act, or CalOPPA, applies to our mobile application and online services. This private right of action may increase the likelihood of, and risks associated with, data breach litigation. The CCPA has been amended from time to time, and it is possible that further amendments will be enacted, but even in its current form it remains unclear how various provisions of the CCPA will be interpreted and enforced. Further, California voters recently approved the California Privacy Rights Act of 2020, or CPRA, that goes into effect on January 1, 2023. It is expected that the CPRA would, among other things, give California residents the ability to limit the use of their sensitive information, provide for penalties for CPRA violations concerning California residents under the age of 16, and establish a new California Privacy Protection Agency to implement and enforce the law. As the number and breadth of California privacy law increases, it is possible that we may be subject to additional standards or enforcement authorities under laws such as CCPA or CPRA in the future with respect to some of the information that we collect or maintain.

Although California often leads the nation in privacy laws, state laws are also changing rapidly. Additional states are enacting more stringent consumer privacy laws, and there is continuing discussion in Congress of a new federal data protection and privacy law to which we would become subject if it is enacted. All of these evolving compliance and operational requirements impose significant costs that are likely to increase over time, may require us to modify our data processing practices and policies, divert resources from other initiatives and projects, and could restrict the way products involving data are offered, all of which may have a material and adverse impact on our business, financial condition and results of operations.

Laws, regulations and standards in many other jurisdictions also apply broadly to the Processing of personal information, which impose significant compliance obligations. For example, in the European Economic Area, or EEA, and the United Kingdom, the collection and use of personal data, including clinical trial data, is governed by the provisions of the General Data Protection Regulation, or GDPR, which came into effect in May 2018. The GDPR

imposes stringent data privacy and security requirements on companies in relation to the processing of personal data of data subjects within the EEA and the United Kingdom. The GDPR, together with national legislation, regulations and guidelines of the EEA member states and the United Kingdom governing the Processing of personal data, impose strict obligations and restrictions on the ability to Process personal data, including health data from clinical trials and adverse event reporting. The law is also developing rapidly and, in July 2020, in its Schrems II ruling, the Court of Justice of the EU invalidated the EU-U.S. Privacy Shield data transfer mechanism, limiting how organizations could lawfully transfer personal data from the EEA to the U.S. Other data transfer mechanisms such as the Standard Contractual Clauses approved by the European Commission have faced challenges in European courts (including being called into question in Schrems II), may require additional risk analysis and supplemental measures to be used, and may be challenged, suspended or invalidated. In addition, the European Commission recently proposed updates to the Standard Contractual Clauses. Such developments may cause us to have to make further expenditures on local infrastructure, limit our ability to Process personal data, change internal business processes or otherwise affect or restrict sales and operations. Complying with these numerous, complex and often changing regulations is expensive and difficult, and failure to comply with any Data Protection Laws or any security incident or breach involving the misappropriation, loss or other unauthorized use or disclosure of sensitive or confidential information, whether by us, one of our service providers or another third party, could negatively affect our business, financial condition and results of operations, including but not limited to: investigation costs, material fines and penalties; compensatory, special, punitive and statutory damages; litigation; consent orders regarding our privacy and security practices; requirements that we provide notices, credit monitoring services or credit restoration services or other relevant services to impacted individuals; adverse actions against our licenses to do business; and injunctive relief.

Further, while the United Kingdom enacted the Data Protection Act 2018 in May 2018 that supplements the GDPR and has publicly announced that it will continue to regulate the protection of personal data in the same way post-Brexit for a period of time, Brexit has created uncertainty with regard to the future regulation of data and data protection in the United Kingdom. Other countries also are considering or have passed legislation requiring local storage, processing or security of data, or similar requirements, which could increase the cost and complexity of delivering our products.

We will make public statements about our use and disclosure of personal information through our Cue Virtual Care Delivery Apps and external Privacy Policies. Although we endeavor to comply with our external Privacy Policies, we may at times fail to do so or be alleged to have failed to do so. The publication of our external Privacy Policies that provide promises and assurances about data privacy and security can subject us to potential government or legal action if they are found to be deceptive, unfair or misrepresentative of our actual practices. Any failure, real or perceived, by us to comply with our external Privacy Policies, Data Protection Laws, or consumer protection-related laws and regulations applicable to us could cause our customers to reduce their use of our products and could materially and adversely affect our business, financial condition and results of operations. In many jurisdictions, enforcement actions and consequences for non-compliance can be significant and are rising. In addition, from time to time, concerns may be expressed about whether our products or processes compromise the privacy of customers and others. Concerns about our practices with regard to the collection, use, retention, security, disclosure, transfer and other processing of personal information or other privacy-related matters, even if unfounded, could damage our reputation and materially and adversely affect our business, financial condition and results of operations.

Many statutory requirements, both in the United States and abroad, include obligations for companies to notify individuals of security breaches involving certain personal information, which could result from breaches experienced by us or our third-party service providers. For example, laws in all 50 U.S. states and the District of Columbia require businesses to provide notice to consumers whose unencrypted personal information has been disclosed as a result of a data breach. These laws are not consistent, and compliance in the event of a widespread data breach is difficult and may be costly. Moreover, states have been frequently amending existing laws, requiring attention to changing regulatory requirements. We also may be contractually required to notify affected customers, regulators, credit reporting agencies or other affected individuals of a security breach. Such notifications are costly, and the disclosures or the failure to comply with such requirements, could lead to material adverse effects, including without limitation, negative publicity, a loss of customer confidence in our services or security measures or breach of contract claims. There can be no assurance that the limitations of liability in our contracts would be enforceable or adequate or would otherwise protect us from liabilities or damages if we fail to comply with applicable Data Protection Laws, Data Protection Obligations or other legal obligations. In addition, although we may have contractual protections with our third-party service providers, contractors and consultants, any actual or perceived security breach by our subcontractors could harm our reputation and brand, expose us to potential liability or require

us to expend significant resources on data security and in responding to any such actual or perceived breach. Any contractual protections we may have from our third-party service providers, contractors or consultants may not be sufficient to adequately protect us from any such liabilities and losses, and we may be unable to enforce any such contractual protections.

We expect that there will continue to be new proposed laws and regulations concerning data privacy and security, and we cannot yet determine the impact such future laws, regulations and standards may have on our business. New laws, amendments to or re-interpretations of existing laws, regulations, standards and other obligations may require us to incur additional costs and restrict our business operations. Because the interpretation and application of health-related and Data Protection Laws and other obligations are still uncertain, and often contradictory and in flux, it is possible that the scope and requirements of these laws may be interpreted and applied in a manner that is inconsistent with our practices and our efforts to comply with the evolving data protection rules may be unsuccessful. If so, this could result in government-imposed fines or orders requiring that we change our practices, which could adversely affect our business.

We cannot assure you that our third-party partners and service providers with access to our or our customers', suppliers' and employees' personally identifiable and other sensitive or confidential information in relation to which we are responsible will not breach contractual obligations imposed by us or violate Data Protection Laws, or that they will not experience security breaches or attempts thereof, which could have a corresponding effect on our business, including putting us in breach of our obligations under the Data Protection Laws, which could in turn adversely affect our business, results of operations and financial condition. We cannot assure you that our contractual measures and our own privacy- and security-related safeguards will protect us from the risks associated with the third-party processing, storage and transmission of such information.

We may receive inquiries or be subject to investigations, proceedings or actions, by various government entities regarding our privacy and information security practices and Processing ("Regulatory Proceedings"). These Regulatory Proceedings could result in a material adverse effect, including without limitation, interruptions of, or required changes to, our business practices, the diversion resources and the attention of management from our business, regulatory oversights and audits, discontinuance of necessary Processing, or other remedies that adversely affect our business.

In addition to the possibility of fines, lawsuits, regulatory investigations, public censure, other claims and penalties, and significant costs for remediation and damage to our reputation, we could be materially and adversely affected if legislation or regulations are expanded to require changes in our data processing practices and policies or if governing jurisdictions interpret or implement their legislation or regulations in ways that negatively impact our business. Complying with these various laws could cause us to incur substantial costs or require us to change our business practices and compliance procedures in a manner adverse to our business. Any inability to adequately address data privacy or security-related concerns, even if unfounded, or to comply with applicable laws, regulations, standards and other obligations relating to data privacy and security, could result in additional cost and liability to us, harm our reputation and brand, damage our relationships with customers and have a material and adverse impact on our business.

While we maintain general liability insurance coverage, cyber insurance coverage and other insurance, we cannot assure that such coverage will be adequate or otherwise protect us from or adequately mitigate liabilities or damages with respect to claims, costs, expenses, litigation, fines, penalties, business loss, data loss, regulatory actions or material adverse effects arising out of our privacy and security practices, Processing or security breaches we may experience, or that such coverage will continue to be available on acceptable terms or at all. The successful assertion of one or more large claims against us that exceeds our available insurance coverage, or results in changes to our insurance policies (including premium increases or the imposition of large deductible or co-insurance requirements), could have an adverse effect on our business. In addition, we cannot be sure that our existing insurance coverage will continue to be available on acceptable terms or that our insurers will not deny coverage as to any future claim.

Laws and regulations affecting government contracts and grants, including our grants, make it more costly and difficult for us to successfully conduct our business. Failure to comply with these laws and regulations could result in significant civil and criminal penalties and adversely affect our business.

We must comply with numerous laws, regulations, and agency-specific policies and procedures relating to the administration and performance of our grant and sub-award agreements. Among the most significant are:

- the Federal Acquisition Regulation, or FAR, and agency-specific regulations supplemental to the FAR, which comprehensively regulate the procurement, formation, administration and performance of government contracts;
- the business ethics and public integrity obligations, which govern conflicts of interest and the hiring of former government employees, restrict the granting of gratuities and funding of lobbying activities and incorporate other requirements such as the AKS, the Procurement Integrity Act, the FCA and the FCPA; and
- laws, regulations and executive orders restricting the exportation of certain products and technical data.

In addition, as a U.S. government contractor, we are required to comply with applicable laws, regulations and standards relating to our accounting practices, including unique accounting requirements regarding allowable and unallowable costs, and are subject to periodic audits and reviews. As part of any such audit or review, the U.S. government may review the adequacy of, and our compliance with, our internal control systems and policies, including those relating to our purchasing, property, estimating, compensation and management information systems. Based on the results of its audits, the U.S. government may adjust our agreement-related costs and fees, including allocated indirect costs. This adjustment could impact the amount of revenue reported on a historic basis and could impact our cash flows under the contract prospectively. In addition, in the event the U.S. government determines that certain costs and fees were unallowable or determines that the allocated indirect cost rate was higher than the actual indirect cost rate, it would be entitled to recoup any overpayment from us as a result. In addition, if an audit or review uncovers any improper or illegal activity, we may be subject to civil and criminal penalties and administrative sanctions, including termination of our agreements, forfeiture of profits, suspension of payments, fines and suspension or prohibition from doing business with the U.S. government. We could also suffer serious harm to our reputation if allegations of impropriety were made against us, which could cause our stock price to decline. Further, as a U.S. government contractor, we are subject to an increased risk of investigations, criminal prosecution, civil fraud, whistleblower lawsuits and other legal actions and liabilities as compared to private sector commercial companies. In addition, the qui tam provisions of the civil FCA authorize a private person to file civil actions on behalf of the federal and state governments and retain a share of any recovery, which can include treble damages and civil penalties.

If we or our suppliers fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could have a material adverse effect on the success of our business.

We and our suppliers are subject to numerous environmental, health and safety laws and regulations, including those governing the handling, use, storage, treatment and disposal of hazardous materials and wastes. Our operations, and the manufacturer of our products, involve the production and use of hazardous and flammable materials and waste, including chemicals and biological materials. We generally contract with third parties for the disposal of these materials and wastes. We cannot eliminate the risk of contamination or injury from these materials. In the event of contamination or injury resulting from our use of hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources. We also could incur significant costs associated with civil or criminal fines and penalties.

Although we maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from the use of hazardous materials, this insurance may not provide adequate coverage against potential liabilities. We do not maintain insurance for environmental liability or toxic tort claims that may be asserted against us in connection with our storage or disposal of biological, hazardous or radioactive materials.

We are subject to federal, state and local laws and regulations in the United States governing the use, manufacture, storage, handling and disposal of medical and hazardous materials. Although we believe that our procedures for using, handling, storing and disposing of these materials comply with legally prescribed standards, we cannot completely eliminate the risk of contamination or injury resulting from medical or hazardous materials. As a result of any such contamination or injury, we may incur liability or local, city, state or federal authorities may curtail the use of these materials and interrupt our business operations. In the event of an accident, we could be held liable for damages or penalized with fines, and the liability could exceed our resources. We do not have any insurance for liabilities arising from medical or hazardous materials. Compliance with applicable environmental laws and regulations is expensive, and current or future environmental regulations may impair our research, development and production efforts, which could harm our business, prospects, financial condition or results of operations.

If we fail to comply with U.S. federal and state fraud and abuse and other healthcare laws and regulations, including those relating to kickbacks and false claims, we could face substantial penalties and our business operations and financial condition could be harmed.

Healthcare providers and third-party payors play a primary role in the distribution, recommendation, ordering and purchasing of any medical device for which we have or obtain marketing clearance or approval. Through our arrangements with healthcare professionals and customers, we are exposed to broadly applicable anti-fraud and abuse, anti-kickback, false claims and other healthcare laws and regulations that may constrain our business, our arrangements and relationships with customers, and how we market, sell and distribute our marketed medical devices. We intend to have a compliance program, code of conduct and associated policies and procedures, but it is not always possible to identify and deter misconduct by our employees and other third parties, and the precautions we take to detect and prevent noncompliance may not be effective in protecting us from governmental investigations for failure to comply with applicable fraud and abuse or other healthcare laws and regulations.

In the United States, we are subject to various state and federal anti-fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute and federal civil False Claims Act, or the FCA. There are similar laws in other countries. Our relationships with physicians, other health care professionals and hospitals are subject to scrutiny under these laws.

The laws that may affect our ability to operate include, among others:

- the Anti-Kickback Statute, which prohibits, among other things, knowingly and willingly soliciting, offering, receiving or paying remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to induce or reward either the referral of a person, or the purchase, order or recommendation of, items or services for which payment may be made, in whole or in part, under a federal healthcare program such as the Medicare and Medicaid programs. The term “remuneration” has been broadly interpreted to include anything of value, and the government can establish a violation of the Anti-Kickback Statute without proving that a person or entity had actual knowledge of the law or a specific intent to violate. In addition, the government may assert that a claim, including items or services resulting from a violation of the Anti-Kickback Statute, constitutes a false or fraudulent claim for purposes of the FCA. There are a number of statutory exceptions and regulatory safe harbors protecting certain business arrangements from prosecution under the Anti-Kickback Statute; however, those exceptions and safe harbors are drawn narrowly, and there may be limited or no exception or safe harbor for many common business activities. Certain common business activities including, certain reimbursement support programs, educational and research grants or charitable donations, and practices that involve remuneration to those who prescribe, purchase or recommend medical devices, including discounts, providing items or services for free or engaging such people as consultants, advisors or speakers, may be subject to scrutiny if they do not fit squarely within any available exception or safe harbor and would be subject to a facts and circumstances analysis to determine compliance with the Anti-Kickback Statute. Our business may not in all cases meet all of the criteria for statutory exception or regulatory safe harbor protection from anti-kickback liability;
- The Eliminating Kickbacks in Recovery Act of 2018, or EKRA, which prohibits payments for referrals to recovery homes, clinical treatment facilities, and laboratories. EKRA’s reach extends beyond federal health care programs to include private insurance (i.e., it is an “all payor” statute);
- the federal false claims and civil monetary penalties laws, including the Civil Monetary Penalties Law and the FCA, which prohibit, among other things, persons or entities from knowingly presenting, or causing to be presented, a false or fraudulent claim for payment of government funds and knowingly making, using or causing to be made or used, a false record or statement to get a false claim paid or to avoid, decrease or conceal an obligation to pay money to the federal government. A claim including items or services resulting from a violation of the Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the FCA. Actions under the FCA may be brought by the government or as a qui tam action by a private person in the name of the government. These people, sometimes known as “relators” or, more commonly, as “whistleblowers,” may share in any monetary recovery. Many medical device manufacturers have been investigated and have reached substantial financial settlements with the federal government under the FCA for a variety of alleged improper activities, including causing false claims to be submitted as a result of the marketing of their products for unapproved and thus non-reimbursable uses and interactions with prescribers and other customers, including those that may have affected their billing or coding practices and submission of claims to the federal government. FCA liability is potentially significant in the healthcare industry because the statute provides for treble damages

and mandatory monetary penalties for each false or fraudulent claim or statement. Because of the potential for large monetary exposure, healthcare and medical device companies often resolve allegations without admissions of liability for significant and material amounts to avoid the uncertainty of treble damages and per claim penalties that may be awarded in litigation proceedings. Settlements may require companies to enter into corporate integrity agreements with the government, which may impose substantial costs on companies to ensure compliance. Medical device manufacturers and other healthcare companies also are subject to other federal false claims laws, including, among others, federal criminal healthcare fraud and false statement statutes that extend to non-government health benefit programs;

- HIPAA, which imposes criminal and civil liability for, among other actions, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payors, or knowingly and willfully falsifying, concealing or covering up a material fact or making a materially false, fictitious or fraudulent statement or representation, or making or using any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the federal healthcare Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH Act, and their implementing regulations, also impose obligations, including mandatory contractual terms, on covered entities subject to the rule, such as health plans, healthcare clearinghouses and certain healthcare providers, as well as their business associates and their subcontractors that perform certain services for them or on their behalf involving the use or disclosure of individually identifiable health information with respect to safeguarding the privacy, security and transmission of individually identifiable health information;
- various state laws govern the privacy and security of personal information, including the CMIA, which provides for a private right of action for data breaches;
- the federal Physician Payments Sunshine Act, implemented as Open Payments, requires manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program to report annually, with certain exceptions to CMS, information related to payments or other "transfers of value" made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and teaching hospitals, and requires applicable manufacturers and group purchasing organizations to report annually to CMS ownership and investment interests held by physicians and their immediate family members. Beginning in 2022, applicable manufacturers also will be required to report such information regarding payments and transfers of value provided during the previous year to physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists, anesthesiologist assistants and certified nurse-midwives; and
- analogous state and foreign law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers; state laws that require medical device companies to comply with the industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state beneficiary inducement laws, which are state laws that require medical device manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures; and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

State and federal regulatory and enforcement agencies continue to actively investigate violations of healthcare laws and regulations, and the U.S. Congress continues to strengthen the arsenal of enforcement tools. Most recently, the Bipartisan Budget Act of 2018, or the BBA, increased the criminal and civil penalties that can be imposed for violating certain federal health care laws, including the Anti-Kickback Statute. Enforcement agencies also continue to pursue novel theories of liability under these laws. In particular, government agencies have increased regulatory scrutiny and enforcement activity with respect to manufacturer reimbursement support activities and patient support programs, including bringing criminal charges or civil enforcement actions under the Anti-Kickback Statute, FCA and HIPAA's healthcare fraud and privacy provisions.

Because of the breadth of these laws and the narrowness of the statutory exceptions and regulatory safe harbors available under such laws, it is possible that some of our business activities, including certain sales and marketing practices of our Cue Health Monitoring System, and financial arrangements with physicians, other healthcare providers, and other customers, could be subject to challenge under one or more such laws. If an arrangement were deemed to violate the Anti-Kickback Statute, it may also subject us to violations under other fraud and abuse laws such as the federal civil FCA and civil monetary penalties laws. Moreover, such arrangements could be found to violate comparable state fraud and abuse laws.

Achieving and sustaining compliance with applicable federal and state anti-fraud and abuse laws may prove costly. If we or our employees are found to have violated any of the above laws we may be subjected to substantial criminal, civil and administrative penalties, including imprisonment, exclusion from participation in federal healthcare programs, such as Medicare and Medicaid, and significant fines, monetary penalties, forfeiture, disgorgement and damages, contractual damages, reputational harm, administrative burdens, diminished profits and future earnings and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our financial results. Any action or investigation against us for the violation of these healthcare fraud and abuse laws, even if successfully defended, could result in significant legal expenses and could divert our management's attention from the operation of our business. Companies settling FCA, Anti-Kickback Statute or civil monetary penalties law cases also may enter into a Corporate Integrity Agreement with the U.S. Department of Health and Human Services Office of Inspector General, or the OIG, in order to avoid exclusion from participation (such as loss of coverage for their products) in federal healthcare programs such as Medicare and Medicaid. Corporate Integrity Agreements typically impose substantial costs on companies to ensure compliance. Defending against any such actions can be costly, time-consuming and may require significant personnel resources, and may harm our business, financial condition and results of operations.

In addition, the medical device industry's relationship with physicians is under increasing scrutiny by the OIG, the U.S. Department of Justice, or the DOJ, the state attorney generals and other foreign and domestic government agencies. Our failure to comply with requirements governing the industry's relationships with physicians or an investigation into our compliance by the OIG, the DOJ, state attorney generals and other government agencies, could harm our business, financial condition and results of operations.

Our employees, independent contractors, consultants, commercial partners and vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could harm our business, financial condition and results of operations.

We are exposed to the risk that our employees, independent contractors, consultants, commercial partners, distributors and vendors may engage in fraudulent or illegal activity. Misconduct by these parties could include intentional, reckless or negligent conduct or disclosure of unauthorized activities to us that violates: (1) the laws of the FDA and other similar regulatory bodies, including those laws requiring the reporting of true, complete and accurate information to such regulators, (2) manufacturing standards, (3) healthcare fraud and abuse laws in the United States and similar foreign fraudulent misconduct laws, or (4) laws that require the true, complete and accurate reporting of financial information or data. These laws may impact, among other things, future sales, marketing and education programs. In particular, the promotion, sales and marketing of healthcare items and services, as well as certain business arrangements in the healthcare industry, are subject to extensive laws designed to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, structuring and commissions, certain customer incentive programs and other business arrangements generally. Activities subject to these laws also involve the improper use of information obtained in the course of patient recruitment for clinical trials.

We intend to adopt a code of business conduct and ethics prior to the completion of this offering that applies to our directors, officers and employees, but it is not always possible to identify and deter misconduct by our employees and other third parties, and the precautions we take to detect and prevent these activities may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could result in the imposition of significant fines or other sanctions, including the imposition of civil, criminal and administrative penalties, damages, monetary fines, disgorgement, imprisonment, additional integrity reporting and oversight obligations, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings and curtailment of operations, any of which could adversely affect our ability to operate our business

and our results of operations. Whether or not we are successful in defending against any such actions or investigations, we could incur substantial costs, including legal fees and reputational harm, and divert the attention of management in defending ourselves against any of these claims or investigations, which could harm our business, financial condition and results of operations.

Healthcare policy changes may have a material adverse effect on our business, financial condition and results of operations.

The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, or collectively, the ACA, enacted in March 2010, made a number of substantial changes in the way healthcare is financed by both governmental and private insurers. Among other ways in which the ACA may significantly impact our business, the ACA includes: provisions regarding coordination and promotion of research on comparative clinical effectiveness of different technologies and procedures; initiatives to revise Medicare payment methodologies; and initiatives to promote quality indicators in payment methodologies.

Since enactment of the ACA, there have been, and continue to be, numerous executive and legal challenges and Congressional actions to repeal and replace provisions of the law. For example, legislation enacted in 2017, informally titled the Tax Cuts and Jobs Act of 2017, repealed the "individual mandate." The repeal of this provision, which requires most Americans to carry a minimal level of health insurance, became effective in 2019. Additionally, the 2020 federal spending package permanently eliminated, effective January 1, 2020, the ACA-mandated "Cadillac" tax on high-cost employer-sponsored health coverage and the medical device tax and, effective January 1, 2021, also eliminated the health insurer tax.

During his term, President Trump signed several Executive Orders designed to delay the implementation of certain provisions of the ACA or otherwise circumvent some of the requirements for health insurance mandated by the ACA. On January 28, 2021, however, President Biden issued a new Executive Order which directed federal agencies to reconsider rules and other policies that limit Americans' access to health care and consider actions to protect and strengthen that access. Under this Executive Order, federal agencies were directed to re-examine: policies that undermine protections for people with pre-existing conditions, including complications related to COVID-19; demonstrations and waivers under Medicaid and the ACA that may reduce coverage or undermine the programs, including work requirements; policies that undermine the Health Insurance Marketplace or other markets for health insurance; policies that make it more difficult to enroll in Medicaid and the ACA; and policies that reduce affordability of coverage or financial assistance, including for dependents.

On December 14, 2018, a Texas U.S. District Court Judge ruled that the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress as part of legislation enacted in 2017, informally titled the Tax Cuts and Jobs Act of 2017. Additionally, on December 18, 2019, the U.S. Court of Appeals for the 5th Circuit upheld the District Court ruling that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. On June 17, 2021, the Supreme Court held that the states and individuals that brought the lawsuit challenging the ACA's individual mandate do not have standing to challenge the law. The Supreme Court did not reach the merits of the challenge, but the decision ends the case. It is unclear how the Supreme Court ruling, other such litigation and the healthcare reform measures of the Biden Administration will impact the ACA.

In addition, there have been numerous governmental reform activities in response to the COVID-19 pandemic. For example, the FFCRA authorized state Medicaid programs to provide access to coverage for certain medically necessary testing, testing-related services and treatment related to COVID-19 at no cost to the individual during the emergency period. Such programs are evolving and vary among state Medicaid programs. In addition, the California Department of Health Care Services implemented a COVID-19 Uninsured Group program on August 28, 2020. Under the program, California covers COVID-19 diagnostic testing, testing-related services, and treatment services, including hospitalization and all medically necessary care, at no cost to the individual, for up to 12 months or the end of the public health emergency, whichever comes first. It is possible that additional governmental action will be taken to address the COVID-19 pandemic, which may impact our business.

We cannot predict whether future healthcare initiatives will be implemented at the federal or state level, or how any future legislation or regulation may affect us. The expansion of government's role in the U.S. healthcare industry as a result of the ACA's implementation, and changes to the reimbursement amounts paid by Medicare and other payors for our tests and our planned future tests, may reduce our profits, if any, and have a materially adverse effect on our business, financial condition, results of operations and cash flows.

We cannot predict the impact changes to these laws or the implementation of, or changes to, any other laws applicable to us in the future may have on our business, financial condition and results of operations.

Risks Related to Our Common Stock and the Offering

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

No public market for our common stock currently exists. An active public trading market for our common stock may not develop following the completion of this offering, or if developed, it may not be sustained. The lack of an active market may impair your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active market may also reduce the fair value of your shares. An inactive market may also impair our ability to raise capital to continue to fund operations by selling shares and may impair our ability to acquire other companies or technologies by using our shares as consideration. The initial public offering price of shares of our common stock has been determined by negotiation between us and the underwriters and may not be indicative of prices that will prevail following the completion of this offering. The market price of shares of our common stock may decline below the initial public offering price, and you may not be able to resell your shares of our common stock at or above the initial public offering price.

Our stock price may be volatile, and the value of our common stock may decline.

The market price of our common stock may be highly volatile and may fluctuate or decline substantially as a result of a variety of factors, some of which are beyond our control, including, but not limited to:

- actual or anticipated fluctuations in our financial condition or results of operations;
- variance in our financial performance from expectations of securities analysts;
- changes in the pricing of our products;
- changes in our projected operating and financial results;
- changes in laws or regulations applicable to our products;
- changes in the number of enterprise customers we are able to partner with;
- the level of market adoption of the Cue Health Monitoring System, including in the over-the-counter and at-home context;
- announcements by us or our competitors of significant business developments, acquisitions, or new offerings;
- changes in the structure of healthcare payment systems;
- significant data breaches of our company, providers, vendors or pharmacies;
- our involvement in litigation;
- future sales of our common stock by us or our stockholders, as well as the anticipation of lock-up releases;
- changes in senior management or key personnel;
- negative publicity, such as whistleblower complaints or unsupported allegations made by short sellers, about us or our products;
- the trading volume of our common stock;
- changes in investor perceptions of us or our industry;
- changes in the anticipated future size and growth rate of our market;
- the effect of the COVID-19 pandemic and the end of the COVID-19 pandemic on our business;
- general economic, political, regulatory, industry, and market conditions; and
- natural disasters or major catastrophic events.

These and other factors may cause the market price and demand for our common stock to fluctuate substantially, which may limit or prevent investors from readily selling their shares of common stock and may otherwise negatively

affect the liquidity of our common stock. In recent years, stock markets in general, and the market for life science technology companies in particular (including companies in the genomics, biotechnology, diagnostics and related sectors), have experienced significant price and volume fluctuations that have often been unrelated or disproportionate to changes in the operating performance of the companies whose stock is experiencing those price and volume fluctuations. Broad market and industry factors may seriously affect the market price of our common stock, regardless of our actual operating performance. These fluctuations may be even more pronounced in the trading market for our stock shortly following this offering. Following periods of such volatility in the market price of a company's securities, securities class action litigation has often been brought against that company. Because of the potential volatility of our stock price, we may become the target of securities litigation in the future. Securities litigation could result in substantial costs and divert management's attention and resources from our business.

Future sales of our common stock in the public market could cause the market price of our common stock to decline.

Sales of a substantial number of shares of our common stock in the public market following the completion of this offering, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities.

All of our directors and officers and the holders of substantially all of our capital stock and securities convertible into our capital stock are subject to lock-up agreements that restrict their ability to transfer shares of our capital stock for 180 days from the date of this prospectus. These lock-up agreements limit the number of shares of capital stock that may be sold immediately following this offering, subject to certain exceptions. Subject to certain limitations, substantially all of these shares will become eligible for sale upon expiration of the 180-day lock-up period. Goldman Sachs & Co. LLC and Morgan Stanley & Co. LLC may, in their sole discretion, permit our stockholders who are subject to these lock-up agreements to sell shares prior to the expiration of the lock-up agreements. For additional information, see the section titled "Underwriting."

In addition, there were 9,994,197 shares of common stock issuable upon the exercise of options outstanding as of June 30, 2021. We intend to register all of the shares of common stock issuable upon exercise of such outstanding options or other equity incentives we may grant in the future, for public resale under the Securities Act of 1933, as amended, or Securities Act. The shares of common stock will become eligible for sale in the public market to the extent such options are exercised, subject to the lock-up agreements described above and compliance with applicable securities laws.

After this offering, holders of approximately shares of our common stock will have rights, subject to some conditions, to require us to file registration statements covering the sale of their shares or to include their shares in registration statements that we may file for ourselves or other stockholders.

The issuance of shares in connection with any subsequent issuance could depress the market price of our common stock. We are unable to predict the effect that such issuances and/or sales may have on the prevailing market price of our common stock.

If you purchase shares of our common stock in this offering, you will experience immediate and substantial dilution in your investment. You will experience further dilution if we issue additional equity or equity-linked securities in the future.

The initial public offering price of our common stock is substantially higher than the pro forma net tangible book value per share of our common stock immediately after this offering. If you purchase shares of our common stock in this offering, you will suffer immediate dilution of $ per share, representing the difference between our pro forma as adjusted net tangible book value per share as of June 30, 2021, after giving effect to the sale of shares of common stock in this offering and an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus. See the section titled "Dilution."

If we issue additional shares of common stock, or securities convertible into or exchangeable or exercisable for shares of common stock, our stockholders, including investors who purchase shares of common stock in this offering, will experience additional dilution, and any such issuances may result in downward pressure on the price of our common stock.

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

We are an emerging growth company, as defined in the Jumpstart Our Business Startups Act, as amended, or JOBS Act. For so long as we remain an emerging growth company, we are permitted by the U.S. Securities and Exchange Commission, or SEC, rules and plan to rely on exemptions from certain disclosure requirements that are applicable to other SEC-registered public companies that are not emerging growth companies.

These exemptions include not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes–Oxley Act of 2002, as amended, or Sarbanes-Oxley Act, not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements, reduced disclosure obligations regarding executive compensation and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. As a result, the information we provide stockholders will be different from the information that is available with respect to other public companies. In this prospectus, we have not included all of the executive compensation related information that would be required if we were not an emerging growth company. We cannot predict whether investors will find our common stock less attractive if we rely on these exemptions.

In addition, as an emerging growth company the JOBS Act allows us to delay adoption of new or revised accounting pronouncements applicable to public companies until such pronouncements are made applicable to private companies, unless we later irrevocably elect not to avail ourselves of this exemption. We have elected to use this extended transition period under the JOBS Act; however, we may choose to early adopt new or revised accounting pronouncements, if permitted under such pronouncements.

If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We do not expect to pay any dividends for the foreseeable future. Investors in this offering may never obtain a return on their investment.

You should not rely on an investment in our common stock to provide dividend income. We have never declared or paid cash dividends on our capital stock, and we do not anticipate that we will pay any dividends to holders of our common stock in the foreseeable future. Instead, we plan to retain all available funds and future earnings to fund the development and expansion of our business. In addition, any credit facility or other financing we obtain may contain terms prohibiting or limiting the amount of dividends that may be declared or paid on our common stock. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any return on their investment. As a result, investors seeking cash dividends should not purchase our common stock.

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

We will have broad discretion in the application of the net proceeds to us from this offering, including for any of the purposes described in the section titled "Use of Proceeds," and you will not have the opportunity as part of your investment decision to assess whether the net proceeds are being used appropriately. Because of the number and variability of factors that will determine our use of the net proceeds from this offering, our ultimate use may vary substantially from our currently intended use. Investors will need to rely upon the judgment of our management with respect to the use of proceeds. Pending use, we may invest the net proceeds from this offering in short-term, investment-grade, interest-bearing securities, such as money market accounts, certificates of deposit, commercial paper, and guaranteed obligations of the United States government that may not generate a high yield for our stockholders. If we do not use the net proceeds that we receive in this offering effectively, our business, financial condition, results of operations and prospects could be harmed, and the market price of our common stock could decline.

Concentration of ownership of our common stock among our executive officers, directors and principal stockholders may prevent new investors from influencing significant corporate decisions.

Based on the number of shares of common stock outstanding as of June 30, 2021 and including the shares to be sold in this offering, 83,526,065 shares of common stock issuable upon the automatic conversion of our redeemable convertible preferred stock outstanding as of June 30, 2021 into an equal number of shares of our

common stock immediately prior to the completion of this offering and the automatic conversion of our outstanding $235.5 million in aggregate principal amount of Convertible Notes into shares of common stock upon the closing of this offering, based on interest accrued through , 2021 and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, our executive officers, directors and current beneficial owners of 5% or more of our common stock will, in the aggregate, beneficially own approximately % of our common stock (assuming no exercise of the underwriters' option to purchase up to additional shares of our common stock and no purchases of shares in this offering or in the directed share program). These stockholders, acting together, will be able to significantly influence all matters requiring stockholder approval, including the election and removal of directors and any merger or other significant corporate transactions. The interests of this group of stockholders may not coincide with the interests of other stockholders.

Some of these persons or entities may have interests different than those of investors purchasing shares in this offering. For example, because many of these stockholders purchased their shares at prices substantially below the price at which shares are being sold in this offering and have held their shares for a longer period, they may be more interested in selling our company to an acquirer than other investors, or they may want us to pursue strategies that deviate from the interests of other stockholders. The foregoing discussion does not reflect any potential purchases by our existing principal stockholders or their affiliated entities of shares of our common stock in this offering.

Delaware law and provisions in our amended and restated certificate of incorporation and amended and restated bylaws that will be in effect at the completion of this offering could make a merger, tender offer or proxy contest difficult, thereby depressing the trading price of our common stock.

Provisions of our amended and restated certificate of incorporation and amended and restated bylaws, which will become effective immediately prior to and upon the completion of this offering, respectively, may delay or discourage transactions involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws:

- permit our board of directors to issue shares of preferred stock, with any rights, preferences and privileges as they may designate (including the right to approve an acquisition or other change in our control);
- provide that the authorized number of directors may be changed only by resolution of the board of directors;
- provide that the board of directors or any individual director may only be removed with cause and the affirmative vote of the holders of at least 66 2/3% of the voting power of all of our then outstanding common stock;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- divide our board of directors into three classes;
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide notice in writing in a timely manner and also specify requirements as to the form and content of a stockholder's notice;
- do not provide for cumulative voting rights (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose); and
- provide that special meetings of our stockholders may be called only by the chairman of the board, our Chief Executive Officer or by the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors.

The amendment of any of these provisions, with the exception of the ability of our board of directors to issue shares of preferred stock and designate any rights, preferences and privileges thereto, would require approval by the holders of at least 66 2/3% of our then-outstanding common stock.

In addition, as a Delaware corporation, we are subject to Section 203 of the Delaware General Corporation Law. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us for a certain period of time. A Delaware corporation may opt out of this provision by express provision in its original certificate of incorporation or by amendment to its certificate of incorporation or bylaws approved by its stockholders. However, we have not opted out of this provision.

These and other provisions in our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law could make it more difficult for stockholders or potential acquirors to obtain control of our board of directors or initiate actions that are opposed by our then-current board of directors, including delay or impede a merger, tender offer or proxy contest involving our company. The existence of these provisions could negatively affect the price of our common stock and limit opportunities for you to realize value in a corporate transaction.

For information regarding these and other provisions, see the section titled “Description of Capital Stock.”

General Risk Factors

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

As a public company, we will incur significant legal, accounting, and other expenses that we did not incur as a private company, which we expect to further increase after we are no longer an emerging growth company. The Sarbanes–Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of the Nasdaq Stock Market LLC and other applicable securities rules and regulations impose various requirements on public companies. Our management and other personnel will devote a substantial amount of time to compliance with these requirements. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. We cannot predict or estimate the amount of additional costs we will incur as a public company or the specific timing of such costs.

As a result of being a public company, we are obligated to develop and maintain proper and effective internal controls over financial reporting, and any failure to maintain the adequacy of these internal controls may adversely affect investor confidence in our company and, as a result, the value of our common stock.

We will be required, pursuant to Section 404 of the Sarbanes–Oxley Act to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting for the fiscal year ending December 31, 2022, which is the year covered by the second annual report following the completion of our initial public offering. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. In addition, our independent registered public accounting firm will be required to attest to the effectiveness of our internal control over financial reporting in our first annual report required to be filed with the SEC following the date we are no longer an emerging growth company if we are not a non-accelerated filer at such time. We are commencing the costly and challenging process of compiling the information systems, processes and internal controls documentation necessary to perform the evaluation needed to comply with Section 404 of the Sarbanes–Oxley Act, but we may not be able to complete our evaluation, testing and any required remediation in a timely fashion once initiated. Our compliance with Section 404 of the Sarbanes–Oxley Act will require that we incur substantial accounting expenses and expend significant management efforts. We currently do not have an internal audit group, and we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge and compile the system and process documentation necessary to perform the evaluation needed to comply with Section 404 of the Sarbanes–Oxley Act.

If we are unable to conclude that our internal control over financial reporting is effective, or if our independent registered public accounting firm determines we have a material weakness or significant deficiency in our internal control over financial reporting, we could lose investor confidence in the accuracy and completeness of our financial reports, the market price of our common stock could decline, and we could be subject to sanctions or investigations by the SEC or other regulatory authorities. Failure to remedy any material weakness in our internal control over financial reporting, or to implement or maintain other effective control systems required of public companies, could also restrict our future access to the capital markets.

For a discussion of material weaknesses that were identified in connection with the audit of our 2019 and 2020 financial statements see "—We have identified material weaknesses in our internal control over financial reporting and may identify material weaknesses in the future or otherwise fail to maintain an effective system of internal controls in the future, as a result of which, we may not be able to accurately report our financial condition or results of operations, which may adversely affect investor confidence in us and, as a result, the value of our common stock" above.

Our amended and restated certificate of incorporation that we intend to adopt effective immediately prior to the completion of this offering will designate the state courts in the State of Delaware or, if no state court located within the State of Delaware has jurisdiction, the federal court for the District of Delaware, as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could discourage lawsuits against us or our directors, officers, or employees.

Our amended and restated certificate of incorporation to be effective immediately prior to the completion of this offering provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware does not have jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for the following types of proceedings: (1) any derivative action or proceeding brought on our behalf, (2) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, other employees or stockholders to our company or our stockholders, (3) any action asserting a claim arising pursuant to any provision of the DGCL or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (4) any action asserting a claim arising pursuant to any provision of our amended and restated certificate of incorporation or bylaws (in each case, as they may be amended from time to time) or governed by the internal affairs doctrine. This exclusive forum provision will not apply to actions arising under the Securities Act, the Exchange Act or any other claim for which federal courts have exclusive jurisdiction.

Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. As a result, the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. Accordingly, the exclusive forum provision does not designate the Court of Chancery as the exclusive forum for any derivative action arising under the Exchange Act, as there is exclusive federal jurisdiction in that instance, and instead designates the federal district court for the District of Delaware for such an action.

To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our amended and restated certificate of incorporation that will become effective immediately prior to the completion of this offering provides that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any claims arising under the Securities Act. Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. As a result, the enforceability of our exclusive forum provision is uncertain, and a court may determine that such provision will not apply to suits brought to enforce any duty or liability created by the Securities Act or any other claim for which the federal and state courts have concurrent jurisdiction. Further, compliance with the federal securities laws and the rules and regulations thereunder cannot be waived by investors in our common stock.

These exclusive forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage lawsuits against us and our directors, officers and other employees. Any person or entity purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to these provisions. There is uncertainty as to whether a court would enforce such provisions, and the enforceability of similar choice of forum provisions in other companies' charter documents has been challenged in legal proceedings. We also note that stockholders cannot waive compliance (or consent to noncompliance) with the federal securities laws and the rules and regulations thereunder. It is possible that a court could find these types of provisions to be inapplicable or unenforceable, and if a court were to find either exclusive-forum provision in our amended and restated bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving the dispute in other jurisdictions, which could significantly harm our business.

We could be subject to securities class action litigation.

In the past, securities class action litigation has often been instituted against companies following periods of volatility in the market price of a company's securities. This type of litigation, if instituted, could result in substantial costs and a diversion of management's attention and resources, which would harm our business, operating results, or financial condition. Additionally, the dramatic increase in the cost of directors' and officers' liability insurance may cause us to opt for lower overall policy limits or to forgo insurance that we may otherwise rely on to cover significant defense costs, settlements, and damages awarded to plaintiffs.

If our estimates or judgments relating to our critical accounting policies are based on assumptions that change or prove to be incorrect, our results of operation could fall below our publicly announced guidance or the expectations of securities analysts and investors, resulting in a decline in the market price of our common stock.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in our financial statements and accompanying notes. We base our estimates on historical experience and estimates and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets, liabilities, equity, revenue and expenses that are not readily apparent from other sources. For example, in connection with the implementation of the new revenue accounting standard if and when we have product sales, management makes judgments and assumptions based on our interpretation of the new standard. The new revenue standard is principle-based and interpretation of those principles may vary from company to company based on their unique circumstances. It is possible that interpretation, industry practice and guidance may evolve as we apply the new standard. If our assumptions underlying our estimates and judgements relating to our critical accounting policies change or if actual circumstances differ from our assumptions, estimates or judgements, our operating results may be adversely affected and could fall below our publicly announced guidance or the expectations of securities analysts and investors, resulting in a decline in the market price of our common stock.

If securities analysts do not publish research or reports about our business or if they publish negative evaluations of our common stock, the price of our common stock could decline.

The trading market for our common stock will rely in part on the research and reports that industry or securities analysts publish about us or our business. We do not currently have and may never obtain research coverage by industry or securities analysts. If no or few analysts commence coverage of us, the trading price of our common stock could decrease. Even if we do obtain analyst coverage, if one or more of the analysts covering our business downgrade their evaluations of our common stock, the price of our common stock could decline. If one or more of these analysts cease to cover our common stock, we could lose visibility in the market for our common stock, which in turn could cause the price of our common stock to decline.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical fact, contained in this prospectus, including statements regarding our strategy, future operations, future financial position, future revenue, projected costs, prospects, plans and objectives of management, are forward-looking statements. The words "anticipate," "believe," "continue" "could," "estimate," "expect," "intend," "may," "might," "plan," "potential," "predict," "project," "should," "target," "will," "would," and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words.

The forward-looking statements in this prospectus include, among other things, statements about:

- our expectations regarding our revenue, expenses and other operating results;
- the extent and duration of the COVID-19 pandemic and the impact of the end of the COVID-19 pandemic on our business and our expectations regarding customer and user demand for our COVID-19 test;
- our ability to increase demand for, and the rate of market adoption of, the Cue Health Monitoring System and our platform, tests and other products generally, including with consumers, healthcare professionals, enterprises, insurers and other payors and public health officials;
- our ability to effectively scale our manufacturing capacity and other operations in a timely manner in order to meet contractual obligations, market demand and to be able to successfully operate our business;
- our ability to meet our contractual obligations under our agreement with the U.S. Department of Defense or other customers;
- our ability to successfully develop and commercialize additional tests and other products for use with our Cue Integrated Care Platform;
- our expectations of the reliability, accuracy and performance of our products and services, as well as expectations of the benefits to patients, clinicians and providers of our products and services;
- our ability to obtain and maintain regulatory authorizations, clearances or approvals for our tests, including our existing FDA EUAs for our COVID-19 test;
- our ability to accurately forecast demand for the Cue Health Monitoring System, our tests and other products;
- our ability to successfully build out our sales and marketing infrastructure, the costs and success of our marketing efforts, and our ability to promote our brand;
- our ability to increase demand for our products and services, obtain favorable coverage and reimbursement determinations from third-party payors and expand geographically;
- our intellectual property position and our expectations regarding our ability to obtain and maintain intellectual property protection;
- the performance of our third-party suppliers and our ability to avoid any disruption in sources of supply;
- our ability to effectively manage our growth, including our ability to retain and recruit personnel, and maintain our culture;
- the impact of U.S. and international laws and regulations;
- our competitive position and expectations regarding developments and projections relating to our competitors and any competing products and services; future investments in our business, our anticipated capital expenditures and our estimates regarding our capital requirements, future revenue, expenses, the ability to obtain reimbursement for our products and any needs for additional financing;
- our expectations regarding technology trends and developments in the healthcare industry and our ability to address those trends and developments with our offerings;
- our expectations concerning relationships with third parties, including healthcare professionals, enterprises, insurance companies and other payors, public health officials and other stakeholders in the healthcare system;

- the degree to which we are able to help bring about a new healthcare paradigm, and be a significant participant in any such new paradigm;
- our ability to grow our business internationally, in addition to within the United States;
- our ability to implement, maintain and improve effective internal controls and remediate material weaknesses;
- our expectations related to the use of proceeds from this offering and the sufficiency of such proceeds, together with our existing cash and cash equivalents, to fund our operations; and
- our expectations regarding the time during which we will be an emerging growth company under the JOBS Act.

We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make. We have included important factors in the cautionary statements included in this prospectus, particularly in the "Risk Factors" section, that we believe could cause actual results or events to differ materially from the forward-looking statements that we make. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, collaborations, joint ventures or investments we may make or enter into.

You should read this prospectus and the documents that we reference in this prospectus and have filed as exhibits to the registration statement of which this prospectus is a part completely and with the understanding that our actual future results may be materially different from what we expect. The forward-looking statements contained in this prospectus are made as of the date of this prospectus, and we do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

MARKET, INDUSTRY AND OTHER DATA

This prospectus includes statistical and other industry and market data that we obtained from independent industry publications and research, surveys and studies conducted by independent third parties as well as our own estimates of potential market opportunities. Certain of these publications, surveys and studies were published before the COVID-19 pandemic and therefore do not reflect any impact of COVID-19 on any specific market. All of the market data used in this prospectus involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such data. Industry publications and third-party research, surveys and studies generally indicate that their information has been obtained from sources believed to be reliable, although they do not guarantee the accuracy or completeness of such information. Our estimates of the potential market opportunities for our products include several key assumptions based on our industry knowledge, industry publications, third-party research and other surveys, which may be based on a small sample size and may fail to accurately reflect market opportunities. While we believe that our internal assumptions are reasonable, no independent source has verified such assumptions.

USE OF PROCEEDS

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

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. An increase (decrease) of 1.0 million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming no change in the assumed initial public offering price per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

As of June 30, 2021, we had cash and cash equivalents of $246.3 million (excluding restricted cash of $6.0 million as of such date). We currently intend to use the net proceeds from this offering, together with our existing cash and cash equivalents, as follows:

- approximately $ million for the continued commercial scale up of our activities and build out our corporate infrastructure, other than the scale up of manufacturing facilities and capabilities, including the hiring and training of sales and marketing personnel and to fund marketing initiatives and for the hiring and training of other personnel;
- approximately $ million for the continued scale up of our manufacturing facilities and capabilities;
- approximately $ million for research and development to continue to develop each of our planned tests in our near-term development pipeline, which includes:
    - approximately $ million for further development and clinical studies for each of our five tests in late-stage technical development (flu, RSV, pregnancy, fertility, and inflammation); and
    - approximately $ million to further develop our software and other technical capabilities, such as the development of the Cue Data & Innovation Layer and the Cue Ecosystem Integrations and Apps; and
- the remainder, if any, for working capital and other general corporate purposes.

We may use a portion of the net proceeds for acquisitions or strategic investments in complementary businesses, services, products or technologies. However, we do not have agreements or commitments to enter into any such acquisitions or investments at this time.

Based on our current plans, we believe that the anticipated net proceeds from this offering, together with our existing cash and cash equivalents, will be sufficient to meet our working capital and capital expenditure needs and debt service obligations for at least the next months. We believe that the net proceeds from this offering, together with our existing cash and cash equivalents, cash anticipated to be generated by ongoing operations, and will be sufficient to fund development of our currently contemplated near-term development pipeline, through completion of product development and regulatory authorization, clearance or approval, as applicable, although we cannot assure you that this will be the case. While we expect that the costs associated with getting any one of our tests authorized, cleared or approved by the FDA will vary, and we are unable to predict with specificity the cost that will be required to complete any particular test, we expect that each planned test in our near-term development pipeline, including our five tests in late-stage technical development, will cost on average between approximately $10.0 million to $20.0 million in order to complete development and obtain regulatory authorization, clearance or approval, as applicable.

This expected use of net proceeds from this offering and our existing cash and cash equivalents represents our intentions based upon our current plans and business conditions, which could change in the future as our plans and business conditions evolve. As of the date of this prospectus, we cannot predict with certainty all of the particular uses for the net proceeds to be received upon the completion of this offering, or the amounts that we will actually spend on the uses set forth above. The amounts and timing of our actual expenditures may vary significantly depending on numerous factors, including cash flows from operations and the anticipated growth of our business. As a result, our management will retain broad discretion over the allocation of the net proceeds from this offering.

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

DIVIDEND POLICY

We have never declared or paid cash dividends on our common stock. We currently intend to retain all available funds and any future earnings to fund the development and expansion of our business and we do not anticipate paying any cash dividends in the foreseeable future. Any future determination to declare and pay dividends will be made at the discretion of our board of directors and will depend on then-existing conditions, including our results of operations, financial condition, contractual restrictions, capital requirements, business prospects and other factors our board of directors may deem relevant. In addition, any future credit facility or other financing arrangements may contain terms prohibiting or limiting the amount of dividends that may be declared or paid on our common stock.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization as of June 30, 2021:

- on an actual basis;
- on a pro forma basis to give effect to (i) the filing and effectiveness of our amended and restated certificate of incorporation, which will be in effect immediately prior to the completion of this offering, (ii) the automatic conversion of all of our outstanding $235.5 million aggregate principal amount Convertible Notes into shares of common stock upon the completion of this offering, based on interest accrued through , 2021 and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, (iii) the automatic conversion of all outstanding shares of our redeemable convertible preferred stock into an aggregate of 83,526,065 shares of our common stock immediately prior to the completion of this offering, and (iv) the automatic conversion of all of our outstanding warrants to purchase redeemable convertible preferred stock into warrants to purchase common stock, and the related reclassification of our redeemable convertible preferred stock warrant liabilities to additional paid-in capital immediately prior to the completion of this offering; and
- on a pro forma as adjusted basis to reflect: (i) the pro forma adjustments set forth above, and (ii) the issuance and sale of shares of our common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The pro forma and pro forma as adjusted information below is illustrative only, and our capitalization following the closing of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing.

You should read the information in this table together with our financial statements and the related notes included elsewhere in this prospectus and the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” of this prospectus.

(in thousands, except share and per share data)	As of June 30, 2021		
	Actual	Pro Forma (unaudited)	Pro Forma As Adjusted(1)
Cash and cash equivalents	$246,326	$	$
Restricted cash, non-current	6,000		
Redeemable convertible preferred stock warrant liabilities	$ 1,521	$	$
Convertible notes	258,734		
Finance leases, including current portion	3,043		
Series A redeemable convertible preferred stock, $0.00001 par value per share; 8,721,437 shares authorized, 8,350,743 shares issued and outstanding, actual; no shares authorized, issued or outstanding, pro forma and pro forma as adjusted	7,519		
Series B redeemable convertible preferred stock, $0.00001 par value per share; 46,213,620 shares authorized, 46,176,715 shares issued and outstanding, actual; no shares authorized, issued or outstanding, pro forma and pro forma as adjusted	66,186		
Series C-1 redeemable convertible preferred stock, $0.00001 par value per share; 27,308,229 shares authorized, 27,308,227 shares issued and outstanding, actual; no shares authorized, issued or outstanding, pro forma and pro forma as adjusted	96,436		
Series C-2 redeemable convertible preferred stock, $0.00001 par value per share; 1,690,380 shares authorized, issued and outstanding, actual; no shares authorized, issued or outstanding, pro forma and pro forma as adjusted	6,182		
Stockholders' equity (deficit):			
Common stock, $0.00001 par value: 129,030,355 shares authorized 29,128,604 shares issued and outstanding, actual; 500,000,000 shares authorized, shares issued and outstanding, pro forma; 500,000,000 shares authorized, shares issued and outstanding, pro forma as adjusted	—		
Preferred stock, $0.00001 par value: no shares authorized, issued or outstanding, actual; 50,000,000 shares authorized, shares issued and outstanding, pro forma; 50,000,000 shares authorized, shares issued and outstanding, pro forma as adjusted			
Additional paid-in capital	16,264		
Accumulated deficit	(77,596)		
Total stockholders' (deficit) equity	(61,332)		
Total capitalization	$378,289	$	$

(1) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, additional paid-in capital, total stockholders' (deficit) equity and total capitalization by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. An increase (decrease) of 1.0 million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, additional paid-in capital, total stockholders' (deficit) equity and total capitalization by $ million, assuming no change in the assumed initial public offering price per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The number of shares of our common stock issued and outstanding and pro forma and pro forma as adjusted in the table above is based on shares of our common stock outstanding as of June 30, 2021, after giving effect to the automatic conversion of all outstanding shares of our redeemable convertible preferred stock into an aggregate of 83,526,065 shares of common stock immediately prior to the completion of this and the automatic conversion of outstanding $235.5 million in aggregate principal amount of Convertible Notes into shares of common stock upon the closing of this offering, based on interest accrued through , 2021 and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, but excludes:

- 9,994,197 shares of common stock issuable upon exercise of stock options outstanding as of June 30, 2021, with a weighted-average exercise price of $4.93 per share;
- 1,049,043 shares of common stock subject to restricted stock units, or RSUs, outstanding as of June 30, 2021;
- 75,744 shares of common stock issuable upon exercise of warrants outstanding as of June 30, 2021 to purchase shares of common stock, with an exercise price of $0.40 per share;
- 79,882 shares of common stock issuable upon exercise of warrants outstanding as of June 30, 2021 to purchase redeemable convertible preferred stock that will automatically become warrants to purchase 79,882 shares of common stock immediately prior to the completion of this offering, with a weighted-average exercise price of $1.12 per share;
- 1,138,635 shares of common stock reserved for future issuance under our 2014 Equity Incentive Plan, as of June 30, 2021, of which our board of directors expects to grant stock awards covering 128,000 shares of common stock to certain of our non-employee directors effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part;
- additional shares of common stock that will become available for future issuance under our 2021 Stock Incentive Plan, which will become effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, as well as any automatic increases in the number of shares of common stock reserved for future issuance under the 2021 Stock Incentive Plan, of which our board of directors expects to grant awards covering shares of common stock to certain of our employees, executive officers and non-employee directors effective prior to the commencement of trading of our common stock on the Nasdaq Stock Market; and
- additional shares of common stock that will become available for future issuance under our 2021 Employee Stock Purchase Plan, which will become effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, as well as any automatic increases in the number of shares of common stock reserved for future issuance under the 2021 Employee Stock Purchase Plan.

2021 Convertible Notes

The table below shows the number of shares of our common stock to be issued upon the conversion of the Convertible Notes at assumed initial public offering prices of $, $, and $ per share, which represent the low, mid, and high point, respectively, of the price range set forth on the cover page of this prospectus, based on interest accrued through , 2021 and assuming a conversion price equal to 80% of the assumed initial public offering price. The actual initial public offering price may be lower or higher than the foregoing assumed initial public offering prices, which would increase or decrease, respectively, the number of shares of common stock to be issued upon the conversion of our Convertible Notes. In addition, the amount of shares issuable upon conversion of the Convertible Notes is also dependent on the timing of the offering. As a result, the total number of shares of common stock to be issued upon the conversion of the Convertible Notes will not be known until the determination of the actual initial public offering price per share following the effectiveness of the registration statement of which this prospectus forms a part. The initial public offering prices shown in the table below are hypothetical and illustrative.

Illustrative Initial Public Offering Price Per Share	Number of Shares of Common Stock to be Issued upon Conversion of the Convertible Notes
$	
$	
$	

DILUTION

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

Our historical net tangible book value (deficit) as of June 30, 2021 was $(68.0) million, or $(2.33) per share of common stock. Our historical net tangible book value (deficit) is the amount of our total tangible assets (total assets less intangible assets and deferred offering costs) less our total liabilities and the carrying value of our redeemable convertible preferred stock, which is not included within stockholders' equity (deficit). Historical net tangible book value (deficit) per share represents historical net tangible book value (deficit) divided by the 29,128,604 shares of common stock outstanding as of June 30, 2021.

Our pro forma net tangible book value as of June 30, 2021 was $ million, or $ per share of common stock. Pro forma net tangible book value represents the amount of our total tangible assets less our total liabilities, after giving effect to (i) the filing and effectiveness of our amended and restated certificate of incorporation, which will be in effect upon completion of this offering, (ii) the automatic conversion of all outstanding shares of our redeemable convertible preferred stock into an aggregate of 83,526,065 shares of our common stock upon the completion of this offering and the automatic conversion of our outstanding $235.5 million in aggregate principal amount of Convertible Notes into shares of common stock, based on interest accrued through , 2021 and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus upon the completion of this offering, and (iii) the automatic conversion of all of our outstanding warrants to purchase redeemable convertible preferred stock into warrants to purchase common stock, and the related reclassification of our redeemable convertible preferred stock warrant liability to additional paid-in capital immediately prior to the completion of this offering. Pro forma net tangible book value per share represents pro forma net tangible book value divided by the total number of shares outstanding as of June 30, 2021, after giving effect to the pro forma adjustments described above.

After giving further effect to our issuance and sale of shares of our common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of June 30, 2021 would have been $ million, or $ per share. This represents an immediate increase in pro forma as adjusted net tangible book value per share of $ to existing stockholders and immediate dilution of $ in pro forma as adjusted net tangible book value per share to new investors purchasing shares of common stock in this offering. Dilution per share to new investors is determined by subtracting pro forma as adjusted net tangible book value per share after this offering from the assumed initial public offering price per share paid by new investors. The following table illustrates this dilution on a per share basis:

Assumed initial public offering price per share		$
Historical net tangible book value (deficit) per share as of June 30, 2021	$ (2.33)	
Increase in net tangible book value per share attributable to the pro forma adjustments described above		
Pro forma net tangible book value per share as of June 30, 2021, before giving effect to this offering		
Increase in pro forma net tangible book value per share attributable to new investors participating in this offering		
Pro forma as adjusted net tangible book value per share after this offering		
Dilution in pro forma as adjusted net tangible book value per share to new investors participating in this offering		$

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

offering expenses payable by us. Similarly, each increase of 1.0 million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase our pro forma as adjusted net tangible book value per share after this offering by $ and decrease the dilution per share to new investors purchasing shares of common stock in this offering by $, assuming no change in the assumed initial public offering price per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. A decrease of 1.0 million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would decrease our pro forma as adjusted net tangible book value per share after this offering by $ and increase the dilution per share to new investors purchasing shares of common stock in this offering by $, assuming no change in the assumed initial public offering price and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

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

The following table summarizes, as of June 30, 2021, on the pro forma as adjusted basis described above, the total number of shares of common stock purchased from us on an as converted to common stock basis, the total consideration paid or to be paid and the average price per share paid or to be paid by existing stockholders and by new investors in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. As the table shows, new investors purchasing shares of common stock in this offering will pay an average price per share substantially higher than our existing stockholders paid.

	Shares Purchased		Total Consideration		Weighted-Average Price Per Share
	Number	Percentage	Amount	Percentage	
Existing stockholders(1)		%	$	%	$
New investors					$
Total		100%	$	100%	

(1) The presentation in this table regarding ownership by existing stockholders does not give effect to any purchases that existing stockholders may make through our directed share program or otherwise purchase in this offering.

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) the total consideration paid by new investors by $ million and, in the case of an increase, would increase the percentage of total consideration paid by new investors by percentage points and, in the case of a decrease, would decrease the percentage of total consideration paid by new investors by percentage points, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same. An increase (decrease) of 1.0 million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase (decrease) the total consideration paid by new investors by $ million and, in the case of an increase, would increase the percentage of total consideration paid by new investors by percentage points and, in the case of a decrease, would decrease the percentage of total consideration paid by new investors by percentage points, assuming no change in the assumed initial public offering price.

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

The foregoing tables and calculations (other than historical net tangible book value) are based on shares of our common stock outstanding as of June 30, 2021, after giving effect to the automatic conversion of all outstanding shares of our redeemable convertible preferred stock into an aggregate of 83,526,065 shares of common stock immediately prior to the completion of this offering and the automatic conversion of our outstanding $235.5 million in aggregate principal amount of Convertible Notes into shares of common stock upon the closing of this offering, based on accrued interest through , 2021 and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus), but excludes:

- 9,994,197 shares of common stock issuable upon exercise of stock options outstanding as of June 30, 2021, with a weighted average exercise price of $4.93 per share;
- 1,049,043 shares of common stock subject to restricted stock units, or RSUs, outstanding as of June 30, 2021;
- 75,744 shares of common stock issuable upon exercise of warrants outstanding as of June 30, 2021 to purchase shares of common stock, with an exercise price of $0.40 per share;
- 79,882 shares of common stock issuable upon the exercise of warrants outstanding as of June 30, 2021 to purchase redeemable convertible preferred stock that will automatically become warrants to purchase 79,882 shares of common stock immediately prior to the completion of this offering, with a weighted-average exercise price of $1.12 per share;
- 1,138,635 shares of common stock reserved for future issuance under our 2014 Equity Incentive Plan, as of June 30, 2021, of which our board of directors expects to grant stock awards covering 128,000 shares of common stock to certain of our non-employee directors effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part;
- additional shares of our common stock that will become available for future issuance under our 2021 Stock Incentive Plan, which will become effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, as well as any automatic increases in the number of shares of common stock reserved for future issuance under the 2021 Stock Incentive Plan, of which our board of directors expects to grant awards covering shares of common stock to certain of our employees, executive officers and non-employee directors effective prior to the commencement of trading of our common stock on the Nasdaq Stock Market; and
- additional shares of our common stock that will become available for future issuance under our 2021 Employee Stock Purchase Plan, which will become effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, as well as any automatic increases in the number of shares of common stock reserved for future issuance under the 2021 Employee Stock Purchase Plan.

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

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

The following discussion and analysis of the financial condition and results of operations should be read together with our financial statements and the related notes thereto included elsewhere in this prospectus. The discussion and analysis should also be read together with the section titled "Business." The following discussion contains forward-looking statements that reflect future plans, estimates, beliefs and expected performance. The forward-looking statements are dependent upon events, risks and uncertainties that may be outside of our control. Our actual results may differ significantly from those projected in the forward-looking statements. Factors that might cause future results to differ materially from those projected in the forward-looking statements include, but are not limited to, those discussed in the sections titled "Risk Factors" and "Cautionary Statement Regarding Forward-Looking Statements."

Overview

We are a health technology company, and our mission is to enable personalized, proactive and informed healthcare that empowers people to live their healthiest lives. Our proprietary platform, the Cue Integrated Care Platform, which is comprised of our Cue Health Monitoring System, Cue Data and Innovation Layer, Cue Virtual Care Delivery Apps, and Cue Ecosystem Integrations and Apps, enables lab-quality diagnostics-led care at home, at work or at the point of care. Our platform is designed to empower stakeholders across the healthcare ecosystem, including consumers, providers, enterprises and payors with paradigm-shifting access to diagnostic and health data to inform care decisions. We are helping pioneer a new continuous care model that we believe has the potential to significantly improve the user experience, provide measurable and actionable clinical insights, and increase efficiency within the healthcare ecosystem. We believe this model, powered by our platform, will allow users to actively manage their health, which we believe will lead to improved health outcomes and a more resilient, connected, and efficient healthcare ecosystem for all stakeholders.

The Cue Integrated Care Platform consists of the following hardware and software components: (1) our revolutionary Cue Health Monitoring System, made up of a portable, durable and reusable reader, or Cue Reader, a single-use test cartridge, or Cue Cartridge, and a sample collection wand, or Cue Wand, (2) our Cue Data and Innovation Layer, with cloud-based data and analytics capability, (3) our Cue Virtual Care Delivery Apps, including our consumer-friendly Cue Health App and our Cue Enterprise Dashboard, and (4) our Cue Ecosystem Integrations and Apps, which allow for integrations with third party applications and sensors.

Our Cue Health Monitoring System is designed to deliver a broad menu of tests through one system, enabling two major testing modalities, nucleic acid amplification tests, or NAAT, and immunoassays, in one device. Our system is designed to handle different sample types, including saliva, blood, urine and swabs, and can detect nucleic acids, small molecules, proteins and cells. We believe this will enable us to address many of the diagnostic tests conducted in clinical laboratories, such as tests addressing indications in respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management.

We designed our platform with the consumer in mind. Our platform, although underpinned by breakthrough technology, is simple to operate and is comprised of the following elements:

- *Cue Health Monitoring System*
  - *Cue Reader*: The Cue Reader is an elegantly designed, automated analyzer of test results and is used with Cue Test Kits and the Cue Health App. The Cue Reader runs the Cue Cartridge and communicates the result of the test digitally via Bluetooth to the Cue Health App.
  - *Cue Test Kit*: Each Cue Test Kit is comprised of a Cue Cartridge and a Cue Wand.
    - *Cue Cartridge*: Our sample-specific, single-use cartridges are designed to handle different chemistries, which allows us to create a broad menu of tests. Cue Cartridges are designed to be seamlessly inserted into the Cue Reader.
    - *Cue Wand*: Cue Wands are single-use and sterile sample collection devices that are designed to be universally compatible with the Cue Cartridges. The Cue Wand is designed to permit collection of multiple sample types, including saliva, blood, urine and swabs, with only minor modifications.

Our cloud-native Cue Data and Innovation Layer stores and curates the data from our Cue Health Monitoring System and provides a secure environment for users to access current and historical health data. Our Data and Innovation Layer has the ability to collate unstructured and structured data from a wide variety of data sources, which we believe will give us the ability in the future to store and analyze more holistic sets of health data, including from other testing modalities and wearables. The Cue Integrated Care Platform was built with data security and regulatory compliance, including HIPAA, at its core.

The Cue Data and Innovation Layer provides the foundation for our Cue Virtual Care Delivery Apps and has enabled the development of our Cue Ecosystem Integrations and Apps. The Cue Data and Innovation Layer currently contains an API that allows for the data from tests performed on the Cue Health Monitoring System to be received, stored, and retrieved by the end user. For enterprises deploying the Cue Enterprise Dashboard, the Cue Data and Innovation Layer enables the creation of a network of users affiliated by roles with the enterprise. Within this network of users, the Cue Data and Innovation Layer provides the engine behind test analytics, creation of groups, scheduling and compliance, reporting, and enterprise-specific privacy policy management. The Cue Data and Innovation Layer powers the EMR integration with major EMR providers.

- *Cue Virtual Care Delivery Apps*
    - *Cue Health App*: Our mobile app creates a secure interface between the user and their health data. For consumers, it allows a single point of entry for their health data; for healthcare professionals, it is designed to provide a unified platform for managing patient histories and, in the future, is expected to allow for telemedicine and e-prescription services. By connecting the diagnostic test results with interventions and outcomes, we believe the Cue Health App will allow users to be more engaged and satisfied with their healthcare experience, which can ultimately drive better outcomes for users. To run a Test Kit on the Cue Reader, a user will need to download and utilize the Cue Health App. As of August 31, 2021, through our 49 active customers, over 45,000 unique accounts have used the Cue Health App to run our COVID-19 Test Kit. These unique accounts include both organizations and individuals who may take tests episodically, healthcare providers running a large number of tests for multiple patients, and enterprises running a large number of tests for their entire organization, as established by the customer on a customer-by-customer basis.
    - *Cue Enterprise Dashboard*: Our dashboard is designed to allow enterprises, payors, healthcare providers and public health entities to manage population health at the organizational level and has the potential to track the efficacy of various population health programs. Accessible online, the Cue Enterprise Dashboard has the potential to help organizations manage a patient's journey from onboarding to scheduling, care management and inventory management. The Cue Enterprise Dashboard was built with a focus on user experience, simplifying the sharing of communications, such as results, records, and histories with patients and across providers and streamlining reporting requirements. Powered by our analytics engine and role-based access capabilities, it is designed to provide chief medical officers, environmental health and safety officials, and benefits managers with insight into their organization's population health, helping to facilitate efficient decision making. As of August 31, 2021, we had approximately 60 active public sector, enterprise and provider accounts on the Cue Enterprise Dashboard. An account on the Cue Enterprise Dashboard is considered active if the customer has signed into their account and utilized the programs within the last six months. A customer may have more than one active account on the Cue Enterprise Dashboard.
- *Cue Ecosystem Integrations and Apps*: We believe that placing our APIs at the core of our integrated care platform will enable us to become foundational within Healthcare 2.0. Our Cue Data and Innovation Layer is designed to be able to securely connect with on-demand services, such as telemedicine, and e-prescription services, which we believe we will enable a truly digital and seamless user experience. In the future, we plan on enhancing our platform to enable third party application development and offerings that complement our solutions.

In addition, our ability to integrate with anchor EMR systems, such as Epic Systems Corporation, or Epic, allows our customers to integrate our platform with their existing systems, creating an agile and responsive workflow for patient monitoring for ongoing care, better intelligence and reporting, and more efficient provider level health management.

These components of the Cue Integrated Care Platform are designed to work together seamlessly, creating an easy-to-use workflow for our consumers.

Our first, and currently only, commercially available diagnostic test for our Cue Health Monitoring System is our COVID-19 test for ribonucleic acid, or RNA, of SARS-CoV-2, the virus that causes COVID-19. In June 2020, the U.S. Food & Drug Administration, or the FDA, granted an Emergency Use Authorization, or EUA, for our molecular COVID-19 test for use under the supervision of qualified medical personnel. In March 2021, the FDA granted us an EUA for over the counter and at-home use of our COVID-19 test without a prescription. Internationally, we have also received the CE mark in the European Union, as well as Interim Order authorization from Health Canada, which is the department of the Government of Canada responsible for national health policy. In June 2021, our COVID-19 test also received regulatory approval from the Central Drugs Standard Control Organisation, India's national regulatory body for pharmaceuticals and medical devices, for professional point-of-care use in India. Our COVID-19 test is authorized for use by both symptomatic and asymptomatic individuals, and by adults and children aged two and older with adult assistance.

We have experienced substantial growth since the commercial launch of our COVID-19 test in June 2020. As of August 31, 2021, we have delivered over 115,000 Cue Readers and over five million Cue Cartridges across the United States, which have been deployed to over 250 school districts, nursing homes, hospitals, public health facilities and organizations, essential businesses, correctional facilities, other public sector users, enterprise customers and healthcare providers, and secured commercial agreements with the U.S. Department of Defense, enterprise customers, and healthcare providers, as of August 15, 2021. We intend to continue to broaden our product offerings, as well as enhance and further develop our integration into connected healthcare.

Prior to August 2020, we were focused on research and development of our platform and did not generate any revenue from product sales. We began generating revenue from product sales in August 2020 following the receipt of our first EUA from the FDA for our COVID-19 test in June 2020. Of our approximately $23.0 million in revenue in the year ended December 31, 2020, approximately $15.4 million was from product sales. Of that amount, $8.9 million of product revenue was from public sector entities, substantially all of which was from the U.S. DoD, and the remaining $6.5 million of product revenue was generated from other customers. All of our approximately $201.9 million in revenue in the six months ended June 30, 2021 was from product sales. Of that amount, $167.1 million of product revenue was from public sector entities, substantially all of which was from the U.S. DoD, and the remaining $34.8 million of product revenue was primarily generated from sales to a single non-government enterprise customer (which accounted for $28.9 million of revenue during the six months ended June 30, 2021) and other non-public sector customers. After the conclusion of the initial U.S. DoD agreement, we anticipate that the percentage of our revenue derived from non-public sector customers will increase as we continue to ramp up our manufacturing and distribution capabilities and are able to sell more of our products to other customers, including enterprises and healthcare providers. Our net loss was $47.4 million for the year ended December 31, 2020, and our net income was $32.8 million for the six months ended June 30, 2021.

Currently, the majority of our product revenue comes from the sale of Cue Test Kits with a smaller proportion coming from the sale of Cue Readers and, to a lesser extent, Cue Control Swab Packs. While the U.S. DoD agreement is for a fixed volume of Cue Readers, Cue Test Kits and Cue Control Swab Packs, for other customers those products are generally sold unbundled, with Cue Test Kits sold in packs of 10. Going forward, we continue to expect product revenue to be dominated by the sale of Cue Test Kits, though we expect the proportion of product revenue coming from Cue Readers to increase as we place more of them in the home where they will likely have lower Cue Test Kit pull-through than those in the hands of the public sector, testing administrators or health care providers. Beginning in 2021, we started offering customers a subscription-based purchasing option. Subscription-based customers can initially purchase a fixed number of Cue Readers at the start of the contract and commit to a fixed number of Cue Test Kits per month for the duration of the subscription agreement. We believe our subscription-based model offers customers maximum utility and allows them to reduce their purchase costs, while simultaneously creating a recurring revenue stream for us. Going forward, we may offer alternate forms of subscription or bundling of products as our product offering expands. Revenue generated from customers with subscription-based contracts was $29.8 million during the six months ended June 30, 2021 (of which $28.9 million was derived from a single enterprise customer). We also provide our Cue Health App to all customers as well as other software to organizations, including the Cue Enterprise Dashboard and the Cue Data and Innovation Layer. Currently, all of our software products are available at no cost, though we may charge for these offerings as we increase functionality and expand our offerings in the future. Beyond product revenue we may also generate grant and other revenue which may be more variable and in 2020 was exclusively linked to our contract with the U.S. Biomedical Advanced Research and Development

Authority, or BARDA, a division of the U.S. HHS. We did not generate any grant or other revenue during the six months ended June 30, 2021. Going forward we expect to continue to seek these sources of revenue both as a source of funding for research and development and as an opportunity for collaboration with strategic partners.

We plan to drive our future revenue growth through, among other means:

Increasing the Number of Cue Readers and Cue Test Kits Shipped: The placement of Cue Readers is critical to the adoption of our platform and products. We view the number of Cue Readers shipped to both existing and new customers to be a leading indicator of the long-term opportunity for widespread adoption of our platform and potential pull-through demand for our current and future tests. As of August 31, 2021, we have shipped over 115,000 Cue Readers and over five million Cue Cartridges, which have been deployed to over 280 school districts, nursing homes, hospitals, public health facilities and organizations, essential businesses, correctional facilities, other public sector users, enterprise customers and healthcare providers. We are focused on continuing to significantly increase our placement of Cue Readers to help drive adoption of our platform and sales of Cue Test Kits.

Expanding Our Future Care Offerings: Our ability to successfully develop and commercialize additional tests for our platform is also a key component to our future success. In addition to our FDA-authorized COVID-19 test, we currently have five tests in late-stage technical development. We believe the flexibility of our platform will allow us to develop and commercialize a wide range of tests for a number of different indications and uses, including respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management, with several of these tests expected to be submitted for FDA authorization or clearance by the end of 2022.

Integrating Our Cue Enterprise Dashboard with Healthcare and Telemedicine Providers and EMR Systems: In July 2020, we launched our web-based Cue Enterprise Dashboard, which has been used by many of our key customers such as the Mayo Clinic and the National Basketball Association. We are continuously working to expand the capabilities and improving the features of the Cue Enterprise Dashboard with a view towards driving further usage and adoption by existing and new customers. We have also developed integrations with leading EMR systems such as Epic. We believe these integrations will increase the value of our solutions, which we believe will ultimately lead to higher levels of adoption of these solutions and allow our customers to easily incorporate our Cue Enterprise Dashboard into their existing process, allowing for improved patient monitoring, intelligence and reporting and more efficient enterprise level health management. In addition, we also seek to drive utilization of our Cue Enterprise Dashboard by healthcare providers, including telehealth providers, to further expand our commercial opportunity.

Our U.S. DoD agreement formed a key component of our initial go-to-market strategy. Funds received under our U.S. DoD agreement allowed us to accelerate commercialization of our COVID-19 test, quickly scale up our manufacturing capabilities and provided us with a significant initial source of product revenue. In addition, through our U.S. DoD agreement, the U.S. government has placed Cue Readers with end users that represent potential new direct customer opportunities for us. Demand for our Cue Readers and COVID-19 Test Kits currently exceeds our manufacturing capacity. As a result, and considering our existing commitments under the U.S. DoD agreement and to our other existing customers, we are strategically selecting customers based on select criteria including order volume, industry diversification and potential interest in our broader anticipated future test menu.

Our direct sales team is comprised of experienced sales professionals focused on the following four categories:

- ***Public Sector Sales:*** Our public sector sales team identifies new opportunities within federal, state and local government agencies. While we expect that revenue from other categories of customers will become a larger component of our revenue over time, our public sector sales strategy continues to look to identify new opportunities within federal, state and local government agency customers.
- ***Enterprise Sales:*** Our enterprise sales team identifies major self-insured enterprises, such as Fortune 500 companies with large, covered employee populations, as well as small-to-medium sized businesses with healthcare plan partners and employee benefits offerings. We believe that enterprise customers will want to utilize our integrated care solutions for their employees and their families, both on-premises and at-home.
- ***Healthcare Provider Sales:*** Our healthcare provider sales team identifies and targets major healthcare systems and healthcare providers such as hospital systems, clinic networks, concierge health systems and physicians' offices. Relationships with our healthcare provider customers, such as our current relationship with the Mayo Clinic, help validate our platform, and we believe will help accelerate marketplace adoption of our products.

- ***Direct-to-Consumer Sales:*** Our direct-to-consumer sales team identifies opportunities through online and offline retail channels such as e-commerce and in-store sales.

We also have a distribution agreement with Henry Schein, Inc., or Henry Schein, pursuant to which Henry Schein acts as our exclusive distributor in the dental market and non-exclusive distributor in other markets as well as non-exclusive distribution agreements with Medline and Avantor / VWR.

Our customer agreements contain standard commercial terms and conditions and include payment terms, quantities, billing frequency, warranties and indemnification. Beginning in 2021, we started offering customers a subscription-based purchasing option. Subscription-based customers can initially purchase a fixed number of Cue Readers at the start of the contract and commit to a fixed number of Cue Test Kits per month for the duration of the subscription agreement. We believe our subscription-based model offers customers maximum utility and allows them to reduce their purchase costs, while simultaneously creating a recurring revenue stream for us.

We believe focused efforts on each of our customer segments is critical given the unique role each plays in the healthcare ecosystem, the total size of their respective addressable markets and the potential benefits that each receive from our platform. Although our initial focus is driving adoption of our Cue Readers and our COVID-19 Test Kits, we are educating all our current and prospective customers about the broad applicability of our platform and the potential rollout of our broader test menu. We believe every placement of a Cue Reader creates a durable, lasting installed base for our broader test menu to serve.

Our automated manufacturing process to produce Cue Cartridges was developed in tandem with our platform technology and is designed to be flexible and quickly scalable. Each manufacturing line is built as a self-contained pod and can produce any of the Cue Cartridges contemplated as part of our planned test menu. In addition, we produce all of our biochemistry in-house, including enzymes, antibodies and primers. We believe this combination of flexible, scalable manufacturing and in-house reagent production allows us to not only scale quickly but also adapt our production quickly to market demands or evolving consumer needs. Production of our Cue Readers is performed for us by third-party contract manufacturers, while production of our Cue Wands is performed by both us and by third-party contract manufacturers. For our Cue Readers and Cue Wands, we own and control all of the intellectual property developed by us and rely on multiple suppliers.

During the fall of 2020 we launched a significant expansion of our manufacturing capacity, leasing two additional facilities, our approximately 197,000 square foot Vista facility and our approximately 63,000 square foot Waples facility. These additional facilities have allowed, and we expect will further allow us to further expand our reagent production and cartridge manufacturing, bring additional cartridge component manufacturing in-house, and improve our distribution capabilities. As of August 31, 2021, the Vista facility was producing cartridges from six production pods (with dedicated space for an additional four production pods) and was serving as our warehousing and distribution hub. Our Waples facility will serve as a second reagent production hub, house certain cartridge component manufacturing, and has dedicated space for five production pods, all of which are currently in operation. Our Nancy Ridge facility is also producing cartridges from two production pods. We believe our existing manufacturing footprint is sufficient to meet our current needs and planned manufacturing expansion for the foreseeable future, and that we will be able to find appropriate space for expansion when needed in the future.

Certain Key Factors Affecting Our Performance

The performance of our business depends on a number of factors, including the key factors discussed below. While each of these areas presents significant opportunities for us, they also pose challenges and risks that we must address to sustain the growth of our business and improve our results of operations. See the section titled “Risk Factors” for additional information on the various challenges and risks we face as we look to grow our business and become profitable.

U.S. Department of Defense Agreement

In October 2020, we entered into a $480.9 million agreement with the U.S. DoD, or the U.S. DoD agreement, to expand our U.S.-based production capacity, to deploy 6,000,000 COVID-19 Test Kits, 30,000 Cue Readers and 60,000 Cue Control Swab Packs (which include three negative and three positive control swabs per pack) by April 2021. We received $184.6 million of the $480.9 million agreement amount, or the U.S. DoD Advance, at the time of signing the agreement, with the initial payment meant to facilitate the scaling of our manufacturing. This payment was intended to help us onshore our supply chain and rapidly increase our production capacity to enable and

support domestic production of critical medical resources. The remaining $296.3 million under the agreement was committed to the federal government's purchase of Cue Test Kits, Cue Readers and Cue Control Swab Packs under the agreement, with payment to be received against shipments of product at agreed upon pricing. For the six months ended June 30, 2021, we received cash payments of $114.3 million under the U.S. DoD agreement.

In March 2021, the U.S. DoD agreement was amended to, among other things, allow for additional ramp-up time and for delivery of the 6,000,000 COVID-19 Test Kits and other deliverables to be made by October 12, 2021. To satisfy the terms of the arrangement, we are obligated to provide the U.S. government with the COVID-19 Test Kits, Cue Readers and Cue Control Swab Packs pursuant to a specified delivery schedule and demonstrate our ability to manufacture a sustained average of approximately 100,000 COVID-19 Test Cartridges per day over a consecutive seven-day period by October 12, 2021. Subject to exceptions, the U.S. government is entitled to be the exclusive purchaser of our entire production through the completion of the project. Pursuant to the U.S. DoD agreement, we are permitted to honor certain contractual obligations that existed prior to the effective date of the U.S. DoD agreement and may use a reasonable number of tests for internal workforce testing as well as for marketing, demonstration and evaluation of our products and business development. Furthermore, we have, and can seek additional, waivers from the U.S. government to sell certain of our products to additional customers. In April 2021, we received a waiver from the U.S. DoD, or the U.S. DoD Waiver, effective May 1, 2021, allowing us to distribute commercially up to 50% of our COVID-19 Test production, measured monthly in arrears on a calendar month basis, to non-U.S. federal government customers and other recipients. We anticipate that the U.S. DoD Waiver will remain in effect for the duration of the U.S. DoD agreement; however, the U.S. government may modify the waiver upon timely written notice to reasonably accommodate changes in U.S. government requirements. Per ASC Topic 606, the initial payment from the U.S. DoD agreement was recorded in deferred revenue. Deferred revenue will be recognized proportionally to product shipments in the current agreement and a follow-on contract. Due to management estimates related to the size and delivery schedule of a follow-on contract relative to the size of the initial agreement we expect recognition of deferred revenue related to the initial agreement to decline following final delivery of the products in the initial agreement.

For at least the duration of the initial U.S. DoD agreement, we expect that at least 50% of our manufacturing capabilities will be dedicated to meet the demand from the U.S. DoD agreement, per the terms of the U.S. DoD waiver. As a result, our ability to acquire new customers will be constrained and we expect to be unable to satisfy much of the non-U.S. government demand for our products during this time. The U.S. DoD agreement also provides that, as soon as possible after the initial U.S. DoD agreement, we and the U.S. government are expected to negotiate in good faith to enter into a follow-on supply agreement based on federal acquisition regulations (a FAR-based contract). The future-contract would provide the U.S. DoD with the right to purchase up to 45% of our quarterly production for the duration of the contract at a percentage discount in the low teens to the lowest price offered by us to a commercial customer for the same products, equivalent quantities and comparable terms of sale, subject to a minimum price floor. Any such additional contract with the U.S. government could constrain our ability to grow our business with non-U.S. government customers.

As of August 31, 2021, we had delivered all of the Cue Readers and over three and a half million Cue Covid-19 Test Kits pursuant to the U.S. DoD agreement. As of August 31, 2021, our daily manufacturing capacity was on average over 43,000 Cue Test Kits per day over a seven-day period, with a single day peak of nearly 60,000 COVID-19 Test Kits, and we are continuing to add daily capacity to meet our obligations under the U.S. DoD agreement. Until we can diversify our customer base, the success of our business depends in large part on our ability to fulfill our obligations under the U.S. DoD agreement and any future related contract. Among other things, upon conclusion of the U.S. DoD agreement, we anticipate that our revenue may decline significantly, at least in the short term (if not longer).

Expanding Our Manufacturing Capacity

The growth of our business depends on our ability to rapidly expand our current manufacturing capacity to meet the demand for our platform and tests, in particular our COVID-19 test, since at least 50% of our current production capacity is dedicated to fulfilling our current contractual obligations under the U.S. DoD agreement. We manufacture all of our Cue Cartridges in our vertically integrated facilities in San Diego, California. We also produce all of our biochemistry in-house, including critical enzymes, antibodies and primers for our Cue Cartridges. Production of our Cue Readers is performed for us by third-party contract manufacturers and production of our Cue Wands is performed by both us and by third-party contract manufacturers.

We are currently scaling our manufacturing capabilities, including our fully automated production pods, to be able to produce approximately 100,000 COVID-19 Cartridges per day, consistent with our obligations under the U.S. DoD agreement, by October 2021. A production pod is a free standing, modular environmentally controlled structure containing an automated cartridge production line. Our current manufacturing facilities can accommodate up to 17 production pods. In October 2020, we had one active production pod. As of August 31, 2021, we had 13 active production pods. We expect that an additional production pod will be completed by the end of 2021. We expect that the development of our manufacturing facilities will be funded by our available cash resources, including the proceeds from this offering and cash on hand. As we expand our manufacturing capacity, we expect to see a reduction in per unit manufacturing costs in 2021 and thereafter.

Investments in Our Growth

We expect to make continued significant investments in our business to drive growth, and therefore we expect our expenses to increase going forward. We expect to invest significant resources in sales and marketing to drive demand for our products and services as well as research and development to enhance our platform and bring additional tests to market. We also intend to continue investing in our supply chain and logistics operations. As we continue to scale our business, we expect to hire additional personnel and incur additional expenses, including those expenses in connection with our becoming a public company.

Expanding Our Customer Base

The future commercial success of our diagnostic products is dependent on our ability to broaden our customer base beyond the U.S. government to markets including individuals, enterprises and healthcare providers. We believe demand for our diagnostic products from all customer channels exceeds our current production capacity. In addition, as discussed above, a substantial portion of our current production capacity is dedicated to fulfilling our contractual obligations under the U.S. DoD agreement and our U.S. DoD agreement currently limits our ability to significantly expand our customer base. The U.S. DoD agreement gives the U.S. DoD the right to negotiate with us for a follow-on supply FAR-based contract which, if entered into, would require us to sell up to 45% of our quarterly production capacity to the U.S. DoD, which may further limit our ability to expand our customer base. In addition to the U.S. DoD, other current key strategic relationships include the U.S. Biomedical Advanced Research and Development Authority, or BARDA, Google LLC, or Google, the Mayo Clinic, the National Basketball Association, and Henry Schein, Inc. We believe that there is substantial market opportunity for our consumer-oriented diagnostic testing platform that sits at the nexus of healthcare and technology and that allows for clinical lab quality molecular diagnostic testing of individuals at home, at the point-of-care, in the workplace and in other settings, and on an over-the-counter basis. We intend to leverage our success with our COVID-19 Test and the expansion of our manufacturing capabilities to enable broad distribution of our Cue Readers and awareness of our platform across different groups of customers and to enhance pull-through of our future tests.

Enhancing and Expanding Our Menu of Tests and Software Capabilities

Currently, our only commercially available test is our molecular COVID-19 test. A key part of our growth strategy is to expand our menu of tests to include other diseases, ailments and general health markers, which we expect will support our growth and continue to contribute to the utility of our platform, including the Cue Health Monitoring System. We are currently developing tests in the fields of respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management, with several of these tests expected to be submitted to the FDA for authorization or clearance by the end of 2022, at the earliest.

As we continue to develop and expand our menu of tests, we have made, and will continue to make, significant investments in our business, particularly in research and development, sales and marketing and the hiring of additional personnel. Investing in research and development will allow us to develop new tests as well as enhance our current product offerings and our Cue Integrated Care Platform. To build out our menu of tests and bring additional products to market, we will need to hire additional personnel, such as engineers and researchers, as well as develop robust sales and marketing and customer support teams to be able to sell our products.

Regulatory Clearance of Our Diagnostic Products

Our commercial success will depend upon a number of factors, some of which are beyond our control, including the receipt of regulatory clearances, approvals or authorizations for existing or new product offerings by us, product enhancements, or additions to our proprietary intellectual property portfolio. While we have received two EUAs for

our COVID-19 test, a CE mark in the European Union, an Interim Order authorization from Health Canada, and regulatory approval from CDSCO, our COVID-19 test has not been FDA cleared or approved and is only authorized for emergency use during the declaration that circumstances exist justifying the authorization of emergency use, and this declaration could be terminated, or our authorization could be revoked in the future. We will need to seek additional regulatory approval for our COVID-19 test if the EUA declaration or Interim Order is terminated or otherwise revised or revoked, and we will need to seek regulatory authorization, clearance or approval for our other diagnostic products in development. In addition, we will not be able to commercialize any other tests for our platform unless we obtain required regulatory clearances or other necessary approvals or authorizations. There are numerous factors associated with the successful development of any diagnostic product and obtaining regulatory clearance or other necessary approvals or authorizations. After a device or other product is cleared, approved or authorized for marketing, numerous and pervasive regulatory requirements continue to apply. As such, our ability to navigate, obtain and maintain the required regulatory clearances, approvals or authorizations, as well as comply with other regulatory requirements, for our products will in part drive our results of operations and impact our business. See the section titled “Our Business—Government Regulation” for further discussion.

Reimbursement and Insurance Coverage

We have been granted two EUAs by the FDA for our COVID-19 test for point-of-care and at-home and over-the-counter indications. The commercial success of our COVID-19 test, and any of our subsequently developed tests, is dependent on a customer’s ability to be able to pay for or otherwise be reimbursed for the purchase of a test, whether out-of-pocket, by insurance or from a governmental or other third-party payor. We believe payment for our products, including our COVID-19 Test Kits, will be billable by a physician, reimbursable by government payors or insurance companies, paid for by a self-insured employer, or eligible under FSA and HSA guidelines. For example, most of our contemplated future tests that are currently offered by others through central labs are reimbursable by health plans and governmental payors if properly ordered by a physician. These third-party payors decide which products will be covered and establish reimbursement levels for those products. Coverage criteria and reimbursement rates for clinical laboratory tests are subject to adjustment by payors, and current reimbursement rates could be reduced, or coverage criteria restricted in the future. We believe that the benefits of our portable, intuitive, accurate and connected system align incentives for all stakeholders, the user and the payors (self-insured employers and health plans), and that this will encourage payors to pay for or subsidize the Cue Health Monitoring System and associated tests for the end-user. Ultimately, however, if the Cue Health Monitoring System, including any of our current or future tests, are not reimbursable or covered by insurance, our business may be materially and adversely impacted.

Seasonality

We anticipate that fluctuations in customer and user demand for our COVID-19 test may be similar to those related to influenza, which typically increases during the fall and winter seasons. Although our products will be available throughout the year, we anticipate that we may experience higher sales during the fall and winter seasons, relative to the spring and summer seasons. However, as our portfolio of diagnostic offerings increases beyond our COVID-19 test, we expect the impact of this seasonality on our results to decrease.

COVID-19 Impact

While the ongoing global COVID-19 pandemic has adversely impacted global commercial activity, it served as a catalyst to accelerate our product pipeline and commercialization of our platform. We began selling and recording product revenue for our COVID-19 test in August 2020 after obtaining our first FDA EUA in June 2020. Currently, 100% of our product revenue is related to sales of our COVID-19 test.

In December 2020, the FDA issued EUAs for two COVID-19 vaccines and in February 2021, the FDA issued a third EUA for a COVID-19 vaccine. In August 2021, the FDA granted full approval for one of the previously authorized COVID-19 vaccines. The widely administered use of an efficacious vaccine or the availability of therapeutic treatments for COVID-19 may reduce the demand for our COVID-19 test and could cause the COVID-19 diagnostic testing market to fail to grow or to decline. However, we believe the need for ongoing detection and monitoring will continue to be high even after effective vaccines have been widely distributed and administered. We also believe COVID-19 will remain endemic for the foreseeable future and people suspected of COVID-19 will want to obtain a fast and accurate COVID-19 test to confirm a diagnosis in order to receive timely and appropriate treatment. Even while vaccine efforts are underway, public health measures, like testing, will likely need to stay in effect to protect against COVID-19. However, given the unpredictable nature of the COVID-19 pandemic, the development and potential size of the COVID-19 diagnostic testing market is highly uncertain.

Components of Our Results of Operations

Revenue

Product Revenue. Our product revenue currently only relates to sales of our COVID-19 test, which began in August of 2020 after we obtained our initial EUA in June of 2020. With respect to the U.S. DoD agreement, the transaction price is fixed and does not include variable consideration. The U.S. DoD Advance of $184.6 million was recorded as deferred revenue and will be recognized upon satisfaction of performance obligations, such as the delivery of Cue Cartridges, Cue Readers, Cue Wands and Cue Control Swab Packs to the U.S. government. Significant judgment is applied in determining how deferred revenue will be recognized, including estimating future quantities, delivery schedules, pricing and contract duration from the U.S. government, which can have a significant impact on revenue recognition. Deferred revenue related to the U.S. DoD Advance as of June 30, 2021 was $140.1 million. Of this amount, $93.3 million was classified as current as of June 30, 2021, based on amounts expected to be realized within the next twelve months. Deferred revenue related to the U.S. DoD Advance as of December 31, 2020, was $182.3 million. Of this amount, $114.9 million was classified as current at December 31, 2020, based on amounts expected to be realized during 2021. The remaining $164.8 million of contract value under the U.S. DoD agreement, excluding deferred revenue, that had not been paid to us as of June 30, 2021, is expected to be recognized by us as revenue upon satisfaction of performance obligations by reference to the total products expected to be provided under the U.S. DoD agreement, including an estimate of future performance obligations under expected contract renewals, and the corresponding expected consideration. Upon final delivery of products specified in the current U.S. DoD agreement, we expect a reduction in the recognition of deferred revenue related to the U.S. DoD Advance, and a related negative impact to product revenue growth, as a larger proportion of product sales go to other customers. Commercial customers outside of the U.S. government accounted for approximately 17% of our product revenue for the six months ended June 30, 2021. Of this amount, a single enterprise customer accounted for $28.9 million of revenue during this period. Revenue from commercial customers increased sequentially from 4% for the three months ended March 31, 2021, to 24% for the three months ended June 30, 2021 (with a single enterprise customer accounting for a substantial portion of the increase). While at least 50% of our production capacity in 2021 is expected to be dedicated to fulfilling our obligations under the U.S. DoD agreement, we expect to continue to grow our revenue from non-government customers over time. Upon conclusion of the U.S. DoD agreement, we anticipate that our revenue may decline significantly (at least in the short term, if not longer), and that we will be largely dependent on new and other existing customers for our revenue at such time.

In April 2021, we started offering non-government customers a subscription-based purchasing option. Subscription-based customers can initially purchase a fixed number of Cue Readers at the start of the contract and commit to a fixed number of Cue Cartridges per month for the duration of the subscription agreement. We believe our subscription-based model offers customers maximum utility, while simultaneously creating a recurring revenue stream for us. Revenue generated from customers with subscription-based contracts was $29.8 million during the three months ended June 30, 2021 (with a single enterprise customer accounting for a $28.9 million of this amount).

Grant and Other Revenue. Our grant and other revenue primarily relate to our cost reimbursement research and development agreement with BARDA, which, as amended, is effective through January 2022 for phase one and through January 2023 for phase two. The objective of the contract is to accelerate the development, validation and FDA clearance of our influenza and COVID-19 diagnostic products. We have received $35.5 million in contracts and awards, $21.8 million for phase one and $13.7 million for phase two, from BARDA from June 2018 to June 30, 2021. Income derived from reimbursement of direct out-of-pocket expenses, overhead allocations and fringe benefits for research costs associated with U.S. government contracts are recorded as grant revenue. We recognize revenue from our contracts and awards with BARDA at the gross amount of the reimbursement in the period during which the related costs are incurred, provided that the conditions under which the grants and contracts were provided have been met and only perfunctory performance obligations are outstanding. Grant and other revenue in 2019 also included $0.4 million related to our collaboration agreement with Janssen Pharmaceuticals, Inc, or the Janssen Contract. We did not recognize any revenue related to the Janssen Contract in 2020 and do not expect to recognize significant revenue under the Janssen Contract in 2021. The direct costs associated with both contracts are reflected as a component of research and development expense in our statements of operations.

Operating Costs and Expenses

Cost of Product Revenue. Our cost of product revenue includes the cost of materials, direct labor, and manufacturing overhead costs used in the manufacture of our Cue Cartridges as well as contract manufacturing costs associated with production of our Cue Readers, Cue Wands and Cue Control Swab Packs. During the six months ended June 30, 2021,

we identified certain immaterial amounts that were previously capitalized as intangible assets and we recorded these amounts as incremental amortization expense within cost of product revenue. Prior to August 2020, we had not commenced sales of our diagnostic products and as such, did not record any cost of product revenue. We expect that our cost of product revenue will increase on an absolute basis for the foreseeable future as we continue to grow and sell a higher volume and wider variety of our diagnostic products. We expect that the cost per Cue Cartridge will decrease over time due to the increase in the number of production pods, the reduction of scrap, volume efficiencies across the supply chain on materials and shipping costs, the transition of certain production capabilities to be handled in-house, and through other efficiencies we may gain as manufacturing of reagents increases.

Sales and Marketing Expense. Our sales and marketing expense consists primarily of salaries and other related costs for personnel in sales and marketing, customer support and business development functions as well as advertising and marketing costs. We expect that our sales and marketing expense will increase significantly on an absolute dollar basis and vary from period to period as a percentage of revenue for the foreseeable future as we focus on building out our customer facing organization and expand our brand.

Research and Development Expense. Research and development expenses consist of external and internal costs associated with our research and development activities, including costs associated with developing our platform, the individual tests we offer on our platform and clinical and regulatory costs associated with obtaining regulatory approval for those tests. Our research and development expenses include:

- external costs, including expenses incurred under arrangements with third parties, primarily associated with CROs performing clinical studies and regulatory submissions; and
- internal costs, including:
  - employee-related expenses, including salaries, benefits, and stock-based compensation;
  - the costs of laboratory supplies, research materials and Cue Cartridges we produce for research and development purposes; and
  - facilities, equipment, and information technology, which include depreciation and amortization costs, direct and allocated expenses for rent and maintenance of facilities and equipment.

Costs associated with our U.S. government agreements and our collaboration contracts (including our contracts with BARDA and Janssen, respectively) are recorded within research and development expense. We expense research and development costs in the periods in which they are incurred.

At any given time, we are working on multiple programs, including specific tests and other components of the platform. Our internal resources, employees and infrastructure are not directly tied to any one program or test and there is often significant overlap in research and development efforts between different programs and tests and we are often able to leverage the research and development of one test or program to help advance one or more other programs or tests. As such, we do not track internal costs on a test-by-test basis. The following table summarizes our external and internal costs for the periods presented:

	Year Ended December 31,		Six MonthsEnded June 30,	
	2019	2020	2020	2021
(dollars in thousands)			(unaudited)	
External costs	$ 1,534	$ 4,441	$ 2,859	$ 1,474
Internal costs				
Salaries and benefits	8,366	7,607	4,428	3,751
Facilities and supplies	11,505	16,430	12,393	6,846
Total internal costs	19,871	24,037	16,821	10,597
Total research and development expense	$21,405	$28,478	$19,680	$12,071

The primary focus of our research and development effort has evolved over time. The work to get certain of our tests into the late-stage technical development phase for the general immunoassay modality and certain specific immunoassays (including fertility, pregnancy, and inflammation) was largely complete prior to a shift of our focus in mid-2018. At that time, we refocused our efforts on improving the NAAT modality within our platform and completing our first automated production line, initially used to build Cue Cartridges for research and development purposes. The primary target within NAAT from mid-2018 was respiratory infectious disease testing, in particular, influenza. The focus on influenza (which also helped advance our very similar RSV test) lasted until COVID-19 came to the forefront in early 2020. Research and development efforts shifted fully to developing our COVID-19 test in March of 2020 when our clinical study sites for influenza were closed to those with respiratory illness symptoms due to the COVID-19 pandemic. COVID-19 remained our focus through most of 2020. Starting in early 2021, we began to shift our research and development efforts to finalizing our tests in late-stage technical development and restarting development on tests in earlier stages. We expect that our research and development expense will increase significantly on an absolute dollar basis and vary from period to period as a percentage of revenue for the foreseeable future as we continue to invest in development activities related to our technology platform and our current and future test menus and continuing to expand our portfolio of diagnostic testing offerings.

General and Administrative Expense. Our general and administrative expense consists primarily of salaries and other related costs, including stock-based compensation, for personnel in our executive, finance, corporate development and administrative functions. General and administrative expense also includes professional fees for legal, patent, accounting, information technology, auditing, tax and consulting services, travel expenses and facility-related expenses, which include direct depreciation costs and allocated expenses for rent and maintenance of facilities and other operating costs. We expect that our general and administrative expense will increase on an absolute dollar basis and vary from period to period as a percentage of revenue for the foreseeable future as we focus on processes, systems and controls to enable our internal support functions to scale with the growth of our business. We expect to incur increased expenses associated with being a public company, including costs of accounting, audit, legal, regulatory and tax compliance services, costs related to compliance with the rules and regulations of the Securities and Exchange Commission and exchange listing standards, higher director and officer insurance costs, and investor and public relations costs.

Interest Expense. Our interest expense prior to February 2021 primarily consists of expense related to our prior loan and security agreement with Comerica Bank. In February 2021, we entered into a new loan and security agreement with East West Bank and the other lenders party thereto. In May 2021, we repaid $63.2 million outstanding under the Revolving Credit Agreement with a portion of the net proceeds from the issuance and sale of the Convertible Notes. In June 2021, we terminated the Revolving Credit Agreement. See “Liquidity and Capital Resources” below.

Change in Fair Value of Redeemable Convertible Preferred Stock Warrants. Change in fair value of redeemable convertible preferred stock warrants relates to our liability-classified redeemable convertible preferred stock warrants which are recorded on the balance sheets at their fair values on the date of issuance and are revalued on each subsequent balance sheet date, with fair value changes recognized as increases or reductions in the statements of operations.

Change in Fair Value of Convertible Notes. Change in fair value of convertible notes relates to our liability-classified convertible notes which are recorded on the balance sheets at their fair values on the date of issuance and are revalued on each subsequent balance sheet date, with fair value changes recognized as increases or reductions in the statements of operations.

Results of Operations

The following table sets forth a summary of our results of operations for the periods indicated:

	Year Ended December 31,		Six Months Ended June 30,	
	2019	2020	2020	2021
(dollars in thousands)			(unaudited)	
Revenue:				
Product revenue	$ —	$ 15,391	$ —	$201,922
Grant and other revenue	6,626	7,562	4,960	—
Total revenue	6,626	22,953	4,960	201,922
Operating costs and expenses:				
Cost of product revenue[1][2]	—	14,951	—	85,177
Sales and marketing[1]	88	714	45	1,959
Research and development[1]	21,405	28,478	19,680	12,071
General and administrative[1]	5,900	23,936	3,764	23,252
Total operating costs and expenses	27,393	68,079	23,489	122,459
Income (loss) from operations	(20,767)	(45,126)	(18,529)	79,463
Interest expense	(152)	(984)	(788)	(9,964)
Change in fair value of redeemable convertible preferred stock warrants	4	(1,289)	(20)	(190)
Change in fair value of convertible notes	—	—	—	(23,254)
Other income (expense), net	309	47	59	61
Net income (loss) before income taxes	(20,606)	(47,352)	(19,278)	46,116
Income tax expense	—	—	—	(13,276)
Net income (loss)	$(20,606)	$(47,352)	$(19,278)	$ 32,840

(1) Includes stock-based compensation expense as follows: during the six months ended June 30, 2021, $0.1 million of stock-based compensation expense was capitalized to inventory during the manufacturing process.

	Year Ended December 31,		Six Months Ended June 30,	
	2019	2020	2020	2021
(dollars in thousands)			(unaudited)	
Cost of product revenue	$ —	$ —	$—	$ 343
Sales and marketing	—	1	—	26
Research and development	45	98	13	1,444[3]
General and administrative	291	3,064	84	3,778
Total stock-based compensation expense	$336	$3,163	$97	$5,591

(2) Includes $2.1 million and $10.5 million of depreciation and amortization expense for the year ended December 31, 2020, and for the six months ended June 30, 2021, respectively.

(3) Includes $1.2 million of stock-based compensation related to a common stock warrant exercised by a vendor.

Depreciation and amortization expense was reclassified to research and development and general and administrative expenses for the years ended December 31, 2019 and 2020.

Comparison of the Six Months Ended June 30, 2020 and 2021

The following table sets forth a summary of our results of operations for the years ended June 30, 2020 and 2021 and the changes between periods:

	Six Months Ended June 30,			
	2020	2021	$ Change	% Change
(dollars in thousands)		(unaudited)		
Revenue:				
Product revenue	$ —	$201,922	$201,922	n.m.
Grant and other revenue	4,960	—	(4,960)	(100.0)%
Total revenue	4,960	201,922	196,962	n.m.
Operating costs and expenses:				
Cost of product revenue	—	85,177	85,177	n.m.
Sales and marketing	45	1,959	1,914	n.m.
Research and development	19,680	12,071	(7,609)	(38.7)%
General and administrative	3,764	23,252	19,488	517.7%
Total operating costs and expenses	23,489	122,459	98,970	421.3%
Income (loss) from operations	(18,529)	79,463	97,992	528.9%
Interest expense	(788)	(9,964)	(9,176)	n.m.
Change in fair value of redeemable convertible preferred stock warrants	(20)	(190)	(170)	n.m.
Change in fair value of convertible notes	—	(23,254)	(23,254)	n.m.
Other income (expense), net	59	61	2	3.4%
Net income (loss) before income taxes	(19,278)	46,116	65,394	339.2%
Income tax expense	—	(13,276)	(13,276)	n.m.
Net income (loss)	$(19,278)	$ 32,840	$ 52,118	270.3%

n.m. = not meaningful

Revenue increased by $197.0 million to $201.9 million in the six months ended June 30, 2021, from $5.0 million in the six months ended June 30, 2020. This increase was due to the start of product sales in August 2020. Of the $201.9 million of product revenue recorded in the six months ended June 30, 2021, $159.7 million related to sales of our COVID-19 test and $42.2 million was related to the amortization of the U.S. DoD Advance. Revenue increased by $72.9 million in the three months ended June 30, 2021, to $137.4 million, compared sequentially to $64.5 million in the three months ended March 31, 2021. The increase of $72.9 million was due to an increase of commercial customer sales of $30.0 million (of which $28.9 million was attributable to a single enterprise customer) and an increase in U.S. government revenue of $42.9 million in the three months ended June 30, 2021 compared to the three months ended March 31, 2021. The increase in commercial customer revenue and subsequent decrease in U.S. government revenue in this period were driven by the U.S. DoD Waiver allowing us to increase sales to commercial customers beginning in May 2021.

Grant and other revenue decreased by $5.0 million, to $0 in the six months ended June 30, 2021, from $5.0 million in the six months ended June 30, 2020. During the six months ended June 30, 2020, all of the revenue recognized related to the agreement with BARDA. There was no activity related to this revenue category during the six months ended June 30, 2021.

Cost of Product Revenue increased by $85.2 million in the six months ended June 30, 2021, from $0 in the six months ended June 30, 2020. This increase was due to the fact that we did not incur cost of product revenue until we began to generate product revenue in August 2020 after receiving our first FDA EUA in June 2020. Product gross profit was $116.7 million in the six months ended June 30, 2021, up from $0 in the six months ended June 30, 2020, as we did not incur cost of product revenue prior to receipt of our first EUA. During the six months ended June 30, 2021, we identified certain immaterial amounts that were previously capitalized as intangible assets. These amounts were recorded as incremental amortization expense during the six months ended June 30, 2021 and recorded as cost of product revenue. Our cost of product revenue increased by $25.1 million in the three months ended June 30, 2021 to $55.1 million compared sequentially to $30.0 million in the three months ended March 31, 2021. This increase of

$25.1 million was due to increased production and sales volume to commercial customers resulting from the U.S. DoD Waiver in the three months ended June 30, 2021 compared to the three months ended March 31, 2021.

Sales and Marketing Expense increased by $1.9 million in the six months ended June 30, 2021, to $2.0 million from an immaterial amount in the six months ended June 30, 2020. This increase was due to the launch of our COVID-19 test in August 2020 and increased personnel costs to support the expected growth and demand for our products. Our sales and marketing expense increased by $1.1 million in the three months ended June 30, 2021, to $1.5 million compared sequentially to $0.4 million in the three months ended March 31, 2021. This increase was primarily due to increases in digital marketing services and increased headcount in the three months ended June 30, 2021 compared to the three months ended March 31, 2021.

Research and Development Expense decreased by $7.6 million to $12.1 million in the six months ended June 30, 2021, from $19.7 million in the six months ended June 30, 2020. This decrease was primarily driven by lower research and development spend associated with the development of our COVID-19 test and the continued shift of our manufacturing-related depreciation and amortization into cost of product revenue upon receipt of the FDA EUA for our COVID-19 test in the six months ended June 30, 2021, compared to the six months ended June 30, 2020. Our research and development expense decreased by $2.9 million in the three months ended June 30, 2021 to $4.6 million compared sequentially to $7.5 million in the three months ended March 31, 2021. The decrease of $2.9 million in research and development expense was primarily due to a decrease in lab supplies, regulatory expenses, and office rent expenses in the three months ended June 30, 2021 compared to the three months ended March 31, 2021.

General and Administrative Expense increased by $19.5 million in the six months ended June 30, 2021 to $23.3 million from $3.8 million in the six months ended June 30, 2020. This increase was primarily related to legal, banking, accounting and other consulting-related costs to support our growing business and prepare us to operate as a public company. The decrease of $0.3 million in general and administrative expense was primarily due to increases in payroll expenses, office expenses and depreciation expense offset by decreases in professional service expenses in the three months ended June 30, 2021 compared to the three months ended March 31, 2021.

Interest Expense increased by $9.2 million to $10.0 million in the six months ended June 30, 2021 from $0.8 million in the six months ended June 30, 2020. This increase was driven by the termination of our Revolving Credit Agreement, which required us to pay a fee of $1.3 million, equal to 1.00% of the amount of the outstanding revolving commitment. We also wrote-off issuance costs of $0.7 million for a total loss on extinguishment of debt of $2.0 million. In addition, we incurred issuance costs of $6.0 million related to the issuance of our Convertible Notes in May 2021. We also incurred interest expense of $1.6 million related to our borrowings from the Revolving Credit Agreement and Convertible Notes during the six months ended June 30, 2021. Interest expense increased $8.9 million in the three months ended June 30, 2021 to $9.4 million compared sequentially to $0.5 million in the three months ended June 30, 2021 compared to three months ended March 31, 2021. The $8.9 million increase in interest expense was primarily due to the issuance costs related to the Convertible Notes and the termination of the Revolving Credit Agreement in the three months ended June 30, 2021 compared to the three months ended March 31, 2021.

Change in Fair Value of Convertible Notes was $23.3 million in the six months ended June 30, 2021, reflecting a $23.3 million fair value adjustment associated with the Convertible Notes issued by us in May 2021. We did not incur any gain or loss associated with change in fair value of Convertible Notes during the six months ended June 30, 2020 or during the three months ended March 31, 2021, as the Convertible Notes were not outstanding during such periods.

Income Tax Expense increased to $13.3 million in the six months ended June 30, 2021 from $0 in the six months ended June 30, 2020, and our effective tax rate was 29% in the six months ended June 30, 2021, compared to 0% in the six months ended June 30, 2020. The increase in our provision and effective tax rate was primarily due to the current tax liability arising from an increase in income from operations which exceeded available net operating loss carryforwards and the discrete impact of the fair value adjustment associated with the convertible notes that were issued in May 2021. Substantially all of our deferred tax assets continue to maintain a valuation allowance. Income tax expense increased $10.8 million in the three months ended June 30, 2021, to $12.0 million compared sequentially to $1.2 million in the three months ended March 31, 2021. The increase of $10.8 million was primarily due to the increase in net income during the period and an increase in forecasted revenue for the remainder of fiscal year 2021.

Comparison of the Year Ended December 31, 2019 and 2020

The following table sets forth a summary of our results of operations for the years ended December 31, 2019 and 2020 and the changes between periods:

	Year Ended December 31,			
	2019	2020	$ Change	% Change
(dollars in thousands)				
Revenue:				
Product revenue	$ —	$ 15,391	$ 15,391	n.m.
Grant and other revenue	6,626	7,562	936	14.1%
Total revenue	6,626	22,953	16,327	246.4%
Operating costs and expenses:				
Cost of product revenue	—	14,951	14,951	n.m.
Sales and marketing	88	714	626	711.4%
Research and development	21,405	28,478	7,073	33.0%
General and administrative	5,900	23,936	18,036	305.7%
Total operating costs and expenses	27,393	68,079	40,686	148.5%
Loss from operations	(20,767)	(45,126)	(24,359)	117.3%
Interest expense	(152)	(984)	(832)	547.4%
Change in fair value of redeemable convertible preferred stock warrants	4	(1,289)	(1,293)	n.m.
Other income (expense), net	309	47	(262)	(84.8%)
Net loss	$(20,606)	$(47,352)	$(26,746)	129.8%

n.m. = not meaningful

Depreciation and amortization expense was reclassified to cost of product revenue, sales and marketing, research and development, and general and administrative for the years ended December 31, 2019 and 2020.

Revenue increased by $16.3 million to $23.0 million in 2020 from $6.6 million in 2019. This increase was primarily due to the recognition of $15.4 million in product revenue during 2020, beginning in August 2020 after obtaining FDA EUA for our COVID-19 test in June 2020. Prior to August 2020 we did not generate product revenue. Of the $15.4 million of product revenue recorded in 2020, $2.3 million was related to the amortization of the U.S. DoD Advance, and the remainder related to sales of our Cue Readers and COVID-19 Test Kits.

Grant and other revenue increased by $0.9 million to $7.6 million in 2020 from $6.6 million in 2019. This increase was due to work associated with our original contract with BARDA, the exercise of an option in March of 2020 for a second phase to accelerate development, validation and FDA clearance of the Cue COVID-19 Test and an amendment to the initial phase of the contract in May 2020. The March 2020 phase two option exercise increased the total value of our contract with BARDA by $13.7 million with a period of performance through January 2023. The May 2020 amendment to the initial phase increased the total value of that phase by $7.8 million to $21.8 million and extended the term of that phase to January 2022. The increase in revenue from our contract with BARDA was offset by a reduction in revenue associated with a pause of work on the Janssen Contract during 2020 to focus on COVID-19.

Cost of Product Revenue increased by $15.0 million in 2020 from $0 in 2019. This increase was due to the fact that we did not incur cost of product revenue until we received our first EUA in June 2020. Product gross profit was $0.4 million in 2020 up from $0 in 2019 as we did not incur cost of product revenue prior to receipt of our first EUA in June 2020 and due to high per unit cartridge costs associated with the low levels of production and inefficiency we experienced during the early scale up in production during 2020.

Sales and Marketing Expense increased by $0.6 million in 2020 to $0.7 million from $0.1 million in 2019. This increase was due to the launch of our COVID-19 test and the ramp-up of our headcount to support the sales of our products.

Research and Development Expense increased by $7.1 million in 2020 to $28.5 million in 2020 from $21.4 million in 2019. This increase was primarily due to the development and launch of our COVID-19 test.

General and Administrative Expense increased by $18.0 million in 2020 to $23.9 million in 2020 from $5.9 million from 2019. This increase was related to a $9.0 million legal settlement of a contract dispute, increases in employee-related costs of $3.5 million and stock-based compensation expense of $2.8 million as a result of increased headcount to support our growing business, and increases in accounting, legal, and consulting fees of $2.2 million.

Interest Expense increased by $0.8 million in 2020 to $1.0 million in 2020 from $0.2 million in 2019. This increase was primarily due to a higher level of borrowing under our prior loan and security agreement with Comerica Bank and a $0.6 million loss on the extinguishment of debt upon closing of the Series C redeemable convertible preferred stock issuance in June 2020.

Change in Fair Value of Redeemable Convertible Preferred Stock Warrants increased by $1.3 million to $1.3 million in 2020 from $0 in 2019. This increase was primarily driven by a $1.3 million fair value adjustment in 2020 associated with our redeemable convertible preferred stock warrants.

Non-GAAP Financial Measures

We supplement the reporting of our financial information determined under accounting principles generally accepted in the United States, or GAAP, with the following non-GAAP financial measures: Adjusted Net Income and adjusted net income per diluted share, or Adjusted Diluted EPS. We define Adjusted Net Income (Loss) as net loss adjusted to exclude the impact of fair value changes to our Convertible Notes and banking and finance-related items as further described below, as well as the related tax effects of these items. We define Adjusted Diluted EPS as Adjusted Net Income (Loss) divided by the weighted-average number of common shares outstanding. We believe these non-GAAP financial measures provide meaningful information to assist investors and shareholders in understanding our financial results and assessing our prospects for future performance. Management believes the adjusted measures described above are important indicators of our operations because they exclude items that may not be indicative of or are unrelated to our core operating results and provide a baseline for analyzing trends in our underlying businesses. Management uses these non-GAAP financial measures for reviewing the operating results and analyzing potential future business trends in connection with our budget process on these non-GAAP financial measures. To measure earnings performance on a consistent and comparable basis, we exclude certain items that affect the comparability of operating results and the trend of earnings. These adjustments are irregular in timing and may not be indicative of our past and future performance. There were no non-GAAP adjustments to be made for the years ended December 31, 2019 and 2020.

For the Six Months Ended June 30, 2021

The Convertible Notes issued by us in May 2021 are recorded at fair value. We excluded the impact of fair value changes to arrive at Adjusted Net Income (Loss) as it is valued based on probability weighted scenarios regarding potential future financing scenarios that may not be indicative of our past and future performance and to assist in the evaluation of our current operating performance.

Banking and finance-related items consist of (i) banking and finance fees associated with the issuance of Convertible Notes; (ii) early extinguishment of debt costs; and (iii) fees associated with our termination of our Revolving Credit Agreement. Since such fees and costs can be material, are irregular and often mask underlying operating performance, we excluded such amounts for purposes of calculating Adjusted Net Income (Loss) and Adjusted Diluted EPS for the six months ended June 30, 2021, as they may not be indicative of our past and future performance and we believe excluding such amounts may assist investors in their evaluation of our current operating performance.

Because non-GAAP financial measures are not standardized, it may not be possible to compare these financial measures with other companies' non-GAAP financial measures having the same or similar names. These adjusted financial measures should not be considered in isolation or as a substitute for reported net income and net income per diluted share, the most directly comparable GAAP financial measures. Our non-GAAP financial measures are an additional way of viewing aspects of our operations when viewed with our GAAP results and the reconciliations to corresponding GAAP financial measures below.

The following table presents a reconciliation of our net income (loss) (GAAP) and Diluted EPS (GAAP) to Adjusted Net Income (Loss) (non-GAAP) and Adjusted Diluted EPS (non-GAAP), respectively:

	Six Months Ended June 30,			
	2020		2021	
	Dollar Amount	Per Diluted Share	Dollar Amount	Per Diluted Share
	(unaudited)			
Net income (loss)/diluted EPS	$(19,278)	$(1.21)	$32,840	$ 0.22
Fair value adjustment—convertible notes	—	—	23,254	0.19
Banking and finance-related items	—	—	7,998	0.07
Tax effects(1)	—	—	(816)	(0.01)
Adjusted Net Income (Loss)/Adjusted Diluted EPS	$(19,278)	$(1.21)	$63,276	$ 0.47

(1) Represents the tax impact with respect to the adjustments noted above. We applied an estimated annual effective tax rate of 24% to amounts deductible for tax purposes to estimate the tax effects.

Liquidity and Capital Resources

We measure liquidity in terms of our ability to fund the cash requirements of our business operations, including primarily working capital and capital expenditure needs to expand our production capabilities. Our principal sources of liquidity to date have included cash from operating activities, including the U.S. DoD Advance, net proceeds from the sale of our redeemable convertible preferred stock, Convertible Notes and warrants, and indebtedness. Our ability to expand and grow our business will depend on many factors, including our working capital needs and the evolution of our operating cash flows.

As of June 30, 2021, we had an accumulated deficit of $77.6 million, and cash, cash equivalents and restricted cash of $252.3 million. Restricted cash included in such amount as of June 30, 2021 was $6.0 million. For the six months ended June 30, 2021, we had net income of $32.8 million and net cash used in operations of $37.8 million. As of June 30, 2021, we had lease liabilities of $52.5 million. In February 2021, we entered into a $130.0 million loan and security agreement, or the Revolving Credit Agreement, with the lenders from time-to-time party thereto and East West Bank, as Administrative Agent and Collateral Agent for the lenders. Per the covenants of the Revolving Credit Agreement, we were required to maintain a balance of $80.0 million on deposit with East West Bank. In May 2021, we raised $229.5 million in net proceeds from the issuance and sale of Convertible Notes. In May 2021, we repaid $63.2 million of debt outstanding under the Revolving Credit Agreement with a portion of the proceeds from the issuance and sale of the Convertible Notes. In June 2021, we terminated our Revolving Credit Agreement but kept in place our outstanding $6.0 million letter of credit with East West Bank. In July 2021, we increased our outstanding letter of credit with East West Bank to $12.0 million. In connection with such increase, our restricted cash increased to $12.0 million as of such time.

Based on our current business plan, we believe our anticipated operating cash flows, together with our existing cash and cash equivalents and net proceeds from this offering, will be sufficient to meet our working capital and capital expenditure requirements for at least the next months.

We expect that our near and longer-term liquidity requirements will consist of working capital and general corporate expenses associated with the growth of our business, including, without limitation, expenses associated with scaling up our operations and continuing to increase our manufacturing capacity, sales and marketing expense associated with rollout of our over-the-counter, at home COVID-19 test to commercial customers, including directly to consumers, increasing market awareness of our platform and brand generally to individual consumers, enterprises and other target customers, additional research and development expenses associated with expanding our care offerings, expenses associated with continuing to build out our corporate infrastructure and expenses associated with being a public company. Our short-term capital expenditure needs relate primarily to the ongoing build out of our manufacturing facilities, and we expect such expenditures to continue throughout 2021. Notwithstanding potential additional capital expenditures related to levels of higher growth or potential global expansion, we expect our capital expenditures to decrease in 2022 and 2023 from 2021 levels.

We have based our estimates as to how long we expect we will be able to fund our operations on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we currently expect, in

which case we would be required to obtain additional financing sooner than currently projected, which may not be available to us on acceptable terms, or at all. Our failure to raise capital as and when needed may have a material adverse impact on our financial condition and our ability to pursue our business strategy. We may raise additional capital through equity or equity-linked offerings, debt financings or other capital sources, including potentially collaborations, strategic alliances, licenses and other similar arrangements. If we do raise additional capital through public or private equity offerings, the ownership interest of our existing stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect our existing stockholders' rights. If we raise additional capital through debt financing, we may be subject to covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we raise additional funds through other third-party funding, collaboration agreements, strategic alliances, licensing arrangements or marketing and distribution arrangements, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or platform or grant licenses on terms that may not be favorable to us.

Our ability to raise additional funds may be adversely impacted by then-existing U.S. or global economic or market conditions and the disruptions to, and volatility in, the equity, credit and financial markets in the United States and worldwide, including those relating to the ongoing COVID-19 pandemic and actions taken to slow its spread, including any diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth, increases in unemployment rates, and uncertainty about economic stability. If the equity and credit markets deteriorate, it may make any necessary equity or debt financing more difficult, more costly and more dilutive. If we are not able to secure adequate additional funding when needed, we may need to re-evaluate our operating plan and may be forced to make reductions in spending, suspend or curtail our product manufacturing, planned new test and other product development programs and commercialization efforts, extend payment terms with suppliers, liquidate assets where possible, and curtail operations or potentially cease operations entirely. Having insufficient funds may also require us to relinquish rights to technology that we would otherwise prefer to develop and market ourselves, or on less favorable terms than we would otherwise choose. The foregoing actions and circumstances could materially and adversely impact our business, results of operations and future prospects.

Revolving Line of Credit

On February 5, 2021, we entered into the Revolving Credit Agreement. In connection with our entering into the Revolving Credit Agreement, we repaid outstanding amounts of $5.4 million and terminated our prior loan and security agreement with Comerica Bank, or the 2015 Credit Agreement, that we initially entered into in May 2015. The 2015 Credit Agreement, as amended, provided for a revolving line with a credit extension of up to $4.0 million and a Growth Capital A Line with a credit extension of up to $6.0 million. The following summary of the Revolving Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the Revolving Credit Agreement, a copy of which is filed as an exhibit to the registration statement of which this prospectus forms a part.

The Revolving Credit Agreement provided for a revolving credit facility with an aggregate maximum principal amount of $130.0 million and a letter of credit sub-facility of $20.0 million.

In June 2021, we terminated the Revolving Credit Agreement, and we were required to pay a fee of $1.3 million, equal to 1.00% of the amount of the outstanding revolving commitment. We also wrote-off issuance costs of $0.7 million for a total loss on extinguishment of debt of $2.0 million. Upon agreement with East West Bank and the other lenders to the Revolving Credit Agreement, we kept in place our outstanding letter of credit in the amount of $6.0 million with East West Bank, which has been cash collateralized. All other obligations under the Revolving Credit Agreement have otherwise been terminated. In July 2021, we increased our outstanding letter of credit with East West Bank to $12.0 million. In connection with such increase, our restricted cash increased to $12.0 million as of such time.

Convertible Notes

In May 2021, we issued and sold convertible promissory notes, or Convertible Notes, with a principal amount of $235.5 million and incurred $6.0 million of debt issuance costs that have been recorded in interest expense in the statements of operations. The Convertible Notes accrue interest at a simple rate of 3.0% per annum during the first 12-month period and at a simple rate of 9.0% per annum thereafter.

The Convertible Notes are only convertible upon a qualified conversion event or the occurrence of certain specified corporate transactions, such as a change of control transaction.

The Convertible Notes will be converted into shares of our common stock at the then effective conversion price in the case of a qualified going public transaction: (a) an IPO resulting in at least $50 million in proceeds, (b) a SPAC combination, or (c) a direct listing. If we close a sale of our preferred stock with gross proceeds to us of not less than $50.0 million, then the Convertible Notes, unless previously converted into shares of our common stock, will automatically convert into shares of the same class and series of our capital stock issued to investors in such equity financing. The conversion price with respect to a qualified conversion event, which would be a qualified going public transaction or a sale of our preferred stock, will incorporate the applicable discount: (i) a 20.0% discount if the qualified conversion event is consummated on or prior to September 30, 2021, and (ii) a 25.0% discount if the qualified conversion event is consummated after September 30, 2021.

In the event of certain corporate transactions prior to the conversion of the Convertible Notes or the repayment of the Convertible Notes, each purchaser, in its discretion, shall have the right either (a) to convert, effective immediately prior to the closing of the corporate transaction, all, but not less than all, of the outstanding principal amount of its Convertible Notes and all accrued and unpaid interest on such Convertible Notes immediately prior to the closing of a corporate transaction into shares of common stock at the then effective conversion price, or (b) be paid an amount equal to the sum of 1.75 times the outstanding principal amount of its Convertible Notes and all accrued and unpaid interest of such Convertible Notes immediately prior to the closing of a corporate transaction.

The Convertible Notes include customary events of default. In the event of any default under the Convertible Notes, the interest rate then in effect shall be increased by 3.0%, and then by an additional 3.0% each year thereafter, so long as such event of default continues. Unless earlier converted immediately prior to the qualified conversion event, the Convertible Notes and any unpaid accrued interest will become due in May 2023.

We elected to account for the Convertible Notes at estimated fair value pursuant to the fair value option and we record the change in estimated fair value in our statement of operations. As of June 30, 2021, the fair value of the of the Convertible Notes was $258.7 million, and we recorded a loss of $23.3 million related to the change in estimated fair value of the Convertible Notes in our statement of operations for the six months ended June 30, 2021.

Cash Flows

The following table summarizes our cash flows for the periods indicated:

	Year Ended December 31,		Six Months Ended June 30,	
	2019	2020	2020	2021
(dollars in thousands)			(unaudited)	
Net cash, cash equivalents and restricted cash (used in) provided by operating activities	$(12,996)	$ 92,655	$ (20,955)	$ (37,812)
Net cash, cash equivalents and restricted cash used in investing activities	(2,945)	(78,148)	(1,326)	(58,896)
Net cash, cash equivalents and restricted cash provided by financing activities	3,610	100,243	101,723	219,779
Net increase (decrease) in cash, cash equivalents and restricted cash	$(12,331)	$114,750	$ 79,442	$123,071

Cash Flows Provided by (Used in) Operating Activities

Net cash, cash equivalents and restricted cash provided by operating activities was $92.7 million in 2020, primarily reflecting receipt of the U.S. DoD Advance and increases in inventory and prepaid expenses and other current assets of $36.8 million, and $31.0 million, respectively, due to the commencement of product manufacturing and expansion of production facilities and manufacturing capacity.

Net cash, cash equivalents and restricted cash used in operating activities was $13.0 million in 2019, primarily reflecting our net loss, net of non-cash cost items and changes in operating working capital. Non-cash cost adjustments were primarily driven by depreciation and amortization expenses of $3.7 million and operating working capital adjustments was primarily driven by increases in accounts receivable of $4.3 million due to the timing of the reimbursement of costs incurred related to our grant contract with BARDA.

Net cash, cash equivalents and restricted cash used in operating activities was $37.8 million for the six months ended June 30, 2021, primarily reflecting our net income of $32.8 million, net of non-cash cost items and changes in operating working capital. Non-cash cost adjustments were primarily driven by the change in fair value of the

Convertible Notes of $23.3 million and depreciation and amortization expenses of $14.5 million. The timing of our revenue and collections increased our accounts receivable. The expected increase in demand for our products drove the increase in inventory and prepaid expenses and other assets. The increase in deferred revenue recognized is due to the increase in product deliveries to the U.S. government.

Net cash, cash equivalents and restricted cash used in operating activities was $21.0 million for the six months ended June 30, 2020, primarily reflecting our net loss, net of non-cash cost items and changes in operating working capital. Non-cash cost adjustments were primarily driven by depreciation and amortization expenses and operating working capital adjustments was primarily driven by increases in accounts receivable and prepaid expenses and other current assets.

Cash Flows Used in Investing Activities

Net cash, cash equivalents and restricted cash used in investing activities was $78.1 million in 2020, primary reflecting purchases of property and equipment to expand our production capabilities of our COVID-19 Test Kits in relation to the U.S. DoD agreement.

Net cash, cash equivalents and restricted cash used in investing activities was $2.9 million in 2019, reflecting purchases of property and equipment.

Net cash, cash equivalents and restricted cash used in investing activities was $58.9 million for the six months ended June 30, 2021, reflecting purchases of property and equipment to expand our production capabilities of our COVID-19 Test Kits in relation to the U.S. DoD agreement.

Net cash, cash equivalents and restricted cash used in investing activities was $1.3 million for the six months ended June 30, 2020, reflecting purchases of property and equipment.

Cash Flows Provided by Financing Activities

Net cash, cash equivalents and restricted cash provided by financing activities was $100.2 million in 2020, primarily reflecting proceeds received from our issuance of Series C redeemable convertible preferred stock in June 2020.

Net cash, cash equivalents and restricted cash provided by financing activities was $3.6 million in 2019, primarily reflecting proceeds from our prior loan agreement with Comerica Bank. See Note 9 to our audited financial statements included elsewhere in this prospectus.

Net cash, cash equivalents and restricted cash provided by financing activities was $219.8 million for the six months ended June 30, 2021, primarily reflecting proceeds received from our Convertible Notes issued in May 2021, partially offset by the proceeds and subsequent repayment of our Revolving Credit Agreement in May 2021. See Notes 9 and 10 to our unaudited condensed interim financial statements included elsewhere in this prospectus.

Net cash, cash equivalents and restricted cash used in financing activities was $101.7 million for the six months ended June 30, 2020, primarily reflecting proceeds received from our issuance of Series C redeemable convertible preferred stock in June 2020.

Commitments and Contingencies

See Note 16 to our unaudited interim condensed financial statements included elsewhere in this prospectus for a summary of our commitments as of June 30, 2021. In addition to the aforementioned debt obligations, our material cash commitments as of June 30, 2021 related to finance leases of manufacturing equipment totaling $3.0 million, real estate leases under non-cancelable operating lease agreements that expire at various dates through 2031 in the amount of $65.2 million, and a legal settlement of a contract dispute totaling $9.0 million, of which $6.8 million has not been paid. We expect to fund these commitments using our existing cash on hand.

Off-Balance Sheet Arrangements

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

Critical Accounting Policies and Estimates

Our management’s discussion and analysis of our financial condition and results of operations is based upon our financial statements included elsewhere in this prospectus, which have been prepared in accordance with U.S. GAAP.

The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities, as well as the reported income generated, and expenses incurred during the reporting periods. We base these estimates and judgments on historical experience, the current economic environment and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may differ materially from these estimates and judgments.

We believe the following accounting policies and estimates are most critical to an understanding of our financial statements. Policies and estimates are considered to be critical if they meet both of the following criteria: (i) involve a significant level of estimation uncertainty, and (ii) have had or are reasonably likely to have a material impact on our financial condition or results of operations. For a detailed discussion on the application of these and other accounting policies and estimates, refer to Note 2 to our financial statements included elsewhere in this prospectus.

Deferred Revenue Recognition

We recorded the U.S. DoD Advance as deferred revenue and recognize this liability upon satisfaction of our performance obligations to the U.S. DoD by reference to estimated future performance obligations of a follow-on agreement with the U.S. DoD and the related expected contract consideration. Changes in the assumptions used in our estimate of the future contract with the U.S. DoD, including the future pricing and the projected term of the contract and quantities purchased, may have a material impact on the timing of recognition of deferred revenue.

Impairment of Long-Lived Assets

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset or an asset group may not be recoverable. If such triggering event is determined to have occurred, the asset's or asset group's carrying value is compared to the future undiscounted cash flows expected to be generated. If the carrying value exceeds the undiscounted cash flows of the asset, then an impairment exists. An impairment loss is measured as the excess of the asset's carrying value over its fair value.

These analyses require management to make judgments and estimates about future revenue, expenses, market conditions and discount rates related to these assets. Management's assessment of whether or not a triggering event has occurred is an area of significant judgment. Additionally, if actual results are not consistent with management's estimates and assumptions, the carrying value of our long-lived assets may be overstated and a charge would need to be taken against net earnings which would adversely affect our financial statements. There were no impairment indicators during, and no impairments were recorded for the years ended December 31, 2020, and 2019.

Deferred Tax Assets (and Related Valuation Allowance)

We recognize net deferred tax assets to the extent that we believe these assets are more likely than not to be realized. In making such a determination, management considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax-planning strategies, and results of recent operations. If we determine that deferred tax assets may be able to be recognized in the future in excess of their net recorded amount, the deferred tax asset valuation allowance would be adjusted, which would reduce the provision for income taxes. We record uncertain tax positions on the basis of a two-step process whereby (i) management determines whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position and (ii) for those tax positions that meet the more-likely-than-not recognition threshold, management recognizes the largest amount of tax benefit that is more than 50% likely to be realized upon ultimate settlement with the related tax authority.

This requires management to make judgments and estimates regarding: (i) the timing and amount of the reversal of taxable temporary differences; (ii) expected future taxable income; and (iii) the impact of tax planning strategies. Future changes to tax rates would also impact the amounts of deferred tax assets and liabilities and could adversely affect our financial statements. All of our deferred tax assets as of December 31, 2020, were fully offset by a valuation allowance.

As of June 30, 2021, we continue to maintain a full valuation allowance on the remaining net deferred tax asset until there is sufficient evidence to support the reversal of all or an additional portion of the allowance. However, given anticipated future earnings and anticipated deferred tax liabilities, we believe that there is a reasonable possibility that by December 31, 2021, sufficient positive evidence may become available to allow us to reach a

conclusion that a significant portion of the valuation allowance will no longer be needed. Release of the valuation allowance would result in the recognition of certain deferred tax assets and a decrease to income tax expense for the period the release is recorded. However, the exact timing and amount of the valuation allowance release are subject to change on the basis of the level of profitability that we are able to actually achieve.

Stock-Based Compensation

We measure stock-based compensation expense for stock options granted to our employees and directors on the date of grant and recognize the corresponding compensation expense of those awards over the requisite service period, which is generally three to four years. Our stock-based payments include stock options. Stock-based compensation expense is recognized over the requisite service period, which is generally the vesting period, on a straight-line basis. Forfeitures are recorded as they occur.

We estimate the fair value of stock options granted to our employees and directors on the grant date, and the resulting stock-based compensation expense, using the Black-Scholes-Merton, or BSM, option pricing model. The BSM option-pricing model requires the use of subjective assumptions which determine the fair value of stock option awards. These assumptions include:

- *Fair Value of Common Stock*. See the subsection titled "Common Stock Valuations" below.
- *Expected Term*. The expected term of options represents the period of time that options are expected to be outstanding. Our historical stock option exercise experience does not provide a reasonable basis upon which to estimate an expected term due to lack of sufficient data. We estimate the expected term by using the simplified method, which calculates the expected term as the average of the time-to-vesting and the contractual life of the options.
- *Expected Volatility*. As there has been no public market for our common stock to date, and as a result we do not have any trading history of our common stock, expected volatility incorporates the historical volatility over the expected term of the award of comparable companies whose share prices are publicly available. The comparable companies are chosen based on their similar size, stage in the life cycle or area of specialty.
- *Risk-Free Interest Rate*. The risk-free interest rate is based on the U.S. Treasury zero coupon issues in effect at the time of grant for periods corresponding with the expected term of the stock option grants.
- *Expected Dividend Yield*. We have never paid dividends on our common stock and have no plans to pay dividends on our common stock. Therefore, we use an expected dividend yield of zero.

We will continue to use judgment in evaluating the expected terms, expected volatility, risk-free interest rates and expected dividend yields utilized for our stock-based compensation calculations on a prospective basis. Assumptions we used in applying the BSM option pricing model to determine the estimated fair value of our stock options granted involve inherent uncertainties and the application of significant judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our equity-based compensation could be materially different.

See Note 13 to our audited financial statements and to our unaudited interim condensed financial statements included elsewhere in this prospectus for more information concerning certain of the specific assumptions we used in applying the BSM option pricing model to determine the estimated fair value of our stock options.

We recorded stock-based compensation expense of $5.6 million for the six months ended June 30, 2021. As of June 30, 2021, there was $12.0 million of unamortized compensation cost. Stock-based compensation expense was $3.2 million for the year ended December 31, 2020. We expect to continue to grant stock options and other equity-based awards in the future, and to the extent that we do, we expect our stock-based compensation expense recognized in future periods will likely significantly increase.

The intrinsic value of all outstanding options as of June 30, 2021 was $ million based on the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, of which approximately $ million was related to vested options and approximately $ million was related to unvested options.

Common Stock Valuations

As there has been no public market for our common stock to date, the estimated fair value of the common stock underlying our stock options was determined by our board of directors, with input from management. We believe that our board of directors has the relevant experience and expertise to determine the fair value of our common stock. Our board of directors considered, among other things, valuations of our common stock prepared by an unrelated third-party valuation firm in accordance with the guidance provided by the American Institute of Certified Public Accountants Practice Guide, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*, or Practice Aid. The Practice Aid identifies various available methods for allocating enterprise value across classes and series of capital stock to determine the estimated fair value of common stock at each valuation date. In accordance with the Practice Aid, our board of directors considered the following methods:

- *Current Value Method*. Under the Current Value Method, our value is determined based on our balance sheet. This value is then first allocated based on the liquidation preference associated with redeemable convertible preferred stock issued as of the valuation date, and then any residual value is assigned to the common stock.
- *Option-Pricing Method*. Under the option-pricing method, or OPM, shares are valued by creating a series of call options with exercise prices based on the liquidation preferences and conversion terms of each equity class. The estimated fair values of the preferred and common stock are inferred by analyzing these options.
- *Probability-Weighted Expected Return Method*. The probability-weighted expected return method, or PWERM is a scenario-based analysis that estimates value per share based on the probability-weighted present value of expected future investment returns, considering each of the possible outcomes available to us, as well as the economic and control rights of each share class.

Historically, based on our early stage of development and other relevant factors, in accordance with the Practice Aid, we determined that an OPM was the most appropriate method for allocating our enterprise value to determine the estimated fair value of our common stock.

Starting in December 2020, we determined that a hybrid approach utilizing the OPM and PWERM models was the most appropriate method for determining the estimated fair value our common stock. This approach involves the estimation of the value of our company using multiple future potential outcomes and estimates the probability of each outcome. The estimated fair value of our common stock is based upon probability-weighted per share values resulting from the various future scenarios, which included a merger with a publicly traded entity and continued operation as a private company.

In addition, we also considered any secondary transactions involving our capital stock. In our evaluation of such transactions, we considered the facts and circumstances of each such transaction to determine the extent to which they represented a fair value exchange. Factors considered include transaction volume, timing, whether such transactions occurred among willing and unrelated parties, and whether such transactions involved investors with access to our financial information.

After the equity value is determined and allocated to the various classes of shares, a discount for lack of marketability, or DLOM, is applied to arrive at the fair value of the common stock. A DLOM is meant to account for the lack of marketability of a stock that is not traded on public exchanges. For financial reporting purposes, we considered the amount of time between the valuation date and the grant date of our stock options to determine whether to use the latest common stock valuation or a straight-line interpolation between the two valuation dates. This determination included an evaluation of whether the subsequent valuation indicated that any significant change in valuation had occurred between the previous valuation and the grant date.

The assumptions we use in the valuation model are based on future expectations combined with management judgment. In the absence of a public trading market, our board of directors with input from management exercised significant judgment and considered numerous objective and subjective factors to determine the fair value of our common stock as of the date of each option grant, including the following factors:

- contemporaneous independent valuations performed by an independent third-party valuation firm;

- the prices at which we sold shares of redeemable convertible preferred stock and the superior rights and preferences of the redeemable convertible preferred stock relative to our common stock at the time of each grant;
- our stage of development and commercialization and our business strategy;
- our actual operating and financial performance;
- our current business conditions and projections;
- external market conditions affecting the diagnostics industry and trends within the diagnostics industry;
- the lack of an active public market for our common stock; and
- the likelihood of achieving a liquidity event, such as an initial public offering or sale of our company in light of prevailing market conditions.

The assumptions underlying these valuations represented our board of directors and management develop best estimates based on application of these approaches and the assumptions underlying these valuations, giving careful consideration to the advice from our third-party valuation expert. Such estimates involve inherent uncertainties and the application of significant judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our equity-based compensation could be materially different. Following the closing of this offering, our board of directors will determine the fair market value of our common stock based on its closing price as reported on the date of grant on the primary stock exchange on which our common stock is traded.

Convertible Notes

We elected to account for the Convertible Notes issued in May 2021 using the fair value option. Such instruments are recognized at estimated fair value, with changes in estimated fair value recorded as a component of earnings in the statements of operations unless the change is a result of a change in credit risk, in which case such change in estimated fair value is recorded within other comprehensive income. Direct issuance costs are expensed as incurred and are included in interest expense in the statements of operations.

Increases or decreases in the fair value of the convertible notes can result from updates to assumptions such as the expected timing or probability of a qualified financing event, or changes in discount rates. Judgment is used in determining these assumptions as of the initial valuation date and at each subsequent reporting period. Updates to assumptions could have a significant impact on our results of operations in any given period.

Product Warranty Reserve

We provide our customers with the right to receive a replacement of defective or nonconforming Cue Readers for a period of up to twelve months from the date of shipment. Although no explicit warranty is provided for Cue Cartridges, we may replace Cue Cartridges that result in invalid test results. Provisions for estimated expenses related to product warranty are made at the time products are sold. These estimates are determined using historical information that include testing failure rates, the frequency and probability of replacement units being requested, and the overall cost of replacement units. We evaluate the reserve quarterly and make adjustments when appropriate. Changes to testing failure rates, the overall cost of replacement units and replacement rates could have a material impact on our estimated liability. At December 31, 2020, and June 30, 2021, the product warranty reserve was $0 and $4.5 million, respectively.

Recently Adopted and Issued Accounting Pronouncements

Recently issued and adopted accounting pronouncements are described in Note 2 to our financial statements included elsewhere in this prospectus.

Internal Control Over Financial Reporting

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis. In connection with the audits of our 2019 and 2020 annual financial statements, we identified material weaknesses in internal controls pertaining to information technology general controls, a lack of segregation of duties, documentation and design of formalized processes and procedures,

insufficient complement of qualified resources with an appropriate level of knowledge, experience and training important to our financial reporting requirements, timely reconciliation and analysis of certain key accounts and the review of journal entries. These material weaknesses could result in material misstatements of our financial statement account balances or disclosures of our annual or interim financial statements that would not be prevented or detected. We have concluded that these material weaknesses in our internal controls over financial reporting occurred because, prior to this offering, we were a private company and did not have the internal controls necessary to satisfy the accounting and financial reporting requirements of a public company.

We began to take steps to address our material weaknesses through our remediation plan, which included the hiring of advisors in the fourth quarter of 2020, the hiring of a Chief Financial Officer in the first quarter of 2021 and the hiring of a Chief Accounting Officer and a Vice President and Treasurer in the second quarter of 2021, and the continued engagement of additional external advisors to provide financial accounting assistance in the short term. We have hired and are in the process of hiring additional personnel to improve the segregation of duties in our financial closing and reporting process and timely review of key accounts and journal entries. In addition, we have engaged external advisors to evaluate and document the design and operating effectiveness of our internal controls and assist with the remediation and implementation of our internal controls as required. We are evaluating the longer-term resource needs of our various financial functions and plan to significantly expand the size of the financial organization to help address these weaknesses.

We and our independent registered public accounting firm were not required to, and did not, perform an evaluation of our internal controls over financial reporting as of December 31, 2020, or any prior period in accordance with the provisions of the Sarbanes-Oxley Act. Accordingly, we cannot assure you that we have identified all, or that we will not in the future have additional, material weaknesses. Material weaknesses may still exist when we report on the effectiveness of our internal controls over financial reporting as required under Section 404 of the Sarbanes-Oxley Act after the completion of this offering.

Emerging Growth Company Status

We are an “emerging growth company” (as defined in the JOBS Act). Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that an emerging growth company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. We have elected to use this extended transition period under the JOBS Act until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our financial statements may not be comparable to companies who have adopted new or revised accounting pronouncements.

Quantitative and Qualitative Disclosures About Market Risk

We are exposed to certain market risks in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. To date, we have not been exposed to material risks related to market instruments in the ordinary course of our business, but we may in the future.

Interest Rate Risk

As of June 30, 2021, we had cash, cash equivalents and restricted cash of $252.3 million. The goals of our investment policy are liquidity and capital preservation and we do not enter into investments for trading or speculative purposes. We believe that we do not have any material exposure to changes in the fair value of these assets as a result of changes in interest rates due to the short-term nature of our cash and cash equivalents.

Foreign Currency Exchange Risk

All of our employees and our operations are currently located in the United States and our expenses and payment obligations are denominated in and have been satisfied with U.S. dollars. There was no foreign currency risk for the six months ended June 30, 2021. In the future, our sales may be denominated in foreign currencies and to the extent they are, we will be subject to foreign currency transaction gains or losses. To date, we have had no foreign currency

transaction gains and losses, and we have not had a formal hedging program with respect to foreign currency. We believe a hypothetical 10% increase or decrease in exchange rates during any of the periods presented would not have a material effect on our financial statements included elsewhere in this prospectus.

Effects of Inflation

Inflation generally affects us by increasing our cost of labor and research, manufacturing and development costs. We believe that inflation has not had a material effect on our financial statements included elsewhere in this prospectus.

LETTER FROM OUR CO-FOUNDERS

Empowering Individuals to Live Healthier Lives

It all starts with the individual. Empower a person to get more information about their health and you can change the world. We founded Cue on this belief over a decade ago.

We started with first principles. In order to live their healthiest lives, people need health data that is accessible, actionable and available when and where they need. We believe we are leading a digital transformation revolution to address this, starting with diagnostics—the one area of healthcare that shapes the clinical decisions and courses of care for millions of patients.

We are building a new healthcare model—one that is designed to be convenient, connected and consumer-centric. We plan to enable end-to-end care journeys from diagnostic tests—lab-quality tests with results delivered in minutes—anywhere and anytime—to physician consultation via telemedicine through intervention. We aim to empower people by making it incredibly simple to get information about their health.

We call this Healthcare 2.0.

Over the last 10 years, we created everything we do at Cue to deliver a great experience for consumers. From how we designed the Cue Health Monitoring System which fits in the palm of your hand, to the fully guided app, our packaging and everything in between. And we are aiming to make it accessible wherever a person is: at home, at work, or at the point-of-care. We envision that people will have access to Cue through their employers, healthcare providers, payors and—and ultimately, direct to them as consumers.

Cue's success during the COVID-19 pandemic revealed the speed and value of our distinctive platform, but even more, it showed the potential of what could be ahead: the consumer power that will come when a smarter, faster and more accessible diagnostic platform is applied all across healthcare.

We envision tests to address respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management.

It is clear that the status quo in healthcare does not work. We believe healthcare is ready for a simple, convenient and digital approach for empowering each person.

Ultimately, we believe this is how you make big change in the world—by giving people health data that is accessible, actionable and available when they need it. By starting with the individual. By remembering that healthcare is always personal.

We believe this is the coming revolution.

Cue plans to lead it. And we are only just beginning.

Ayub Khattak, *Co-Founder and Chief Executive Officer*

Clint Sever, *Co-Founder and Chief Product Officer*

BUSINESS

Overview

Reinventing How We Interact with Our Health.

We are a health technology company, and our mission is to enable personalized, proactive and informed healthcare that empowers people to live their healthiest lives. Digital transformation has revolutionized nearly every industry except healthcare to create new, consumer-first experiences that are both personalized and empowering. We seek to usher in a new era in healthcare, what we call Healthcare 2.0, to transform how acute and chronic conditions are diagnosed and managed.

We believe the current healthcare system is challenged. Care delivery can often be uncontextualized and disconnected in an increasingly personalized and connected world. The vast majority of healthcare delivery still relies on in-person encounters at centralized locations while consumers and caregivers may often be forced to make important health decisions without complete or real-time information. The first step in many healthcare journeys is often diagnosis, a critical part of the healthcare value chain. Despite being a key basis for care decisions, we believe current diagnostic solutions are suboptimal because they are not timely, convenient, or connected to care delivery. The COVID-19 pandemic exposed the shortcomings of our healthcare system and of diagnostics in particular. A centralized and rigid testing infrastructure, the reliance on in-person encounters, and the lack of timely information illustrate how current diagnostic solutions are not built for modern care delivery to hundreds of millions of people. We believe consumers want the same tech-enabled convenient, connected, and customized experiences that have transformed their daily lives to transform their care journeys.

We are now witnessing what we believe is the beginning of a transformational shift as consumers take control of their own health. In industry after industry, disruptors are using technology to transform the consumer experience. From the way we consume content to the way we travel, we believe consumers and organizations are increasingly looking for a simple, convenient and digital first approach. We further believe that healthcare is finally ripe for a digital transformation and that it will begin with diagnostics, since approximately 70% of all clinical decisions are made utilizing diagnostic data.

We are helping pioneer this healthcare digital transformation, beginning with diagnostics. We started from consumer-centric principles and designed our proprietary platform, the Cue Integrated Care Platform, with a relentless focus on user experience, convenience, and accuracy. The Cue Integrated Care Platform consists of hardware and software components: (1) our revolutionary Cue Health Monitoring System, made up of a portable, durable and reusable reader, or Cue Reader, a single-use test cartridge, or Cue Cartridge, and a sample collection wand, or Cue Wand, (2) our Cue Data and Innovation Layer, with cloud-based data and analytics capability, (3) our Cue Virtual Care Delivery Apps, including our consumer-friendly Cue Health App and our Cue Enterprise Dashboard, and (4) our Cue Ecosystem Integrations and Apps, which allow for integrations with third-party applications and sensors.

Our platform has been designed to work seamlessly to deliver and manage health data both within the healthcare system and within the home. Through our application programming interfaces, or APIs, our platform has been engineered so that it can be directly integrated into existing workflows and on-demand services, such as telemedicine, e-prescription services, and electronic medical record, or EMR, systems. For example, we implemented an integration with one of the U.S.'s leading EMR systems on behalf of one of our customers, a leading healthcare system, to enable a seamless workflow from test ordering to test result, with our mobile app and the Cue Health Monitoring System. But beyond designing our platform to be able to integrate within the traditional healthcare system, we have built our platform to enable fast, frequent, lab-quality diagnostics by anyone, anywhere, intended to facilitate a new continuous care model of personalized and contextualized healthcare. Our first commercially available diagnostic test for use with our Cue Health Monitoring System, our COVID-19 Test Kit, which has been authorized by two Emergency Use Authorizations, or EUAs, from the U.S. Food & Drug Administration, or the FDA, for point-of-care and over-the-counter and at-home use, is an example of this. Users can run a COVID-19 test anywhere using the Cue Reader and a COVID-19 Test Kit, and have lab-quality test results delivered digitally to the user's mobile device in about 20 minutes. While our COVID-19 Test Kit is our only commercially available Test Kit and our future tests remain subject to technical development, clinical studies and regulatory authorization, clearance or approval, we have five additional Test Kits that we consider to be in late-stage technical development (influenza A/B, or flu, respiratory syncytial virus, or RSV, fertility, pregnancy, and inflammation) for which we expect to begin submitting for FDA authorization or clearance in the second half of 2022. Based on the working prototypes we have

developed for our Test Kits in late-stage technical development, as well as other Test Kits we currently have in development, and the clinical and other development work we have performed to date with respect to our Test Kits in development, we expect that all of our Test Kits currently in development will work within our Cue Health Monitoring System in a manner similar to our COVID-19 Test Kit and will be able to be utilized with our Cue Health App and the Cue Enterprise Dashboard and be capable of being integrated with existing workflows, including EMRs, and with other planned on-demand services. We believe our model, driven by our platform, will empower our users to actively manage their health, which we believe will result in improved health outcomes and a more resilient, connected, and efficient healthcare ecosystem for all. We further believe that our platform positions us to be at the center of the broader healthcare ecosystem as it continues to undergo a massive virtual and digital shift. Through our connected diagnostic solution, we seek to enable the shift of care to virtual settings, while also connecting the physical care paradigm to the new digital ecosystem.

As the COVID-19 pandemic was closing the global economy and filling hospitals in the first quarter of 2020, we rapidly focused our team on developing a COVID-19 Test Kit and did so in a matter of a few months, building on a decade of research and development on our adaptive and flexible system. Our COVID-19 test (consisting of our Cue Reader and Cue COVID-19 Test Kit) has been validated via an independent clinical study conducted by researchers at the Mayo Clinic that demonstrated our COVID-19 test has 97.8% concordance with tests performed by central labs using reverse transcription polymerase chain reaction, or RT-PCR technology, the current “gold standard” for central lab testing. Our platform has been designed to uniquely offer fast results and ease-of-use combined with the high-quality results of central lab technology, all in a device that fits in the palm of your hand.

Our first commercially available diagnostic test for use with our Cue Health Monitoring System is our COVID-19 Test Kit for ribonucleic acid, or RNA, of SARS-CoV-2, the virus that causes COVID-19. In June 2020, the U.S. Food & Drug Administration, or the FDA, granted an Emergency Use Authorization, or EUA, for our molecular COVID-19 test for point-of-care use under the supervision of qualified medical personnel. In March 2021, the FDA granted us an additional EUA for over-the-counter and at-home use of our COVID-19 test without a prescription. Our COVID-19 test is authorized for use by both symptomatic and asymptomatic individuals, and by adults and children aged two and older with adult assistance. While commercial sales of our COVID 19 Test Kit are authorized pursuant to our two EUAs, we cannot predict how long our EUAs will remain in effect and, to date, we have not obtained any clearances under Section 510(k) of the Federal Food, Drug and Cosmetic Act of 1938, as amended, or 510(k), for our COVID-19 Test Kit, which such clearance would be required to sell our COVID-19 Test Kit in the event that the FDA terminates or revokes our EUAs. In order to be eligible to receive 510(k) clearance from the FDA, we will need to conduct additional clinical studies with larger subject enrollment and more COVID-19 positive tests. We are moving forward on the additional steps we believe are required to enable us to seek 510(k) clearance, and intend to seek 510(k) clearance as soon as feasible once we have completed these steps. See “—Our First Product Offering—Cue COVID-19 Test Kit—Regulatory Status of the Cue COVID-19 Test Kit” for additional detail regarding what is required for the regulatory clearance process for our Cue COVID-19 Test Kit.

While our Cue COVID-19 Test Kit is our first, and currently only, commercially available test, our vision was always to build a broad platform that would reinvent how we interact with our health. Since our early days, we developed our platform to be able to address the majority of diagnostic tests routinely conducted in clinical laboratories because we believe that users will not only demand a simple, personalized, convenient and connected solution but also a single platform to address their healthcare needs. We are developing solutions to broaden the diagnostic use cases for our platform, such as our five tests we consider to be in late-stage technical development. Our additional planned care offerings include tests in the categories of respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management. We are also working to expand the functionality of our platform by adding capabilities which will enable telehealth, e-prescription and the ability to connect to third-party services to facilitate an end-to-end healthcare journey. Our focus is on creating experiences with the user at the center, enabling high satisfaction, measurable health outcomes, and more cost-effective care for the entire ecosystem.

We believe the power of our platform has been demonstrated by our substantial growth, the quality of our customers, the clinical validation of our COVID-19 Test Kit, the several regulatory authorizations we have received for our COVID-19 Test Kit, including being the first company ever to have a product authorized by the FDA for molecular-based infectious disease testing available over-the-counter for home use. Our platform was trusted by the National Basketball Association, or NBA, to help it perform COVID-19 testing in its highly publicized “Bubble” in the 2020 basketball season. Our products are used by the Mayo Clinic in their hospital network and in their

laboratories. In October 2020, we entered into a $480.9 million agreement, or the U.S. DoD agreement, with the U.S. Department of Defense, or U.S. DoD, and the U.S. Department of Health and Human Services, or U.S. HHS, to scale up our production and deliver 6,000,000 COVID-19 Test Kits and 30,000 Cue Readers. Today our platform is relied upon every day for vital COVID-19 testing across schools, enterprises, nursing homes, hospitals, physicians' offices, dental clinics, sports and other live event venues, federal and state agencies, and other settings around the country as well as by individual end-users testing in their homes. As of August 31, 2021, we had 49 active customers, which includes our largest customer by product volume to date, the U.S. DoD. We define an active customer as an entity that has entered into an agreement with us to purchase the Cue Health Monitoring System or Test Kits in the past 12 months.

Prior to March 31, 2021, we were required, pursuant to the U.S. DoD agreement, to deliver to the U.S. government all of our manufacturing output of COVID-19 Test Kits, subject to limited exceptions. The U.S. DoD agreement initially contemplated a ramp-up in of our production to 100,000 COVID-19 Test Kits per day for a seven-day period and final delivery of the required Cue Readers and Cue COVID-19 Test Kits by March 31, 2021. However, in March 2021, the production ramp up target and final product delivery dates were extended by mutual agreement to October 2021. In April 2021, the U.S. DoD granted us a waiver whereby, effective May 1, 2021, we are permitted to sell up to 50% of our manufacturing output of Cue COVID-19 Test Kits to additional customers. Notwithstanding the waiver granted to us by the U.S. DoD, we are still required under the U.S. DoD agreement to deliver 30,000 Cue Readers, 6,000,000 COVID-19 Test Kits and 60,000 COVID-19 Control Swab Packs by October 2021. As of August 31, 2021, we have delivered all of the required Cue Readers and over three and a half million COVID-19 Test Kits pursuant to the U.S. DoD agreement. We are further required to ramp up our production capacity to approximately 100,000 COVID-19 Test Kits per day for a seven-day period by October 2021. As of August 31, 2021, our daily production capacity was on average over 43,000 COVID-19 Test Kits per day over a seven-day period, with a single day peak of nearly 60,000 COVID-19 Test Kits. We believe that the receipt of our waiver from the U.S. DoD will allow us to more widely commercialize our COVID-19 Test Kit. Since we received the waiver from the U.S. DoD and our second FDA EUA for over-the-counter and at-home testing for our COVID-19 Test Kit, we have been able to add several new enterprise customers and extend our business with existing customers. For example, we have added certain major technology and other enterprises as customers who are providing our solution to their employees for use in their homes as part of return to work initiatives and ongoing employee health benefits. In addition, for the 2021 NBA basketball season, we have been able to extend our relationship with the NBA to provide our testing solution for use by players, their families and referees, at home and on the road.

We believe our platform will allow us to develop and commercialize new tests quickly and scale rapidly, driven by our flexible technology and our in-house, vertically-integrated and automated manufacturing facilities. Our platform has the potential to perform a variety of different tests by accommodating different sample types, including saliva, blood, urine and swabs, and detecting nucleic acids, small molecules, proteins or cells. Because we developed our manufacturing facilities and processes in tandem with our technology, we were able to scale our production to produce a rate of millions of Test Kits per year using fully automated production pods. A production pod is a free standing, modular environmentally-controlled structure containing an automated test cartridge production line. Additionally, we produce our critical biochemistry in-house, including enzymes, antibodies and primers for our Cue Cartridges. As of August 31, 2021, we were manufacturing Cue Cartridges at a rate equivalent to over 15 million per year and we anticipate growing our manufacturing capacity to a rate equivalent to tens of millions of Cue Cartridges per year by the end of 2021.

We first began generating revenue from product sales in August 2020 following the receipt of our first EUA from the FDA for our COVID-19 test in June 2020. We generated approximately $201.9 million of revenue in the six months ended June 30, 2021, all of which was from product sales. Of that amount, $167.1 million, or approximately 83%, of our product revenue was from public sector entities, substantially all of which was from the U.S. DoD, with the remaining $34.8 million of product revenue generated from other customers (of which a single enterprise customer accounted for $28.9 million). We generated $23.0 million of revenue for the year ended December 31, 2020, of which approximately $15.4 million was from product sales. Of this amount, $8.9 million of product revenue was from public sector entities, substantially all of which was from the U.S. DoD, and the remaining $6.5 million of product revenue was generated from other customers. The U.S. DoD and Henry Schein accounted for approximately 80% of our product revenue in 2020. In 2019, we generated $6.6 million of revenue, none of which was from product sales. After the conclusion of the initial U.S. DoD agreement, we anticipate that the percentage of our revenue derived from non-public sector customers will increase as we continue to ramp up our manufacturing and distribution

capabilities and are able to sell more of our products to other customers, including enterprises and healthcare providers. For the six months ended June 30, 2021, our net income was $32.8 million. In 2020 and 2019, we incurred net losses of $47.4 million and $20.6 million, respectively.

Healthcare 1.0

We believe the current healthcare system suffers from centralization, and is, disconnected, analog and access-limited. We call the current system Healthcare 1.0. Globally, healthcare has become increasingly complex and we believe continues to suffer from significant fragmentation of care, while costs have continued to expand faster than the growth of the economy. Rising healthcare costs have not necessarily resulted in improved outcomes, as exemplified through the increasing prevalence of chronic conditions in the United States despite the country's approximately $4.0 trillion annual spend, the highest per capita healthcare spend in the world.

We believe Healthcare 1.0 does not meet the evolving needs of healthcare consumers who are demanding:

- control over how they manage their acute and chronic conditions as well as their overall health;
- access to actionable clinical insights;
- affordable and transparent pricing; and
- customer-centric user experiences that connect the entire care journey.

Centralized Care Limits Access

We believe healthcare that is delivered through centralized, physical locations limits access due to the inconvenience and time-consuming nature of visiting hospitals, doctors' offices, and urgent care clinics. We believe this system is also inherently rigid, siloed and disconnected when it comes to events or disruptions, such as a pandemic, where health information is not easily accessible or actionable. Centralized care also underserves remote populations and others lacking traditional access.

The Centralized Diagnostic Testing Framework Is Challenged

We believe the current centralized diagnostic ecosystem has significant shortcomings. The patient experience can be slow, costly and inefficient, yielding results that can be difficult to understand and contextualize. A patient first needs to schedule an in-person appointment with a healthcare professional, after which they often need to travel to a separate testing facility. The sample is then couriered to a lab, during which time the patient may be subject to long wait times and left unaware of the quality or status of the sample. A number of days later a result is provided through old technology that is difficult to interpret and understand. While this high latency process is unfolding, the patients underlying condition is not being addressed or contained, with the healthcare provider unable to identify the optimal treatment path required. We believe this legacy system results in underutilization of testing, healthcare professionals having to prescribe treatments without diagnostic context and a disconnected user experience that leads to suboptimal outcomes.

We believe these shortcomings impact every facet of care delivery, as brought to the forefront during the COVID-19 pandemic. In the United States today, there are hundreds of thousands of diagnostics access points to serve hundreds of millions of people. Lack of access prevents individuals and care providers from obtaining access to critical health information. The inadequate response of the healthcare system to the COVID-19 pandemic, especially when it came to simply diagnosing the disease, is a symptom of this larger problem. As of April 2020, there were only approximately 6,000 hospitals and 2,000 COVID-19 testing centers in the United States. With a daily peak of approximately 300,000 new COVID-19 cases in the United States, in 2020 the turnaround time from sample collection to receiving a COVID-19 test result in the U.S. was often measured in days or even weeks, with a typical turnaround time of approximately five days. Additionally, in April 2020, concerns of exposure to COVID-19 infection in healthcare facilities led to a breakdown of routine diagnostic screenings for other conditions, including the 90% decline in cancer screening through May 2020 and 65% decline in the number of new cancer diagnoses in April 2020. Additionally, according to U.S. HHS, nearly half of Medicare physician exams in April 2020 were conducted remotely, without access to coincident diagnostics. The lack of real-time, convenient, and readily accessible diagnostic solutions is a direct result of the legacy central lab testing model.

Legacy Infrastructure Is Not Built for Virtual Care

We believe the current centralized diagnostic and care infrastructure is even less well suited for the growing virtual care delivery model. Consumer adoption of telehealth rapidly accelerated in large part by the COVID-19 pandemic, from 11% of consumers in the United States using telehealth in 2019 to 46% percent in April 2020. As more and more people use virtual care options, the lack of connected, real-time and distributed diagnostics may become more of an issue and we believe will expose a critical weakness in the growing telehealth care delivery paradigm. For care to truly be virtual, we believe patients need the ability to obtain a diagnostic result from anywhere and at any time, rather than from a central laboratory with high latency.

Lack of Capabilities to Identify Health Threats

We believe the disconnected and high-latency diagnostic system is not able to timely deliver the information that public health agencies and healthcare providers need to identify, mitigate and monitor outbreaks of highly contagious diseases, such as COVID-19 or influenza. Without access to diagnostic data informing policymakers, providers and individuals, the containment of such outbreaks may be difficult. In addition to the issues associated with managing infection spread and population health, the lack of a decentralized and robust testing framework can also have negative collateral consequences like the capacity constraints the pandemic placed on the already strained healthcare system.

Healthcare 2.0

Digital transformation has revolutionized nearly every industry, except for healthcare, to create new, consumer-first experiences that are both personalized and empowering. We believe a new era in healthcare is beginning, Healthcare 2.0. We envision that Healthcare 2.0 will be a connected and distributed care ecosystem with seamless coordination across the physical and virtual care continuums and we believe that abundant and timely testing and real-time data will be at the center of personalized and informed care. As diagnostics-led care moves away from centralized, geographically defined settings and toward distributed, virtual modalities, we believe a connected diagnostics platform is needed to bring testing to the user, when and where they need it most.

Healthcare Is Shifting to Consumer-Focused Care and Delivery

Across multiple industries, new disruptors have used technology to transform the consumer experience. A paradigm shift is occurring in healthcare as consumers are both increasingly informed and focused on the user-experience. We believe this shift will become one of the most important factors that shapes the next decade of healthcare. As healthcare consumers pay more and more out-of-pocket, we expect they will be focused on receiving value and consumer-centric services that fit their lifestyles. New consumer driven healthcare companies and models are already rapidly growing to enable better in-person primary care experiences, telehealth and management of chronic conditions.

Diagnostics Is at the Center of Healthcare 2.0

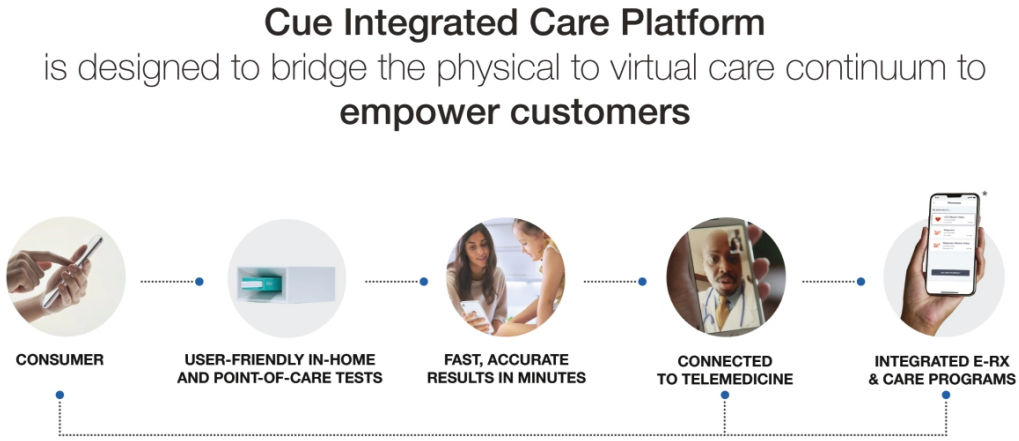
To be successful in realizing the vision of Healthcare 2.0, we need to build platforms centered around the principals of convenience, connectivity and customization that can bridge the gap between the physical and virtual care continuums. The iPhone changed the world by putting the internet in everyone's pocket and provided a hardware-software combination that enabled an ecosystem of applications to be built on top of it. We believe diagnostic data is the key to unlocking the full potential of personalized and virtually delivered care. Without an at-home testing solution, telehealth solutions can likely still be burdened by long turnaround times, requiring individuals to visit, or mail samples to, centralized testing laboratories.

We are committed to changing the traditional diagnostic testing industry with our universal platform for enterprise, professional and personal use with broad applications. Our platform is designed to offer tangible benefits that we believe will directly address the historic challenges of and consumer dissatisfaction with the diagnostics industry.

We believe the regulatory climate is shifting in favor of decentralized diagnostics. Current leading FDA officials have been quoted as having noted the essential role that diagnostics have played in mitigating the COVID-19 pandemic. They have also stated that the lessons learned from the COVID-19 pandemic should be leveraged to drive changes of the current diagnostics system to accelerate access to accurate and reliable tests for a variety of diseases, not just COVID-19. Efforts are currently underway to increase access and facilitate point-of-care and at-home diagnostic solutions to help support public health measures and improve the overall health of the U.S. population.

We are Well Positioned to Be at the Center of Healthcare 2.0

We are focused on helping to build a new healthcare ecosystem, developed around the Cue Integrated Care Platform, that will deliver on the promise of timely, informed and connected healthcare. We are already active across a wide range of stakeholders with our COVID-19 test. We believe participants in the healthcare ecosystem will benefit from the Cue Integrated Care Platform in various ways: governments will benefit by keeping people healthy and managing population health; enterprises will benefit by maximizing employee productivity while minimizing healthcare expenses; healthcare payors and providers will benefit by evidence-based care leading to improved outcomes; and consumers will benefit from being able to take control of their healthcare journeys through more consistent diagnostic testing, leading to personalized care, faster clinical decisions, and better control of their health. We aim to make lab-quality diagnostics, such as our COVID-19 Test Kit, accompanied by real-time results, widely accessible through the use of our Cue Health Monitoring System and Cue Health App, and providing a hardware-software combination that we believe will enable healthcare stakeholders to have better outcomes.



* Depicts future product developments.

The Cue Integrated Care Platform is designed to meet the consumer wherever they are: at-home, at work, or at the point-of-care, aiming to remove the friction and inconvenience of the Healthcare 1.0 centralized diagnostic system. We believe we have the potential to become the new standard of care in diagnostics, with the ability to bridge the physical and virtual care continuums and benefit everyone by keeping people healthy and productive. Our vision is to bring diagnostics to the right point in the care journey, in any setting, enabling an end-to-end care solution. Just as monitoring combined with data-driven insights helps people with chronic conditions live healthier lives, we believe our platform will transform the way people manage their health through real-time, actionable and connected health data.

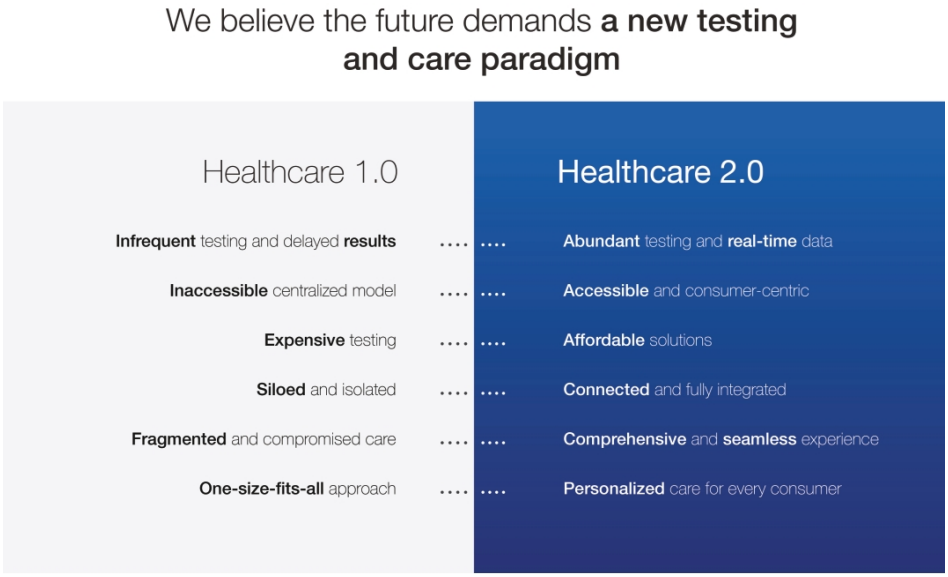
We believe the Cue Integrated Care Platform has the potential to allow consumers to reinvent the way they manage their health. There are two envisioned pathways to begin this care journey: one pathway would begin with a conversation with a doctor or telemedicine visit within the Cue Health App, wherein a doctor guides a consumer and determines a test is necessary; the second pathway would begin with a person having symptoms or knowing what they want to test for, such as COVID-19, strep throat, or flu, and there would not be a need for a telemedicine visit. We plan on giving consumers on-demand access to Cue Cartridges for a variety of different conditions by leveraging last-mile delivery infrastructure where available such as DoorDash, Amazon, goPuff, Postmates, or others. This would enable consumers to conveniently take a diagnostic test and receive results within minutes, allowing for interaction with their healthcare provider via telemedicine within the app.

A few examples could include:

- A busy parent has few good options for handling a child sick with cold and flu-like symptoms. Currently, they must take time off from work to care for the child and will often make an appointment with a pediatrician or travel to an urgent care facility. An integrated care solution with telemedicine, with diagnostics for the common respiratory threats, such as flu, COVID-19, strep throat, and RSV would allow for testing to be done conveniently and easily at-home with the guidance of a telemedicine visit if desired, and with the results delivered directly to their mobile device in minutes. Prescriptions such as Tamiflu (for influenza) or antibiotics (for strep throat) could be delivered same day to their doorstep, as the telemedicine care provider deems appropriate. Otherwise, appropriate over-the-counter medications for symptom relief could also be delivered. We believe this type of care model for respiratory diseases will become normative for this number one most common reason for a visit to urgent care in the developed world.
- A sexually active adult that wants peace of mind before or after a sexual encounter must currently make an appointment, give a sample, and typically wait days for a result on their sexual transmitted infection, or STI, status. Beyond the inconvenience, the stigma and general friction associated with getting tested is a high barrier for seeking care. We believe an integrated care solution including quick results for some of the most common STIs, consultation with a telemedicine provider through a virtual care delivery app and potential resolution with the appropriate therapy, such as an antibiotic for chlamydia delivered to them – all within hours – is an optimal flow that has the potential to become normative for handling STI related matters.

- For an individual managing a chronic condition such as cardiovascular disease, autoimmune disorder or metabolic disorder such as hypothyroidism, medication adherence and regular diagnostic testing measuring the clinically relevant biomarkers such as cholesterol are critical for effective condition management. Removing significant friction to accessing critical diagnostic information that informs disease management with doctor-informed care could provide an effective way to drive medication adherence and combined with other sensor data to form a more complete picture of health that helps drive engagement and effective disease management.

Further, we believe our platform will have wide applications in a variety of other markets, including personal health and wellness, community and public health, travel, sports and entertainment, and education. As the healthcare system undergoes the transformation to Healthcare 2.0, we believe diagnostics will be a crucial component in making virtual care a reality. Current U.S. healthcare spending on outpatient, office, and home health spend has been estimated at $1.25 trillion and the potential for virtual care was estimated at $250 billion. We believe that by introducing an integrated care solution that features advanced diagnostics, we may be able to access a significant portion of the overall virtual care market and possibly help increase the proportion of the total spend that could move to virtual care solutions.

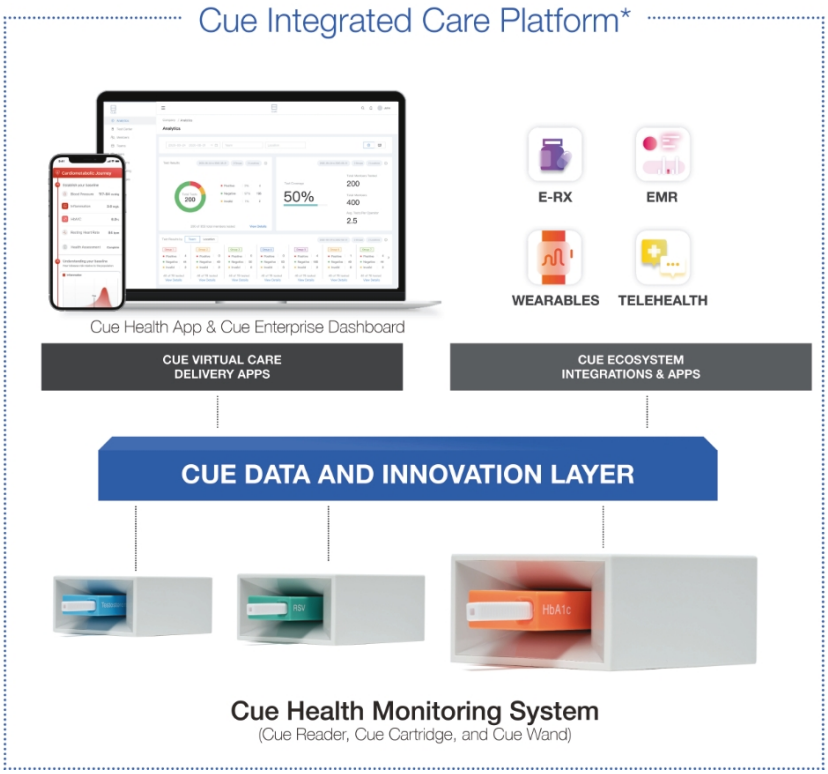


Our Solution – The Cue Integrated Care Platform

Our Cue Integrated Care Platform is simple, fast, and accurate. Our Platform is designed to harness the power of the cloud and provide consumers and enterprises with real-time access to their data and the broader healthcare ecosystem as part of our planned end-to-end solution.

Development of the Cue Integrated Care Platform is guided by our focus on the user, whether that be a clinician in a provider office or an individual at home, with a simple goal of enabling individuals and clinicians to have reliable information at their fingertips to make faster and more informed healthcare decisions. We believe we can transform disease prevention and detection globally by making important healthcare data available to anyone, anywhere, at anytime. Our system is designed to put consumers in control of their information and place diagnostic information at the center of care, where it belongs.

For consumers, we expect our platform will eliminate the friction of taking a test and communicating the results to providers. We believe increasing consumer testing at-home will lead to better outcomes. By making our platform widely available to consumers over-the-counter for use anywhere and at anytime, we aim to redefine the care workflow such that over time our platform will become the standard of care.



* Depicts future product developments.

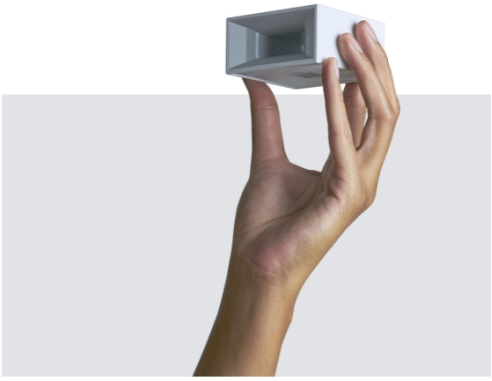
Cue Health Monitoring System

Our Cue Health Monitoring System was designed to deliver a broad menu of tests through one system, enabling two major testing modalities, nucleic acid amplification tests, or NAAT, and immunoassays, in one device. Our system is designed to handle different sample types, including saliva, blood, urine and swabs, and can detect nucleic acids, small molecules, proteins and cells. We believe this flexible design will enable us to address many of the diagnostic tests conducted in clinical laboratories, such as respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management.

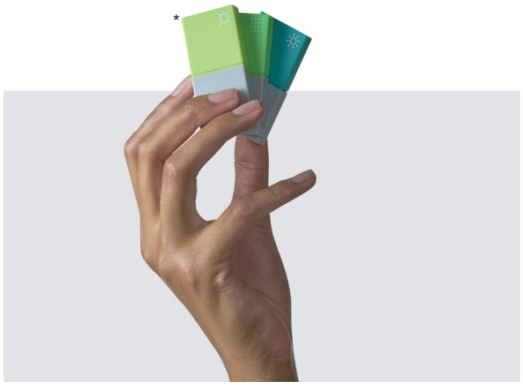
Our Cue Health Monitoring System is comprised of the following elements:

Cue Reader

The Cue Reader is an elegantly designed, automated analyzer of test results and is used with Cue Test Kits and the Cue Health App. The Cue Reader contains all the circuitry necessary to process, analyze, and communicate test results digitally, including encrypted Bluetooth radio communication and other sensors. The Cue Reader runs the Cue Cartridge and communicates the result of the test digitally via Bluetooth to the Cue Health App. The Cue Reader is easy to set-up and use and designed to be universally compatible with our current and planned future Cue Cartridges. It is a compact, battery-operated and rechargeable device that can run thousands of tests in its lifetime. The Cue Reader is portable, durable, easy-to-maintain, and has a battery life of approximately eight hours of continuous use, making it highly versatile for consumer and professional testing in a variety of settings.



Cue Test Kit: Each Cue Test Kit is comprised of a Cue Cartridge and a Cue Wand.



Cue Cartridge

Cue Cartridges are the result of significant research and development investment and we believe represent a significant advance in testing technology. Our sample-specific, single-use cartridges are designed to handle different chemistries, which allows us to create a broad menu of tests. Cue Cartridges are designed to be seamlessly inserted into the Cue Reader. Each Cue Cartridge contains the specific reagents and associated materials required to detect the target of the particular test. Cue Cartridges were designed with ease-of-use, user safety, and scalability in mind.

* Depicts future product developments.

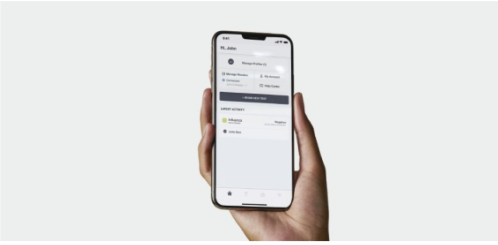
Cue Wand

Cue Wands are single-use and sterile sample collection devices that are designed to be universally compatible with the Cue Cartridges. Cue Wands are proprietary and designed only to work with the Cue Cartridges. The Cue Wand is designed to permit collection of multiple sample types, including saliva, blood, urine, and swabs, with only minor modifications. When a Cue Wand is inserted into the Cue Cartridge the system automatically runs the test and delivers the result to our Cue Health App.

Our Cue Integrated Care Platform is portable, intuitive, fast, and cloud-connected.

Portable

Compact, automated system that is battery operated and rechargeable for frequent, reliable testing in home or at point-of-care.



Intuitive

Easy to use. Fully guided experience from sample to result.

Fast & Accurate

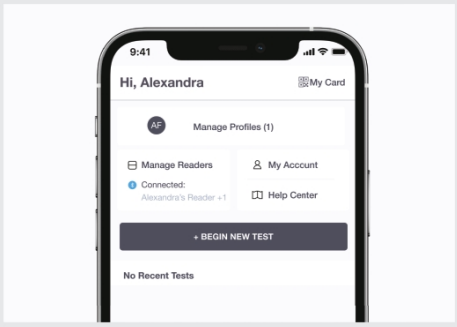
Test results in minutes. 97.8% concordance with gold-standard PCR testing as independently validated by Mayo Clinic for our Cue COVID-19 test.

Connected

Results will be able to be delivered directly to connected mobile devices enabling telemedicine, early detection, intervention, e-prescriptions, and ongoing care.

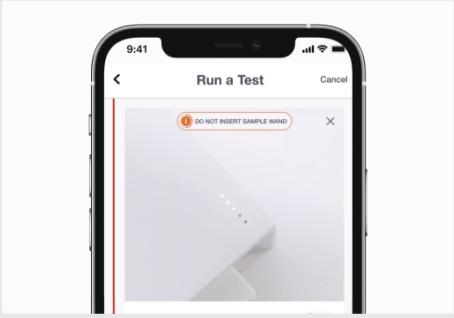
Using the Cue Health Monitoring System

The Cue Health Monitoring System is designed to be simple to set-up and use. Our COVID-19 test delivers results in approximately 20 minutes and we expect our future tests to deliver results in five to twenty-five minutes, depending on the test, and to require a user to follow only a few simple steps. The Cue Health Monitoring System was designed with a focus on the user, and our intuitive Cue Health App uses clear instructions, videos, and pictures to guide users through the entire testing process from sample collection to result, to mitigate user errors. The Cue Health Monitoring System also contains multiple safety features, including a mechanism that locks the Cue Wand inside the Cue Cartridge after insertion, and quality checks, such as confirming a Cue Cartridge is valid and has not expired. The Cue Reader in conjunction with the Cue Health App ensures that the user performs the test correctly. The Cue Health App provides instructions and informs the user of any errors detected by the Cue Reader to preclude inaccurate results. These are the key steps to operate the Cue Health Monitoring System:



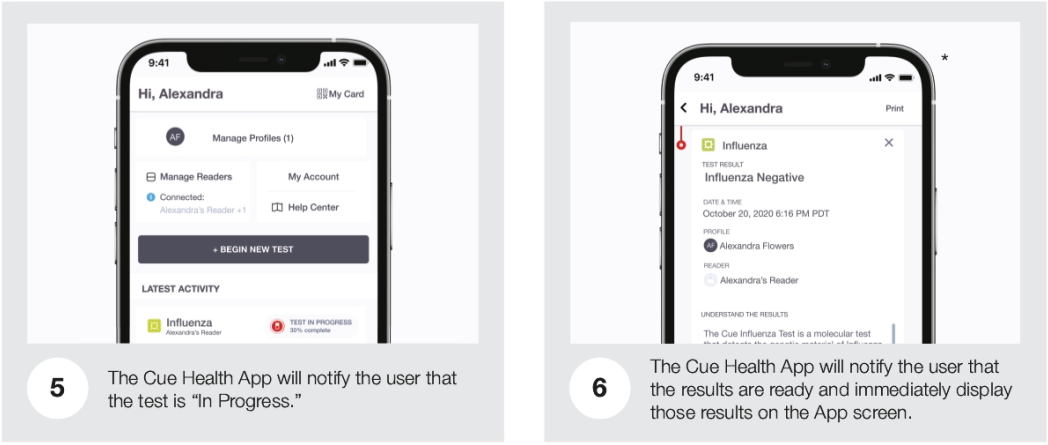
1 Open the Cue Health App and tap "+BEGIN NEW TEST," which will provide step-by-step guidance for completing the test.

2 Insert the Cue Cartridge into the Cue Reader, which initiates pre-heating and test preparation.



3 After approximately one minute, the Cue Health App will notify the user that the Cue Cartridge is ready to begin testing.

4 Collect the specimen using the Cue Wand and insert it into the Cartridge, which initiates the test.



* Depicts future product developments.

Cue Data and Innovation Layer

Our cloud-native Cue Data and Innovation Layer stores and curates the data from our Cue Health Monitoring System and provides a secure environment for users to access current and historical health data. Our Data and Innovation Layer has the ability to collate unstructured and structured data from a wide variety of data sources, which we believe will give us the ability in the future to store and analyze more holistic sets of health data, including from other testing modalities and wearables. The Cue Integrated Care Platform was built with data security and regulatory compliance, including HIPAA, at its core.

The Cue Data and Innovation Layer provides the foundation for our Cue Virtual Care Delivery Apps and has enabled the development of our Cue Ecosystem Integrations and Apps. The Cue Data and Innovation Layer currently contains an API that allows for the data from tests performed on the Cue Health Monitoring System to be received, stored, and retrieved by the end user. For enterprises deploying the Cue Enterprise Dashboard, the Cue Data and Innovation Layer enables the creation of a network of users affiliated by roles with the enterprise. Within this network of users, the Cue Data and Innovation Layer provides the engine behind test analytics, creation of groups, scheduling and compliance, reporting, and enterprise-specific privacy policy management. The Cue Data and Innovation Layer powers the EMR integration with major EMR providers.

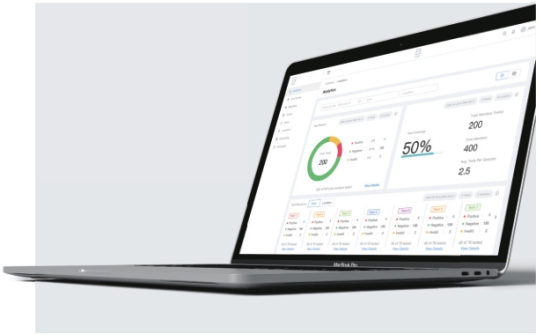
Cue Virtual Care Delivery Apps

Cue Health App

Our mobile app creates a secure interface between the user and their health data. For consumers, it allows a single point of entry for their health data; for healthcare professionals, it is designed to provide a unified platform for managing patient histories and, in the future, is expected to allow for telemedicine and e-prescription services. By connecting the diagnostic test results with interventions and outcomes, we believe the Cue Health App will allow users to be more engaged and satisfied with their healthcare experience, which can ultimately drive better outcomes for users. To run a Test Kit on the Cue Reader, a user will need to download and utilize the Cue Health App. As of August 31, 2021, through our 49 active customers, over 45,000 unique accounts have used the Cue Health App to run our COVID-19 Test Kit. These unique accounts include both organizations and individuals who may take tests episodically, healthcare providers running a large number of tests for multiple patients, and enterprises running a large number of tests for their entire organization, as established by the customer on a customer-by-customer basis.

Cue Enterprise Dashboard

Our dashboard is designed to allow enterprises, payors, healthcare providers and public health entities to manage population health at the organizational level and has the potential to track the efficacy of various population health programs. Accessible online, the Cue Enterprise Dashboard has the potential to help organizations manage a patient's journey from onboarding to scheduling, care management and inventory management. The Cue Enterprise Dashboard was built with a focus on user experience, simplifying the sharing of communications, such as results, records, and histories with patients and across providers and streamlining reporting requirements. Powered by our analytics engine and role-based access capabilities, it is designed to provide chief medical officers, environmental health and safety officials, and benefits managers with insight into their organization's population health, helping to facilitate efficient decision making. As of August 31, 2021, we had 60 active public sector, enterprise and provider accounts on the Cue Enterprise Dashboard. An account on the Cue Enterprise Dashboard is considered active if the customer has signed into their account and utilized the programs within the last six months. A customer may have more than one active account on the Cue Enterprise Dashboard or Data and Innovation Layer.



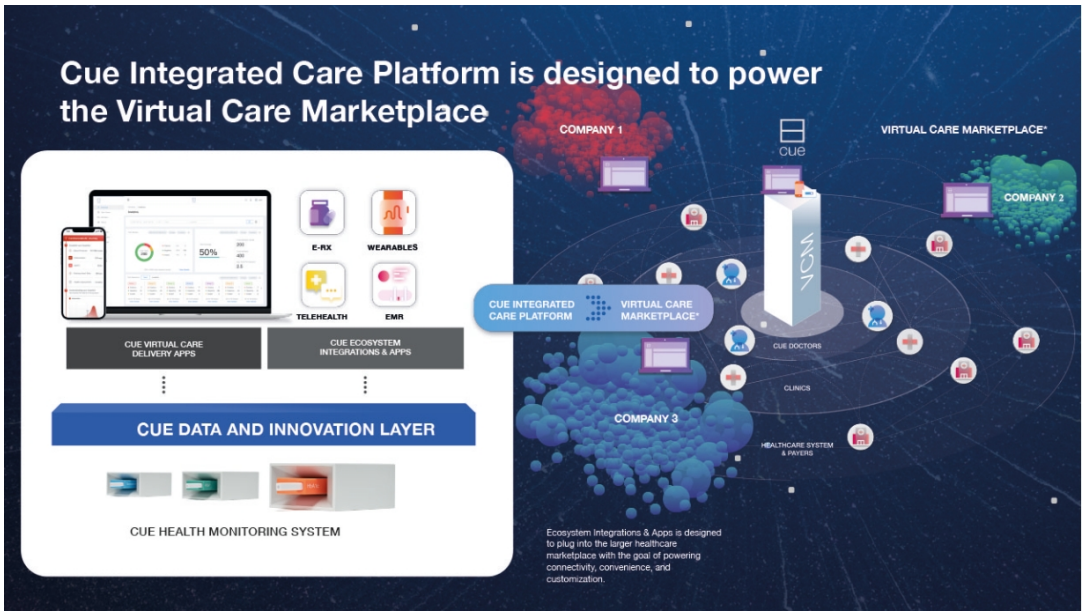
Cue Ecosystem Integrations and Apps

We believe that placing our API at the core of our integrated care platform will enable us to become foundational within Healthcare 2.0, powering the virtual care marketplace. By securely connecting our Cue Data and Innovation Layer with on-demand services, such as telemedicine and e-prescription services, and integrating with wearable technology, we believe we will enable a truly digital and seamless user experience. In the future, we plan on enhancing our platform to enable third-party application development and offerings that complement our solutions.

In addition, our ability to integrate with anchor EMR systems, such as Epic Systems Corporation, or Epic allows our customers to integrate our platform with their existing systems, creating an agile and responsive workflow for patient monitoring for ongoing care, better intelligence and reporting, and more efficient provider-level health management.

The Cue Virtual Care Marketplace

Our current customers can be categorized as both care consumers, enterprises and the employees that comprise them, and the care providers, doctor's offices, healthcare systems, urgent care clinics. We believe that as both care consumers and care providers take advantage of our Cue Integrated Care Platform to better diagnose and manage health, our networked Virtual Care Delivery Apps will allow us to create a marketplace where virtual care takes place, centered around objective clinical diagnostic information. We believe that the Cue Integrated Care Platform will help improve access to care while driving down healthcare costs and improving outcomes. In turn, we anticipate payors will begin to reimburse for our tests and other products offered under our Cue Integrated Care Platform. We believe that all of these dynamics will help create what we call the Cue Virtual Care Marketplace.



* Depicts future product developments.

Our Underlying Diagnostic Technology

Once a test sample is collected via the Cue Wand and inserted into the Cue Cartridge, the test automatically begins. Depending on the type of Cue Cartridge, our platform uses either a NAAT or immunoassay to perform a test. NAATs and immunoassays are two of the most common in vitro diagnostic product technologies and make up a significant portion of clinically important tests that are primarily run in centralized laboratories. For NAAT tests, primers amplify carefully selected regions within the target organism's genome. For immunoassays, antibodies conjugated to magnetic particles bind target antigens. In both cases, an internal or process control confirms proper assay execution including, as relevant, sample lysis, amplification, sample flow and assay reagent function. If the internal or process control is not detected, the test will return an invalid result. Once the assay is executed, all heating, mixing, amplification and detection takes place within the Cue Cartridge with no steps by the user. Electrodes generate a current flow to the Cue Reader which interprets a nanoampere measurement and converts it to a test result based on predetermined thresholds for qualitative tests or standard curves for quantitative tests. The Cue Reader then communicates the test result digitally, directly and wirelessly to the Cue Virtual Care Delivery Apps, which we expect will take between five and twenty-five minutes from sample collection.

Our Testing Technologies

We believe our ability to use both NAAT and immunoassays to perform tests will enable us to deliver the broadest menu of tests through our platform using our Cue Reader.

Molecular Tests

Molecular tests, also known as NAAT, target genetic material (DNA or RNA) in order to detect a broad range of infectious diseases, and are considered to be the most reliable for this purpose. PCR and isothermal amplification

are two types of molecular testing techniques. The NAAT procedure works by first making many copies of a target microbe's genetic material that is present in a specimen. This enables NAATs to detect very small amounts of DNA or RNA in a specimen, making these tests highly sensitive. In other words, NAATs can reliably detect small amounts of disease and are unlikely to return a false-negative result. The Centers for Disease Control, or CDC, has described molecular tests as the "gold standard" for clinical diagnostic detection of COVID-19. Our COVID-19 Test was the first molecular diagnostic test authorized for at-home and over-the-counter use without physician supervision or a prescription. For infectious diseases, molecular tests are more sensitive than antigen tests and have been recommended by the CDC as the preferred testing technology.

Immunoassay Tests

Immunoassays are widely used in clinical care. In clinical laboratories, the most common immunoassay technique is the is the Enzyme Linked Immunosorbent Assay, or ELISA, which is a fundamental clinical diagnostic methodology for detecting and quantifying a wide range of analytes and is one of the main modern lab techniques employed by central labs for a variety of clinical applications. Our ability to perform ELISA-like chemistry within the same cartridge structure we use to run our molecular tests enables us to detect and quantify the biomarkers necessary to expand our care offerings for use cases, including in cardiometabolic health (cholesterol, inflammation, HbA1c), men's health (testosterone, prostate specific antigen), women's health (pregnancy, fertility), other cardiac care (troponin, brain natriuretic peptide), wellness (vitamin D), and other tests.

Our Key Differentiators

We believe the following attributes differentiate us from other diagnostic solutions and digital health companies:

- ***Consumer-centric***. The Cue Integrated Care Platform is intended to revolutionize the way individuals and healthcare providers access diagnostic testing at home, at work, or at the point-of-care. Our Cue Integrated Care Platform is designed to deliver a superior user experience in any setting, one that is fully-guided, fast, accurate, and easy to use and that puts the consumer in control of their health data. Users only have to take the test and the Platform does the rest, obviating the need for many in-person testing visits and sample shipments, with a focus on at-home testing which we believe is the most consumer-centric and convenient setting. Results are presented in an easy-to-understand format through our Cue Health App and Cue Enterprise Dashboard. The digital nature of our results allows consumers to access their medical data immediately. By connecting this data to the wider healthcare ecosystem, consumers will be able to securely share their data with key stakeholders in their care journey and further streamlining the user experience. This will allow for more testing to be performed at the right point in the care journey, enabling diagnostics to drive care decisions.
- ***Lab-quality diagnostics anywhere in minutes.*** By combining the sophistication and accuracy of complex molecular testing platforms with the simplicity, convenience and speed of a consumer electronic device, our Cue Health Monitoring System has been developed to deliver highly specific and sensitive results within minutes. As a result, we believe our tests will provide a better, more convenient user experience compared to traditional lab tests while also delivering "gold standard" molecular testing results - all from a device that fits in the palm of your hand. The accuracy of the Cue Health Monitoring System was confirmed by a recent independent study, conducted by researchers at the Mayo Clinic, that found that the overall concordance between our COVID-19 test and clinical laboratory tests using NAAT was 97.8%.
- ***Extensible platform approach.*** We designed our technology, platform and infrastructure to be versatile in accommodating a wide range of tests by addressing both main analytical modalities used in diagnostic testing, immunoassays and NAAT. We believe our flexible platform will permit our planned future menu of tests to cover a large portion of diagnostic solutions typically offered by a traditional lab. The extensibility of our platform is due to the reusability of the Cue Reader, the uniform design of single-use Cue Cartridges and the synergies in chemistry across our pipeline of contemplated future tests, which we believe will allow us to quickly expand and upsell our menu in a cost-efficient manner. We have demonstrated our ability to quickly develop tests, having developed our highly accurate COVID-19 test within weeks. Our digitally native results enable seamless integration into our apps and cloud-based software platform as well as allow for integration with the broader healthcare and partner ecosystem.
- ***Vertically-integrated, automated and scalable production infrastructure.*** Our proprietary technology was designed to enable us to optimize our system across the full product life cycle from design to

manufacturing. Our integrated cartridge manufacturing and bio-production, including enzymes and chemistry, ensure the quality of our finished product. Our vertically-integrated and highly automated manufacturing facilities, which we developed alongside our science and technology and where we manufacture our Cue Cartridges, result in what we believe is a highly cost efficient and rapidly scalable manufacturing process. We further designed our manufacturing production pods to scale rapidly and allow for the production of any type of test cartridge in our planned future menu. We believe this will allow us to dramatically shorten our time to market when compared to traditional diagnostic manufacturing and to adapt to new market demands quickly and efficiently.

- ***Scaled and growing installed base.*** We have shipped over 115,000 Cue Readers across the United States as of August 31, 2021, including Cue Readers placed through our agreement with the U.S. DoD and through our other customer agreements, resulting in a broad installed base, diversified across industries, locations and end-markets such as schools, essential businesses, nursing homes, hospitals, physicians' offices, dental clinics, sports and other live events, and other settings around the country. With our EUA for at-home and over-the-counter COVID-19 testing, we expect to significantly grow our install base over the coming months and gain a place in more consumer households across the U.S. and internationally. Given our Cue Readers are reusable and universally compatible with our current and planned future Cue Cartridges, we believe this installed base and population of active users will position us well as we expand our testing menu. In addition, our installed base provides us with a wealth of data generation for our own use, and which we intend to use to improve our current and future product offerings.

Our Market Opportunity

We believe that there is substantial market opportunity for a consumer-oriented platform that sits at the nexus of healthcare and technology. We estimate that global healthcare expenditures in 2021 will reach $8.8 trillion. We estimate that the total addressable markets, or TAM, for digital health and diagnostics were approximately $120 billion and $85 billion, respectively, in 2020. Of the estimated $85 billion diagnostics market, we estimate that at-home and point-of-care testing solutions accounted for approximately $30 billion, of which, according to our internal estimates, approximately $20 billion was attributable to point-of-care testing solutions while approximately $10 billion was attributable to at-home testing solutions. We further estimate that the TAM for point-of-care diagnostics will grow to up to $51 billion by 2025. In 2021, we estimate the COVID-19 point-of-care diagnostic market alone to be at approximately $12 billion. We believe that the digital health and diagnostics markets that we are targeting are not only capable of being quickly disrupted by our Cue Integrated Care Platform, but that our TAM will continue to expand as individuals increasingly seek convenience and accessibility in their healthcare services, as awareness of our brand and platform offering grows, and as we build out our planned integrated service offering, including telehealth and e-prescription capabilities. Additionally, we believe healthcare providers and payors will continue to look for creative solutions to optimize care and cost efficiency, while employers will aim to maintain productivity and continuity.

Our Growth Strategy

Key elements of our growth strategy include:

- ***Expand our menu of tests and continue to innovate and enhance our platform.*** We plan to expand our test menu, including in the fields of respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management, with several of these tests expected to be submitted for FDA authorization or clearance by the end of 2022. Our broad planned future test menu is aimed to appeal to consumers, self-insured employers, and health plans alike and will allow for care that can be personalized to the consumer. We intend to further continue to expand our platform capabilities to provide a comprehensive user experience.
- ***Drive ecosystem adoption.*** We have been successful in our ability to integrate our platform into existing enterprise-level health management systems, allowing customers to automate workflows while allowing us to garner long-term commercial partnerships. As we enhance our Cue Integrated Care Platform, we intend to extend our integrations with leading EMR systems and to build-out additional capabilities to integrate with telemedicine and digital health providers, e-prescription, e-commerce, and other connected services, to offer consumers a frictionless, virtual-to-physical care solution that positions them for better outcomes
- ***Continue to expand our installed base and distribution network to enable pull-through of our future extended care offerings.*** We believe that the ability of customers to experience our platform for COVID-19

testing will facilitate market adoption and awareness that will benefit us as we continue to expand our test menu. We have shipped over 115,000 Cue Readers as of August 31, 2021, but we believe we are just at the beginning of our market adoption. COVID-19 has served as an accelerant for increasing the installed base of our customers, which we believe will drive natural demand to try our additional tests in development. We have significant interest from individuals, enterprises, and healthcare providers to purchase our COVID-19 test as well as interest in our future test menu. We further plan to leverage our installed base, established distribution network, and direct customer relationship through our apps to drive sales of our future test menu.

- ***Increase adoption through value-based selling and payor reimbursement.*** Our platform enables enterprise customers and payors to capture consistent, convenient and simple diagnostic information to inform key decisions. We believe this will help create positive outcomes for all stakeholders, especially our customers, as we expand our test menu. For example, helping customers test their HbA1c to manage diabetes or assess their HIV viral load to determine whether their treatment plan is effective would help payors and enterprises incur fewer costs. We believe this strategy will help accelerate our growth and drive further adoption of our platform.
- ***Continue to build the Cue brand.*** We believe that there are significant opportunities to drive increased brand awareness, educate consumers and enterprises on the benefits of diagnostics and our connected health platform, and build a lasting consumer brand. As we continue to invest in marketing, we anticipate that many customers who are not aware of our platform or the benefits of continuous, virtual care will begin using our platform. We further intend to increase our brand awareness through our partnership program. We believe the validation of leading institutions, such as the Mayo Clinic, the NBA and others, will help us to become the testing solution of choice in the enterprise and employer, travel, sports and entertainment, education, personal health and wellness, community and population health, and government market.
- ***Scale manufacturing capabilities to capitalize on demand.*** In the fall of 2020, we leased two new manufacturing facilities in an effort to scale our capabilities, and we have since commenced construction on a number of new production pods. As of August 31, 2021, we were manufacturing Cue Cartridges at a rate equivalent to over 15 million per year and we anticipate growing our manufacturing capacity to a rate equivalent to tens of millions of Cue Cartridges per year by the end of 2021.
- ***Expand our global footprint.*** We believe in the broad suitability of our platform and intend to grow our international customer base. In countries with developed healthcare systems, our value proposition is similar to that of the United States and will offer individuals, enterprises, and healthcare providers with the ability to positively impact health outcomes. In December 2020, our COVID-19 test received the CE mark, clearing it for sale and distribution in the European Union. In April 2021, we received Interim Order authorization from Health Canada to be able to sell and distribute our COVID-19 test and in August 2021 such Interim Order authorization was amended to include both point-of-care and self-testing. In countries with underdeveloped healthcare systems and infrastructure, we believe our platform will be able to provide front-line healthcare providers with access to lab-quality testing to better diagnose and treat underserved patient populations. In June 2021, our COVID-19 test received regulatory approval from the CDSCO for professional point-of-care use in India.

Our First Product Offering – Cue COVID-19 Test Kit

The Cue COVID-19 Test Kit is our first, and currently only, commercially available test. It is designed to detect SARS-CoV-2, the virus that causes COVID-19. Our COVID-19 test was the first FDA-authorized molecular diagnostic test for at-home and over-the-counter use, without physician supervision or a prescription. Internationally, we have also received the CE mark in the European Union, as well as Interim Order authorization from Health Canada, which is the department of the Government of Canada responsible for national health policy, for both professional point-of-care and self-testing, which is similar to over-the-counter authorization in the United States. In June 2021, our COVID-19 test also received regulatory approval from the Central Drugs Standard Control Organisation, India's national regulatory body for pharmaceuticals and medical devices, for professional point-of-care use in India. Our COVID-19 test provides highly accurate, lab-quality results, including for emerging variants, directly to connected mobile smart devices in about 20 minutes. A recent independent study conducted by researchers at the Mayo Clinic found that the overall concordance between our COVID-19 test and clinical laboratory tests using NAAT was 97.8%. In December 2020, our COVID-19 test was ranked by the FDA Reference Panel testing as the most sensitive among direct nasal swab point-of-care tests.

The COVID-19 Test Kit is authorized for use by both symptomatic and asymptomatic individuals, adults and children aged two and older with adult assistance. With an easy-to-use, fully guided experience, the Cue COVID-19 Test Kit offers convenience, privacy, and the ability to test frequently.

The Cue COVID-19 Test Kit runs on our Cue Reader, using our single use Cue COVID-19 Cartridge, which contains the specific reagents and associated materials required to detect the virus, and a Cue Wand.

Given our versatile platform and our team's experience in respiratory infectious disease testing, we were well-positioned to respond to the COVID-19 global pandemic. Building on our existing relationship, established in 2018, with the U.S. Biomedical Advanced Research and Development Authority, or BARDA, a division of the U.S. HHS, we received funding from BARDA in March 2020 to accelerate the development, validation and FDA clearance of our COVID-19 test to help curb the spread of COVID-19. Our flexible technology and manufacturing capabilities allowed us to develop the Cue COVID-19 Test Kit in a few months. We received EUA from the FDA for point-of-care use of our COVID-19 test in June 2020 and EUA for over-the-counter and at-home use of our COVID-19 test in March 2021.

Persistence of COVID-19: The Ongoing Importance of Testing

Many prominent immunologists and infectious disease researchers have now forecasted that COVID-19 will become endemic, remaining with us for years to come. Of concern are the new COVID-19 variants which have the potential to be more transmissible, more severe, and/or have the potential to reduce the effectiveness of vaccines. On April 12, 2021, 17 months after COVID-19 was first identified, the World Health Organization, or WHO, indicated that trajectory of the coronavirus pandemic is now growing exponentially and noted that the virus is stronger and faster due to the emergence of new variants. Prior to the actual rise of new variants, the scientific consensus was that SARS-CoV-2, the virus that causes COVID-19 had a slow rate of mutation compared to other RNA-based viruses like influenza and HIV and was unlikely to have significant variation due to this slow mutation rate. As the new variants are demonstrating, this consensus was not accurate.

We believe that a number of factors and unknowns will drive the need for testing as part of an ongoing and global, multimodal approach to manage the virus into the future.

Several new COVID-19 variants are already circulating globally and within the U.S. and additional new variants are expected to occur over time. On June 8, 2021, the CDC issued an update on variants and it included five "Variants of Concern," or VOC, for which there is evidence of an increase in transmissibility, reduced efficacy of vaccination, and other factors. These VOC include: the ''Alpha Variant," fka the "U.K Variant" B.1.1.7, which is highly transmissible and might carry a higher risk of being fatal and as of May 22, 2021 was the most common source of new infections in the U.S. and Europe, is infecting more children with more young people ending up in the hospital; the "Gamma Variant," fka the "Brazil Variant" P.1, is believed to be even more transmissible than other variants, and is the second most common variant in the U.S. and has been found in over 20 countries worldwide; the "Beta Variant," fka the "South Africa Variant" B.1.351, which is highly transmissible and the "Epsilon Variant," fka the "California Variant" B.1.427 and B.1.429, which are believed to be more contagious than the original virus. The Beta Variant has been found to reduce the effectiveness of all of the major vaccines. A recent clinical trial published in the New England Journal of Medicine showed a double dose of AstraZeneca's Covid-19 vaccine was not effective in combating the Beta Variant. A study done by a team of scientists from Tel Aviv University and the Clalit healthcare organization found increased evidence that the Beta Variant was able to break through the Pfizer-BioNTech vaccine. In addition, the "Delta Variant," fka the "India Variant" B.1.617.2, first detected in India, appears to be extremely transmissible, and the first dose of a two-dose regimen is much less effective than is the first dose against other variants. Both Pfizer and AstraZeneca vaccines are only 33% effective against the Delta Variant after one dose, according to data from a U.K. study. Even countries with relatively high vaccination rates, such as the United Kingdom and United States, have seen surges in the Delta Variant. Further, doctors in Britain, Brazil, and China have reported patients becoming sicker and conditions worsening more quickly with the Delta Variant. People infected with the Delta Variant are more than twice as likely to be hospitalized for COVID-19 than those with the Alpha Variant, according to a recent study published in The Lancet Infectious Diseases Journal. The World Health Organization classifies the Delta Variant as a Variant of Concern and is believed to be the most transmissible variant so far.

While the above variants have been identified and are among the most well known, there are many other notable variants and it is not yet clear whether there already exist even more potent immune and vaccine evading variants or when or whether they will arise. The unprecedented speed of developing powerful vaccines against the variants

represents the power of advanced healthcare technology. However, the vaccines and human ingenuity face an incredibly successful and fit virus that has exhibited more highly divergent behavior than expected from the scientific community. At the beginning of the pandemic many scientists were skeptical of early anecdotes that asymptomatic spread could be a factor in spread of the SARS-CoV-2 virus until evidence mounted that this was in fact occurring. The skepticism of asymptomatic spread of COVID-19 was due to the lack of historical precedent of a virus that had significant spread driven by asymptomatic carriers. COVID-19 is a black swan event and continues to surprise scientists.

A real-world example of the impact of a variant can be seen in Manaus, Brazil, a city with 2.2 million people. Manaus, the Amazon's largest city, was highly impacted with a first wave of COVID-19 and it is estimated that 75 percent of the population was infected with the virus by October 2020. Scientists originally believed that at a 70 percent level of prior infection, a population was close if not beyond the threshold for herd immunity. However, high levels of natural immunity can also create a selection pressure that forces the virus to adapt to the immune landscape. This may explain how the new "Brazil Variant" P.1 arose in Manaus, likely in November 2020, and created a second wave of infections with a record-breaking spike in COVID-19 infections. A second wave continued throughout Brazil, and the country experienced a wave of infection from the new variant that surpassed the death rate of the first devastating wave from the original virus strain.

Despite more than a year of continuous and global COVID-19 spread, the virus is continuing to spread in parts of the world nearly unabated. The continued spread of COVID-19 provides more opportunity for the virus to accumulate mutations that confer properties that enhance its spread, especially to counter natural and vaccine based immunity. India recently reported the largest daily surge in COVID-19 infections since the pandemic began. Additionally, in Asia, cases are surging in India, the Philippines and Bangladesh and in Europe, Turkey, France and Ukraine are seeing sharp increases in infections once again. A global roll-out of vaccines is necessary to protect against severe infection, and, to date, many countries around the world haven't made progress with vaccinations. Even in highly developed countries such as the United States, the virus continues to spread regionally and in some areas like Florida, cases have risen dramatically, despite a relatively high prevalence of vaccinated individuals, estimated at greater than 50% of the U.S. population fully vaccinated. The emergence of new variants will require a global and coordinated public health effort for several years to combat and there is no guarantee that COVID-19 and its many variants will be fully suppressed into the future.

We believe it is unlikely that any vaccine will be 100% effective against COVID-19 and global health organizations and scientists are working to understand the impact of new variants on vaccine effectiveness. Even after full vaccination, research shows that there is still risk of contracting and spreading COVID-19. Furthermore, scientists believe that immunity weakens over time and that the current vaccines do not provide permanent protection from the disease thus there will be a need for booster shots over time.

We believe that achieving herd immunity is becoming increasingly unlikely. In February 2021, the CDC indicated that the U.S. is far from having herd immunity. In addition, viral infections are often seasonal and new research suggests that seasonality could be a factor in the spread of COVID-19.

As organizations across the country start to return to the office and put plans in place to return to the office, not all returning employees will be vaccinated and employers cannot mandate vaccines. There is ongoing debate about the need for vaccine disclosure in the workplace. The likely scenario is that there will be vaccinated and non-vaccinated individuals returning to the office, increasing the risk of the spread of COVID-19. In addition, immunosuppressed patients have shown to raise very minimal responses and may be susceptible to COVID-19 even after vaccination. Employers' Chief Medical Officers and EH&S leaders cannot assume that everyone has a sufficient immune response raised against the virus even if vaccinated and will continue to have to test their employees in order to create safer workplaces.

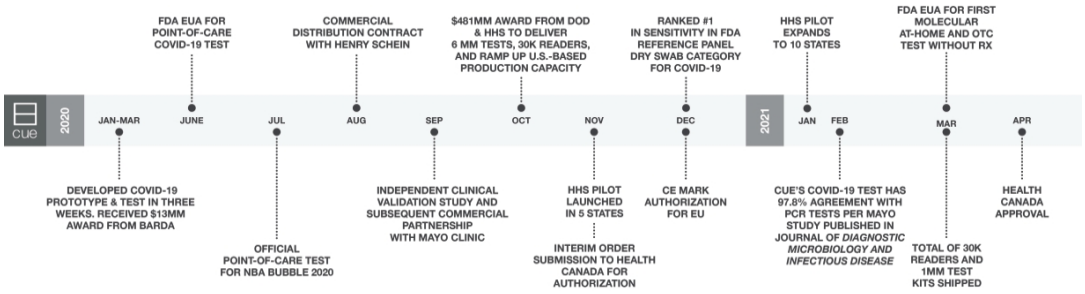
Given these factors and the number of unknowns, as well as the highly infectious nature of COVID-19, we believe that testing, along with vaccines, will be an important part of a multi-modal approach to managing COVID-19. In January 2021, the Biden Administration issued a National Strategy for the COVID-19 Response and Pandemic Preparedness plan and in it noted "To control the COVID-19 pandemic and safely reopen schools and businesses, America must have wide-spread testing." President Biden established a $50 billion plan for increased COVID-19 testing, of which $10 billion is dedicated to testing specifically to help schools re-open. Additionally, we

believe, based on various market models, that the market size for COVID-19 testing could be approximately $24 billion in 2022, $12 billion in each of 2023 and 2024, and $7 billion to $9 billion per annum thereafter. These are illustrations of how COVID-19 is expected to continue to impact the United States and how testing will be a regular part of life.

Development and Commercialization Timeline

Since the first FDA EUA authorization of the Cue COVID-19 Test in June 2020, we have been working around the clock to scale our manufacturing and focus our commercialization efforts to get as many tests as possible in the market in the midst of a pandemic. We made significant developments on regulatory authorizations, commercial activities, and manufacturing capacity.

The development and commercialization timeline for our Cue COVID-19 Test Kit is set forth below:



We continue to monitor the development and variation of SARS-CoV-2 to ensure compatibility of the COVID-19 Test Kit. Based on our own internal testing, our COVID-19 test has demonstrated a greater than 99% match for the "Alpha Variant" B.1.1.7 first detected in October 2020, the "Beta Variant" B.1.351 first detected in December 2020, the "Gamma Variant" P.1 first detected in January 2021, the "Epsilon Variant" B.1.429 first detected in July 2020 and the "Delta Variant" B.1.617.2 first detected in October 2020. As SARS-CoV-2 continues to evolve through mutation, we intend to continue to test our system to ensure our COVID-19 test delivers fast and accurate results for emerging variants.

Clinical Results

In January 2021, Mayo Clinic Laboratories published the results of an independent clinical validation study that evaluated the clinical performance of our COVID-19 test in Diagnostic Microbiology & Infection Disease, a leading peer-reviewed scientific and medical journal in the fields of clinical microbiology and the diagnosis and treatment of infectious diseases. The study was performed using lower nasal swabs and the results were compared to a reference central laboratory NAAT in 292 symptomatic and asymptomatic adults who were referred for COVID-19 testing in a community drive though collection setting operated by the Mayo Clinic. The study protocol was approved by the Mayo Clinical Institutional Review Board. The samples were collected in August 2020. Patient health status was not collected at the time of testing. The study concluded that Cue COVID-19 test was both sensitive and specific compared to central laboratory testing and that the Cue COVID-19 test for SARS-CoV-2 can be considered a feasible solution to implement at sites requiring a point-of-care solution.

The reference panel testing of 206 patients was conducted using the Hologic Aptima SARS-CoV-2 assay on a Hologic Panther instrument and the reference panel testing of 85 patients was conducted using the Mayo Clinic laboratory for testing by a RT-PCR testing on the Roche Light Cycle 480. The primary outcome was positive and negative percent agreement between the Cue COVID-19 test and the laboratory tests. The Mayo Clinic used a tie-breaker method for any sample with positive result by the laboratory test but a negative test result by the Cue COVID-19 test. If the patient had received testing by more than one reference method within 14 days of study enrollment, the tie-breaker system referred the reference result to be the result obtained by two of the three methods (Cue, Hologic Aptima and laboratory-development RT-PCR). The study did not have a method for resolving all discrepant results observed and an incorrect reference method result cannot be ruled out. It was also not possible to perform a formal limit of detection study due to the design of the assay at that time. Invalid or cancelled results were not able to be retested as directed by the instructions in the Cue COVID-19 test because study participants left the facility before point-of-care testing was completed.

The overall concordance between our COVID-19 test and the reference laboratory test was 97.8%. The positive test agreement between our COVID-19 test and the reference test was 91.7% (22/24) and 95.7% (22/23) when one patient with no tie-breaker method was excluded. The negative test agreement was 98.4% (239/243). There were 25 (8.6%) invalid or cancelled results. Since the time of the study, we have lowered the cut-off value for the internal control that detects the presence of human cellular material in the nasal sample such that 12 invalid results obtained during the study would now return a concordant negative result, and with this change there would have been 13 invalid or cancelled results.

The results of the study are presented in the table below:

	Number of samples with a reference result of		
Number of samples with a Cue result of	**Positive**	**Negative**	**Total**
Positive	22	4	26
Negative	2	239	241
Positive percent agreement	91.7%(1)	—	—
Negative percent agreement	—	98.4%	—
Total	24	243	267

(1) One discrepant positive reference sample did not have a tie-breaker method available, so positive percent agreement would be 22/23 (95.7%) excluding that sample.

The discordant results are presented in the table below.

Patient #	**Cue Result**	**Reference (method)**	**Other performed**	**Reference consensus result**
1	Negative	Positive (Hologic)	None	Positive
2	Negative	Positive (Hologic)	Negative (LTD-PCR)	Negative
3	Negative	Positive (LTD-PCR)	Positive (Hologic)	Positive
4	Positive	Negative (Hologic)	None	Negative
5	Positive	Negative (Hologic)	None	Negative
6	Positive	Negative (Hologic)	None	Negative
7	Positive	Negative (Hologic)	Negative (Hologic)	Negative

The Mayo Clinic study concluded that the Cue COVID-19 Test Kit using a lower nasal swab collection method is accurate and is both sensitive and specific compared to central laboratory testing using an NPS collection. Additionally, the study noted the Cue COVID-19 Test Kit is easy to use with minimal training or previous laboratory testing experience.

In March 2021, the FDA issued an EUA for the Cue COVID-19 Test Kit for at-home and over-the-counter use without a prescription or physician supervision, making it the first molecular diagnostic test to receive such authorization. In September 2020, the FDA required us to evaluate the analytical limit of detection and to assess the traceability of our COVID-19 test with FDA reference materials. Between December 2020 and February 2021, we conducted prospective studies at four urgent care locations and at two of our own locations to evaluate the use of the Cue COVID-19 Test Kit for at home and over-the-counter use by lay users in a simulated home use environment. Adult lay users (≥18 years of age) self-collected or collected from their child (<18 years of age) a Cue Wand nasal swab and ran the test. Adult and child subjects were enrolled in an “all comers” style at the urgent care locations. A total of 286 subjects were enrolled: 276 adults self-swabbing and self-testing to run the Cue COVID-19 Test Kit for at home and over-the-counter use and 10 children where their parent collected the nasal sample and ran the Cue COVID-19 Test Kit.

There were 38 subjects who tested positive for COVID-19, 233 subjects who tested negative for COVID-19 and 2 subjects with inconclusive results by the FDA Emergency Use Authorized molecular comparator method. Among the subjects, 10 subjects were asymptomatic positive, 123 subjects were asymptomatic negative, and 1 subject was asymptomatic inconclusive by the comparator. In this clinical study, our COVID-19 test correctly identified 96% (27/28) of positive samples from individuals known to have symptoms and correctly identified 100% (10/10) of

positive samples from individuals without symptoms. Our COVID-19 test correctly identified 99.1% (231/233) of negative samples. Additionally, in September 2020, we submitted a post-market clinical data report to the FDA as required under our EUA, which included results from the Mayo Clinic's evaluation of Cue versus an institutional reference panel.

Regulatory Status of the Cue COVID-19 Test Kit

In June 2020, the FDA granted us an EUA for our COVID-19 test for point of care use under the supervision of qualified medical personnel. In March 2021, the FDA granted us an additional EUA for over-the-counter and at-home use of our COVID-19 test without a prescription. Our COVID-19 test is authorized for use by both symptomatic and asymptomatic individuals, and by adults and children aged two and older with adult assistance. While commercial sales of our COVID-19 Test Kit are authorized pursuant to our EUA authorizations, to date we have not obtained a 510(k) clearance for our COVID-19 Test Kit, which clearance would be required in the event that the FDA terminates or revokes our EUAs. In order to be eligible to receive 510(k) clearance from the FDA, we will need to conduct additional clinical studies with larger subject enrollment and more COVID-19 positive tests.

Among other things, prior to seeking 510(k) clearance, we will need to execute a 12-day lot-to-lot precision study using three lots of Cue COVID-19 Test Cartridges. We have already drafted and are preparing to submit to the FDA a pre-submission packet of questions to seek agreement from the FDA that we do not need to repeat any of the analytical performance studies already submitted to the FDA for our EUAs. We will also need to conduct another clinical study with lay users who will self-swab and self-test. The FDA requires a larger subject enrollment and more COVID-19 positive samples for 510(k) clearance than was required for an EUA. FDA guidance has indicated that 120 samples positive for COVID-19 with at least 30 positive samples from asymptomatic individuals would potentially be sufficient for a clinical study. As part of our pre-submission packet, we intend to request that the FDA apply the samples positive for COVID-19 from the EUA lay user study we already conducted towards this “requirement” (i.e., 28 symptomatic positive samples and 10 asymptomatic positive samples). Once the study is complete, we will plan to draft the submission for 510(k) clearance for home use available over-the-counter without a prescription. With 510(k) clearance for over-the-counter and at-home use, the FDA grants automatic clearance for point-of-care, CLIA-Waived environment use.

We have an agreement with BARDA which covers the development, EUA and 510(k) clearance of our COVID- 19 Test Kit. There is approximately $5.5 million of funding remaining on this agreement to fund all of the required analytical and clinical studies necessary to complete the procedures to receive 510(k) clearance. We have also contracted with a CRO to conduct the external clinical study with lay users and the external site reproducibility study. We believe the funds from our agreement with BARDA will be sufficient to cover the required expenses, including the approximately $2.5 million CRO contract, to complete the clinical studies necessary to seek 510(k) clearance. We expect the external clinical studies to begin in the fourth quarter of 2021, with expected completion in early 2022. Assuming successful completion of these clinical studies, we intend to seek 510(k) clearance from the FDA for our COVID-19 Test Kit in the second half of 2022.

Our Go-To-Market Strategy

Our go-to-market strategy is powered by an in-house direct sales team focused on target customer segments including the public sector, healthcare providers, large enterprises, and individual consumers. Our go-to-market strategy is further complimented by our marketing team’s strategy on raising our overall brand awareness and value proposition.

Marketing

Our marketing strategy is focused on building strong brand awareness for the Cue Integrated Care Platform as a next-generation healthcare solution, with relevant, measurable value for all of our customer segments. Our marketing drives across our owned media channels (website and social networks), press releases, scientific publications, industry engagement with key stakeholders, partnerships with key opinion and market leaders, and targeted marketing through digital and non-digital channels. We anticipate investing further, using account-based marketing strategies to accelerate brand awareness and increase demand, and thus sales opportunities, across our targeted markets.

Sales

Our direct sales team engages with prospective clients and seeks to identify the best sales channel based on each client’s needs. Our go-to-market strategy is focused on allowing us access to the end user, through our Cue Integrated

Care Platform, even if the individual was acquired via our direct sales organization or through an outside sales channel. For example, if an individual obtained a Cue Health Monitoring System through their self-insured employer's COVID-19 return-to-work efforts or as a result of government-supported distribution, we can nonetheless directly engage with the end user through the Cue Health App and potentially convert them to using our planned future tests and other products we may develop. As a result, we expect that we will be able to fulfill market demand through our internal and external sales channels, while maintaining an important direct relationship for our product enhancements and care offerings.

Additionally, our relationship with U.S. DoD formed an important foundation of our initial go-to-market strategy. Our relationship with U.S. DoD helped establish our domestic manufacturing infrastructure as a critical component of ongoing national healthcare infrastructure. Our relationship with the U.S. DoD also helped commercialize the Cue Health Monitoring System as part of a critical, decentralized national diagnostic infrastructure for ongoing pandemic management. In addition, the development of Cue Readers alongside our COVID-19 Test Kits, has significantly accelerated our installed base, growth, which we believe will enable continued distribution of our COVID-19 Test Kit as well as pull-through of our planned future Cue Test Kits to key federal, state and local government agencies. Through our U.S. DoD agreement, the Cue Health Monitoring System and COVID-19 Test Kits have been deployed to over 250 school districts, nursing homes, hospitals, public health facilities and organizations, essential businesses, correctional facilities and other public sector users, as of August 15, 2021.

We expect that customer demand for our COVID-19 Test Kits will exceed our manufacturing capacity in 2021. As a result, and in light of our existing commitments under the U.S. DoD agreement and to existing customers, we are strategically selecting new customers based on the following considerations: order volume, industry diversification and potential interest in our expected future test menu.

Our direct sales team is comprised of experienced sales professionals focused on the following four categories:

- **Public Sector Sales**: Our public sector sales team identifies new opportunities within federal, state and local government agencies. While we expect that revenue from other categories of customers will become a larger component of revenue over time, our public sector sales strategy continues to look to identify opportunities with new and existing federal, state and local government agency customers.
- **Enterprise Sales**: Our enterprise sales team identifies major self-insured enterprises such as Fortune 500 companies with large-covered employee populations as well as small to medium sized businesses with healthcare plans partners and employee benefits offerings. We believe that enterprise customers will want to utilize our integrated care solutions for their employees and their families, both on-premise and at-home.
- **Healthcare Provider Sales**: Our healthcare provider sales strategy targets major healthcare systems and healthcare professionals such as hospital systems, private clinics and concierge health systems, and physicians' offices. Relationships with our customers, like our current relationship with the Mayo Clinic, help validate our platform, and we believe will help accelerate marketplace adoption of our products.
- **Direct-to-Consumer Sales**: Our direct-to-consumer sales team identifies opportunities through online and offline retail channels such as e-commerce and in-store sales.

Our customer agreements contain standard commercial terms and conditions and include payment terms, quantities, billing frequency, warranties and indemnification. Beginning in 2021, we started offering non-U.S. government customers a subscription-based purchasing option. Subscription-based customers can initially purchase a fixed number of Cue Readers at the start of the contract and commit to a fixed number of our COVID-19 Test Kits per month for the duration of the subscription agreement. We believe our subscription-based model offers customers maximum utility and allows them to reduce their purchase costs, while simultaneously creating a recurring revenue stream for us.

We believe focused efforts on each of our customer categories is critical given the unique role each plays in the healthcare ecosystem, the total size of their respective addressable markets and the potential benefits that each receive from our platform. Although our initial focus is driving adoption of our Cue Health Monitoring System and our Cue COVID-19 Test Kits, we are educating all of our current and prospective customers about the broad applicability of our Cue Integrated Care Platform and the potential roll-out of our broader test kit menu. We believe every sale of a Cue Health Monitoring System for COVID-19 testing creates a durable lasting install base for our future offerings and test kits.

Our direct go-to-market strategy is tailored to our key customer categories:

Public Sector

We have worked closely with BARDA for approximately three years, developing the Cue Health Monitoring System as a field-deployable, rapid molecular connected diagnostic technology. As a result, our first major customer agreement was in October 2020 with the U.S. HHS and the U.S. DoD. In connection with the agreement, as of August 31, 2021, we have shipped all of the Cue Readers required to be delivered by us under the U.S. DoD Agreement and over three and a half million Cue Cartridges which have been deployed to over 280 school districts, nursing homes, hospitals, public health facilities and organizations, essential businesses, correctional facilities and other public sector users. Specifically, Cue Readers and Cue Cartridges are deployed to Alaska, California, Colorado, Florida, Minnesota and Texas Departments of Public Health, among others. These represent some of the largest public health systems in the United States and play a key role in the ongoing fight against COVID-19 as well as the supervision of the overall health and wellness of large state populations. State level Department of Public Health systems guide health protocols for their respective public community clinics and public K-12 schools and as a result the Cue Health Monitoring System is in use at hundreds of K-12 schools, as well as some state sponsored community clinics. The Cue Health Monitoring System brings a valuable tool to these state level Departments of Public Health systems and other state-level end-users so they are better equipped to manage future public health needs, including those that we anticipate will be covered by our expected future test menu.

Our government sales team is currently pursuing additional agreements with the U.S. federal government as well as direct contracts with over 300 government-supplied end-users who have received the Cue Health Monitoring System as a result of our U.S. HHS and U.S. DoD deployments. We believe these end-users will have lower customer acquisition costs, with strong potential of conversion into one of our other customer categories given their experience with the platform. For example, hospitals that have received our platform are integrating the Cue Health Monitoring System into their EMRs, such as Epic, in order to seamlessly onboard, test, and deliver results to their patients. We believe these integrations, catalyzed by our COVID-19 test, will create lasting connectivity between us and our end-users and create an important foundation on which our expanded test menu can follow.

Additionally, through our agreement with the U.S. HHS and the U.S. DoD, we have deployed Cue Health Monitoring Systems to various U.S. DoD end-users. We believe our portable, accurate, intuitive and fast platform offers an especially high degree of utility for U.S. DoD applications as well as provides a new capability to bring our connected diagnostic solution to the U.S. DoD. We believe we can pursue additional direct contracts with the U.S. DoD to further support their ongoing deployments and use of the Cue Health Monitoring System.

Enterprise

Our enterprise sales team develops direct relationships with enterprises of all sizes, from small businesses to large Fortune 500 companies, across a wide variety of industries. For employers, including self-insured enterprises, we believe we provide a new ability to provide near real-time information to benefit managers and population health employees that drives decision-making, better health outcomes and ultimately cost savings at the enterprise level. We are initially supporting enterprises in their efforts to shift their large remote workforces back to in-person activities safely, by providing large-scale and real-time decentralized COVID-19 testing. Our Cue Integrated Care Platform provides a unique solution for enterprises looking to provide their employees with the ability to test themselves regularly from the comfort and convenience of their homes. Now more than ever, our enterprise customers want their employees and family units to be healthy and safe. They are seeking approved solutions that people can choose to participate in, at scale and that we believe will help save the enterprise costs over time. We form relationships with enterprises with our expected future test menu in mind and aim to partner with enterprises that will benefit from our anticipated broader test menu over time.

Healthcare Providers

We are targeting large, regional health systems with associated clinic networks as we seek to accelerate our presence in the provider segment of the market. We believe our diagnostic solution provides a unique value proposition to providers in both the acute and non-acute levels of care that has historically lacked connected platform testing and capabilities. Our healthcare sales team has already developed relationships with key healthcare providers, such as the Mayo Clinic and other leading health systems. In each of these provider systems, we have successfully integrated, or are in the process of integrating, directly into their EMR systems, such as Epic. We believe our Cue

Integrated Care Platform provides seamless use of our test kits, as patient ordering and results can happen within the healthcare provider's existing EMR workflow. Our healthcare sales team offers our integration capability when selling to this customer group.

Direct-to-Consumer

In March 2021, we received an EUA from the FDA for our COVID-19 Test Kit, allowing us to be the first molecular diagnostic test authorized for at-home and over-the-counter use. We are developing our expected future care offerings to be available in an over-the-counter setting as well, and direct-to-consumer marketing is one of our key initiatives to increase awareness of our Cue Integrated Care Platform. We are initially targeting direct-to-consumer sales through our owned sales platform, on our website and through our Cue Health App. Additionally, we are exploring direct-to-consumer sales through channel partnerships and retail distributors to further provide our platform to individuals. We anticipate selling our Cue Readers and Cue COVID-19 Test Kits individually and we may also sell through a membership model that allows consumers to have access to discounted pricing and other services, such as telemedicine, in return for annual commitments. The direct-to-customer segment may be more price sensitive than other segments, resulting in a potential negative impact to our product gross margins. We expect to launch our direct-to-consumer sales in the fourth quarter of 2021.

Strategic Collaborations and Certain Other Agreements

U.S. Government

- *BARDA* - We have partnered with BARDA since June 2018, initially focusing on a molecular influenza test using the Cue Health Monitoring System pursuant to a contract that was originally effective through January 2021 and that provided $14.0 million in base funding. In March 2020, BARDA exercised an option to accelerate development, validation and FDA clearance of our COVID-19 test for a $13.7 million award. This funding enabled us to accelerate the development and validation of our COVID-19 test. In May 2020, our original contract with BARDA was amended to increase the base value from $14.0 million to $21.8 million and to extend the contract term to January 2022. Pursuant to our agreement with BARDA, we agreed to provide regular reports to BARDA regarding our progress and certain customary oversight provisions. BARDA can terminate this agreement for convenience or if we fail to meet our obligations, subject to our opportunity to cure such defaults.
- *Department of Defense/Department of Health and Human Services*
  - In October 2020, we entered into an agreement, as amended in March 2021, for an aggregate of $480.9 million, with the U.S. DoD to expand our U.S.-based production capacity, to deploy 6,000,000 Cue COVID-19 Test Kits, 30,000 Cue Readers and 60,000 Cue Control Swab Packs (which is comprised of three positive and three negative control swabs per pack) pursuant to the delivery schedule under the agreement and demonstrate our ability to manufacture an average of approximately 100,000 Cue COVID-19 Cartridges per day over a consecutive seven-day period by October 12, 2021. Included as part of the $480.9 million contract amount was an upfront payment of $184.6 million to scale our manufacturing. This payment was intended to help us onshore our supply chain and rapidly increase our production capacity to enable and support domestic production of critical medical resources. As of August 31, 2021, we have shipped all of the required Cue Readers and over three and a half million COVID-19 Test Kits under the agreement.
  - In November 2020, as part of our agreement with the U.S. DoD, we started deployment of a pilot program in coordination with the U.S. HHS to assess how to best integrate our diagnostic technology into public health strategies for disease surveillance and infection control in institutions such as nursing homes. Through this program, our COVID-19 test is currently being used in the U.S. in point-of-care settings with high-concern populations and congregate care settings, such as nursing homes, long-term care, assisted living facilities, veterans' homes, K-12 schools, correctional facilities, homeless populations, essential businesses, remote and tribal communities, and hospitals. In the pilot program, U.S. HHS is using our COVID-19 test to verify antigen test results, which are less sensitive than molecular and PCR tests and occasionally prone to false positives. This pilot program was expanded to ten states in January 2021. As part of this pilot program, we have the ability to directly work with the state or local authorities that decide how to distribute our COVID-19 tests in their jurisdictions, including the ability to offer support and to sell our COVID-19 test directly to such state and local authorities.

- During the term of our agreement with the U.S. DoD, we agreed that the U.S. government would be the exclusive purchaser of our entire production until our development obligations under this agreement have been completed, except for previously existing contracts and subject to agreed upon waivers. In April 2021, we received the U.S. DoD Waiver, effective May 1, 2021, which now allows us to distribute commercially up to 50% of our COVID-19 Test production, measured monthly in arrears on a calendar month basis, to non-U.S. federal government customers and other recipients. We expect that the U.S. DoD Waiver will remain in effect for the duration of the U.S. DoD agreement; however, the U.S. government may modify the waiver upon timely written notice to reasonably accommodate changes in U.S. government requirements. We also agreed to provide regular reports as to the status of our production and distribution. We have the right to terminate this agreement without penalty if we cease to undertake development as a result of emerging safety or efficacy data, and the U.S. government can terminate the agreement if we materially fail to comply with our obligations under the agreement. If the agreement is terminated by the U.S. DoD for cause, the U.S. government may be entitled to certain remedies, including grants of licenses and penalty payments. The U.S. government may also terminate the agreement for convenience upon 30 days' notice, subject to the U.S. government retaining the right to place priority orders for up to a year following termination for other diagnostic tests manufactured using the manufacturing equipment purchased with U.S. government funds under the agreement.
- Under the agreement, following completion of our agreement, we have agreed to negotiate in good faith with the U.S. DoD for a new production agreement under which the U.S. DoD would have the right to purchase up to 45% of our quarterly production at a discount to the lowest price offered by us to a commercial customer for the same products, equivalent quantities and comparable terms of sale, subject to a price floor.

Google

In April 2021, the Company and Google LLC entered into an agreement to provide Cue Health Readers and Cue COVID-19 Test Kits to Google's U.S.-based employees through year end.

In August 2021, the Company and Google Cloud entered into a partnership to accelerate the development of a secure real-time COVID-19 variant tracking and sequencing solution. The partnership is intended to create an advanced respiratory biothreat detection system spanning from the Company's at-home diagnostic testing to full real-time viral sequencing as well as analytical and predictive capability using Google Cloud powered solutions.

Mayo Clinic

In November 2020, we established a commercial relationship with the Mayo Clinic to supply our COVID-19 Test Kits for use at the Mayo Clinic following an independent clinical validation of our COVID-19 test by the Mayo Clinic. We entered into a purchase agreement with the Mayo Clinic under which they may purchase the Cue Health Monitoring System and COVID-19 Test Kits on a purchase order basis. The purchase agreement has an initial one-year term and provides for automatic one-year renewals thereafter, unless the agreement is earlier terminated in accordance with its terms.

In April 2021, we entered into a collaboration agreement with the Mayo Clinic in which the Mayo Clinic agreed to identify us, to employers, hospitals and other U.S. clients, as a preferred partner for providing clinical diagnostic testing using our Cue Health Monitoring System, and we agreed to identify the Mayo Clinic as a preferred partner for lab and advisory services, and we jointly agreed to work together to develop go-to-market strategies for clinical diagnostic testing services. The collaboration agreement has a three-year term, unless it is earlier terminated in accordance with its terms.

NBA

In July 2020, we entered into a services agreement with the NBA to provide the Cue Health Monitoring System and our Cue COVID-19 Test Kits to the NBA to support testing within the "Bubble" established by the NBA at Disney World Resort in Orlando, Florida in order to complete the 2019–2020 NBA season, as well as community-facing testing that the NBA was engaging in as part of its operations in Orlando. We worked with the NBA to design the testing workflow, such that our test could be administered with speed, scale, and efficiency,

adhering to the NBA's health and safety protocols. Our Cue COVID-19 test was used in an assessment at high exposure points to test vendors who needed frequent access, further securing this Bubble, as part of the NBA's overall strategy, and contributing to safe, uninterrupted operations.

Under the services agreement, we agreed to supply the NBA with, among other things, tests each week through November 1, 2020, subject to preferences for essential healthcare workers, governmental entities, and certain non-profits. In November 2020, we amended our services agreement with the NBA to include a fan testing program pursuant to which we agreed to make available our COVID-19 tests to all NBA member teams in order to test certain individuals who wish to attend NBA games. Under the agreement, we were a preferred provider of COVID-19 testing for NBA members through the 2020-2021 NBA season, with our testing solution being used by players, their families and referees, at home and on the road.

Henry Schein

In August 2020, we entered into an exclusive distribution and supply agreement with Henry Schein, pursuant to which Henry Schein acts as our exclusive distributor in the dental market and non-exclusive distributor in other markets. Henry Schein is one of the leading distributors of products to the global dental market, with reported sales of approximately $10.1 billion in 2020. The Henry Schein agreement provides for an initial term of three years, unless earlier terminated in accordance with its terms, and provides for automatic one-year renewals thereafter, subject to either party's notice of intent not to renew.

Research and Development

Our research and development strategy focuses on developing gold-standard diagnostic science that seamlessly integrates with a connected, end-to-end digital platform. Our platform was developed over a ten-year period in our San Diego, California facilities. All of our core technology, including the chemistry, the Cue Reader and Cue Cartridge design, the Cue Health App and Cue Enterprise Dashboard is proprietary and developed in-house by us.

Our research and development team, which includes our clinical and reagent production team members, is responsible for the design, functionality and quality of our products and services. Our team is interdisciplinary in nature, including scientists, statisticians, chemists, engineers and regulatory experts. Our research and development team currently consists of 174 team members located across our facilities.

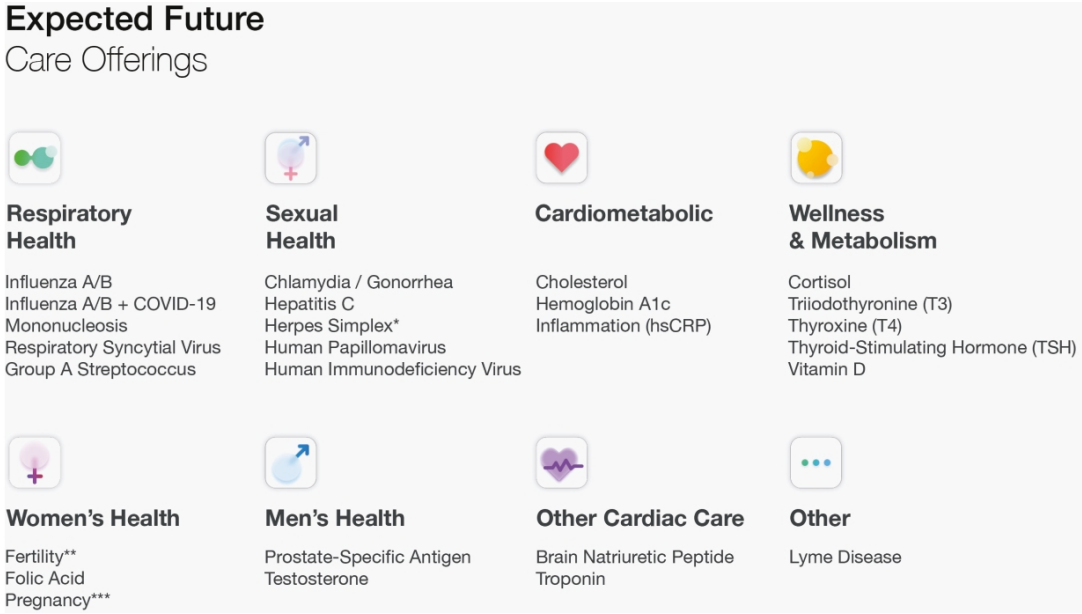
Expected Future Care Offerings

Our expected future care offerings include tests and other products across multiple categories, including respiratory health, sexual health, cardiac and metabolic health, women's health, men's health, and chronic disease management. We are currently developing both the actual diagnostic test and the accompanying software solutions in the Cue Virtual Care Delivery Apps to support our planned holistic care offerings as part of our Cue Integrated Care Platform. We expect to begin submitting additional tests for FDA authorization or clearance in the second half of 2022. Further, we intend to pursue future authorizations, clearances and approvals globally, including in the European Union, Australia, Brazil, Canada, India, Japan, within the Middle East, Singapore and the United Kingdom, and other countries. In public communications, FDA officials have indicated that they would be more amenable to approving tests for many diseases for home use as a result of lessons learned from the COVID-19 pandemic, especially testing solutions with telehealth capabilities.

We believe our expected future test menu expansion benefits from:

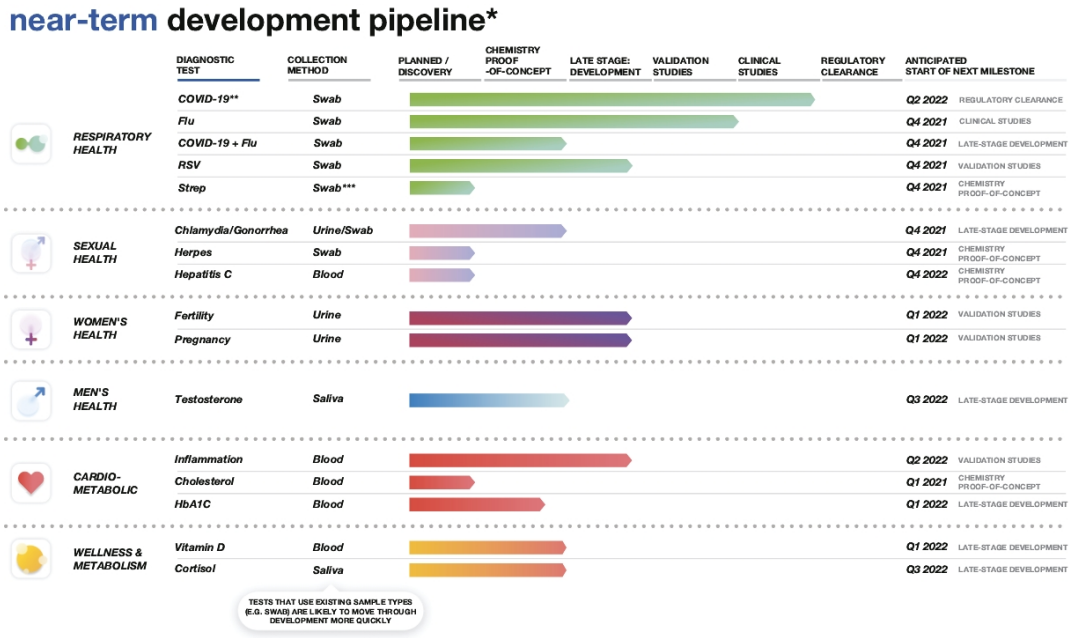
- our technical development capabilities that have led to an authorized COVID-19 test and multiple tests in late-stage technical development;
- our understanding of the regulatory pathways, including FDA authorization or clearance, for the various diagnostic tests; and
- our test-agnostic production capacity that we believe will provide us the flexibility to meet our customers' needs.

We believe our expected future care offerings will align all key healthcare stakeholders – consumers, providers, enterprises, and payors – around better health outcomes.



* HSV-1 & HSV-2
** Luteinizing Hormone (LH)
*** Human chorionic gonadotropin (hCG)

The graphic below sets forth the status of our planned future care offerings that are furthest along in development:



* This graphic does not reflect our full development pipeline but rather those of our tests that are furthest along in development.

** Our COVID-19 test has been authorized by the FDA under two EUAs. This graphic reflects progress towards 510(k) clearance. Our COVID-19 test has also received regulatory approval from the Central Drugs Standard Control Organisation, India's national regulatory body for pharmaceuticals and medical devices, for professional point-of-care use in India. Internationally, we have also received the CE mark in the European Union, as well as Interim Order authorization from Health Canada.

*** Throat swab sample may be required.

There are four phases to our product development process:

(1) Concept: The concept of the Cue Health Monitoring System, test cartridges and associated sample wands was established with the Cue Health Monitoring System and our COVID-19 Test Kit. Our planned future tests currently in development are built on the same system and concept.

(2) Development: In this phase we design and select primer pairs (in the case of a molecular test) or antibodies (in the case of an immunoassay) as part of our initial discovery process. We also develop and optimize run, wash and detection buffers as well as biosensor components. Once we have proof-of-concept for the test chemistry, we assemble cartridges with the relevant sample-input wand components and test in an iterative cycle until the system meets its design goals. At this point, when the working prototype is developed in its final form factor and is capable of running its intended sample type using the relevant sample-input wand, we consider the test to be in late-stage technical development. Once we have a final prototype we are ready to move to the qualification phase.

(3) Qualification: In this phase we initiate validation studies to execute design verification, software and firmware verification and validation, human factors studies (if needed) and analytical performance validation. The final step of the qualification phase is one or more clinical studies to determine the product's performance in the hands of end users with clinical samples.

(4) Regulatory Review: At the beginning of this phase we will collect all the data from the validation and clinical studies to draft the relevant regulatory submissions, i.e., FDA 510(k) submission or a technical file for CE-mark. During this phase, our Clinical and Regulatory teams will work closely with regulators to complete their review and obtain clearance or authorization. Once we have received authorization or clearance, this phase is complete and the product is ready to be launched and marketed.

Throughout all phases we draft and maintain the relevant design control documentation, including user needs, design inputs, verification and validation plans and protocols, design trace matrices and design outputs.

The design of our platform is such that the majority of the components, including the printed circuit board, plastics and assembly are identical among tests. Only the chemistry pellet is different between two tests that use the sample type and sample wand. For example, influenza A/B, or flu, COVID-19 and respiratory syncytial virus, or RSV, are identical tests but for the chemistry pellet. This means that the majority of the technical development for the tests in our pipeline have been completed and verified.

We currently have five tests in late-stage technical development: flu, RSV pregnancy, fertility, and inflammation. We consider a test to be in late-stage technical development when we have developed a working prototype Cue Cartridge in its final form factor, capable of running its intended sample type using its relevant Cue Wand. When a test is in late-stage technical development, we believe that all or the majority of the technical risk has been eliminated and the test performance is expected to meet regulatory and marketplace requirements. At this stage, the relevant test is ready or nearly ready for verification and validation studies. In addition to completing late-stage technical development, all of our planned tests will be required to complete validation and clinical studies. With the exception of our fertility test for over-the-counter at-home use, we generally expect that our expected future tests will then need to receive regulatory authorization, clearance or approval before they can be commercialized. Although we expect the costs associated with getting any one of our tests authorized, cleared or approved by the FDA to vary, we estimate that the clinical study costs per study for those tests requiring 510(k) clearance (which is substantially all of our expected future tests in our near-term development pipeline) range from $2.0 million to $5.0 million, with costs associated with infectious disease tests, such as flu and RSV, likely to be higher than those for other tests. In general, our tests in our near-term development pipeline will require one clinical study for clearance, though we may choose to run two clinical studies for such tests that we believe have a substantial difference in risk between obtaining clearance for over-the-counter at-home use and for use at CLIA-waived facilities. These are general estimates as it is difficult to predict with certainty how much a given test will cost to be authorized, cleared or approved by the FDA as estimated costs are subject to a number of factors, some of which are outside of our control, and are likely to vary from test to test.

The following discussion highlights indications and tests that we are focusing on for current and future development.

Respiratory

We believe respiratory diseases and illnesses exemplify the potential benefits and alignment between various stakeholders for our Cue Integrated Care Platform with its closed-loop healthcare solutions. Cold and flu-like symptoms are the number one reason for visiting an urgent care facility and result in over 100 million out-patient visits per year in the U.S. alone. In the US, the seasonal flu accounts for billions in direct medical costs per year due to urgent care visits, hospitalizations, and other treatments as well as indirect costs such as loss of productivity. These indirect costs also include the working days lost per year by those individuals who must miss work to care for themselves or a loved one.

Respiratory diseases are contagious and easily spread to others at work, the doctor’s office, schools, within the family, and other settings. Current testing solutions for the flu, strep, and other respiratory diseases require an individual to travel to a healthcare provider or lab for testing, limiting the number of people who get tested which contributes to further spread of disease. We believe access to our lab-quality testing at home combined with the context of our Cue Integrated Care Platform will result in direct and indirect savings for consumers, the healthcare system, and enterprises alike by improving health outcomes. As we continue to build out our platform, we anticipate that a user will be able to start a test, receive their test result, use telemedicine to consult with a physician about their result, order medication, and have it delivered, all from the Cue Health App. All of this could be accomplished without the user leaving their home. Employers benefit when their employees take fewer sick days and avoid spreading illness in the workplace. The healthcare providers benefit from less demand on their limited resources. Consumers benefit by catching a disease early, allowing them the opportunity to seek treatment earlier in order to feel better faster and reduce spread within their family.

Our pipeline of respiratory tests includes flu, flu + COVID-19 Multiplex, Group A Streptococcus, or strep throat, and Respiratory Syncytial Virus, or RSV, all of which are already in technical development. For those indications that already have treatments commercially available, we envision our platform providing a closed-loop, end-to-end care journey from diagnostic test to physician consultation via telemedicine and through to intervention and follow-up.

Influenza A/B

Influenza, or the flu, is an infectious respiratory disease caused by an influenza virus. The CDC estimates that influenza has been responsible for between 12,000 and 61,000 deaths in the United States annually since 2010. In the United States, seasonal influenza is estimated to result in billions of dollars of direct and indirect economic costs. According to industry estimates, a future influenza pandemic could cause hundreds of billions of dollars in direct and indirect costs. Given that the COVID-19 pandemic has caused an estimated economic cost of $16.0 trillion dollars, we expect these estimates may be low.

The Cue influenza test is in late-stage technical development. In early 2020, we had fully functioning influenza tests and associated software that had progressed through analytical validation and had begun clinical validation. We started our external influenza clinical study in January 2020. The study utilized a number of sites throughout the country. Many of these sites were research facilities that focused on clinical studies and do not provide clinical care. When the COVID-19 pandemic began spreading in the U.S. in early February and March 2020, many of these facilities began preventing potential enrollees from entering the sites if they exhibited any respiratory disease systems. This significantly impacted the enrollment of participants into our influenza test studies. We subsequently chose to pause, and ultimately stop, the study due to very low enrollment.

The year-long delay has given us an opportunity to further optimize the performance of our influenza test. We expect to resume the study in late 2021, with the goal of completing the study in the spring of 2022, followed by submission for over-the-counter 510(k) clearance. Assuming successful completion of the study, we expect we would expect to seek FDA clearance by the end of 2022, and assuming receipt of the 510(k) clearance, to be able to commercialize this test shortly thereafter. Since the sample type for the Cue influenza test will be a lower nasal swab collected using the same Cue Wand as the Cue COVID-19 Test, the sample collector wand and interface is complete and no further optimization is needed or expected.

Influenza A/B + COVID-19 Multiplex

Recent research states that SARS-CoV-2 is likely to become a reoccurring seasonal virus, similar to the flu. With the seasonal flu and COVID-19 having similar symptoms including fever, cough and fatigue, a multiplex test that can test for both viruses at the same time will be beneficial in order to differentially diagnose and appropriately treat these patients.

Technical development for the Cue Influenza A/B + COVID-19 Multiplex test is in the chemistry proof-of-concept stage of the development phase. We have substantially completed the development of the enzyme chemistry and continue to optimize the performance of the chemistry. Additional detection chemistry is also under development. We are in the process of updating the printed circuit board design of the cartridge to accommodate additional detection chemistry. The Cue Influenza A/B + COVID-19 Multiplex test will use the same Cue Wand configuration for lower nasal swab collection that our Cue COVID-19 Test uses. Given the ongoing and urgent need for COVID-19 testing, we intend to complete technical development, conduct appropriate clinical studies as needed and apply for an EUA between the end of 2021 and early 2022 for our Cue Influenza A/B + COVID-19 Multiplex test. If we are successful in obtaining an EUA, we would expect to commercialize this test shortly thereafter.

Group A Streptococcus

The incidence of Group A Streptococcus, commonly known as strep throat, is consistently high with 616 million people contracting strep, and half a million people dying due to severe strep throat, each year. Studies show that accurate and rapid diagnosis of strep throat may reduce the overuse of antibiotics. Literature shows that 37% of children visiting the doctor in 2010-2011 with sore throat tested positive for strep throat, but 56% of visits were associated with antibiotic prescriptions. Similarly, 18% of adults visiting the doctor with a sore throat tested positive for strep throat, but 72% were treated with antibiotics. Our Cue Group A Strep test, which has the potential to provide fast and accurate results at home, may improve clinical outcomes by facilitating quick diagnosis and treatment with antibiotic therapy if indicated by a physician within the integrated care offering; or, conversely, if not indicated, antibiotic resistance will be reduced by avoiding unnecessary prescriptions both for the individual and in aggregate across the human population.

Our strep test is in the planning/development, stage of development. Additionally, we are in the process of developing run buffer for bacterial lysis. Our preliminary research shows the sample type for the Cue Group A Strep test can be a buccal/tongue swab sample, but it is possible that for maximal sensitivity of detection, the test may require a throat swab.

Respiratory Syncytial Virus

RSV is one of the most common causes of childhood illness. Each year in the United States, RSV leads to approximately 2.1 million outpatient visits among children younger than 5 years old, 58,000 hospitalizations among children younger than 5 years old, and can result in death. Similar to the flu, a readily available at-home RSV test could help greatly reduce the severity and spread of RSV annually by allowing individuals to test themselves at home easily and safely when experiencing symptoms, avoiding exposure to others at work, school and in other settings.

Our RSV test is in phase 2, late-stage technical development. While we have fully functioning prototypes of the cartridges and associated testing software for RSV, we continue to optimize the RSV test with more rounds of primer design. We also continue to develop the associated software. We anticipate that collection of the sample will be with a lower nasal swab, the same method used for our COVID-19 Test. We expect to start and complete analytical performance validation in the fall of 2021 and to begin clinical studies in late 2021. We anticipate the study will be completed in the spring of 2022, followed by submission for over-the-counter 510(k) clearance. We expect to seek FDA clearance by the end of 2022 and, assuming receipt of 510(k) clearance, to be able to commercialize this test shortly thereafter.

Sexual Health

Sexual Health, as a category, provides another example of how our integrated care solution can create alignment between all key healthcare stakeholders. It is estimated that 1 in 5 people in the U.S. have a Sexually Transmitted Infection or STI. CDC speculates that the rise of dating apps and behavior changes among sexually active individuals (Dating 2.0) has led to various STDs being on the rise for the first time since 2006. STIs can have serious health consequences including infertility, liver problems, and other issues. The majority of STIs are treatable with simple interventions.

Yet, many consumers are hesitant to visit a healthcare provider office to consult or get tested for STIs, which can result in continued spread of the disease and sometimes serious health conditions for the individual due to untreated infections. We believe an accessible test that can be taken from the privacy of the home would result in more frequent and timely testing, allowing for the individual to avoid downstream negative health consequences. Additionally, in aggregate, the effect of testing could potentially drive reduced spread of these infections.

Enterprises can benefit from an integrated care solution for STIs for their employee population. While this data would not typically be shared with an enterprise, they still benefit from employees who catch an infection sooner and treat it more quickly. The more efficient diagnosis and treatment by testing earlier in an integrated care context reduces the risk of employees becoming seriously ill, resulting in fewer sick days and less associated direct medical care costs.

In addition to benefiting from lower direct medical costs associated with downstream consequences of undiagnosed and unmanaged STIs in their covered populations, payors benefit from the screening because STIs are part of the Healthcare Effectiveness Data and Information Set, or HEDIS, measure. HEDIS scores are determined by up to 81 health measures and are a tool to judge care and service performance of health plans. Ultimately, the HEDIS score is used by the CMS to determine Medicare Advantage Quality Bonus Payments – a direct impact on the health plan’s bottom line. One such HEDIS measure is based on the percentage of women in the health plan 16-24 years old who are sexually active and have at least one test for chlamydia during the year. The higher the percentage, the better the HEDIS score for that health plan, resulting in higher revenue for the health plan. Therefore, the payor benefits from an accessible at-home test that encourages testing by the consumer.

Our pipeline of sexual health tests includes Chlamydia and Gonorrhea, or CT/NG, HIV, Herpes and Hepatitis C, with the following tests representing some of our near-term priorities:

Chlamydia and Gonorrhea

Chlamydia and gonorrhea, or CT/NG, are two of the most common, yet easily treatable, STIs in the United States. When left untreated, these diseases can lead to a variety of serious issues, including infertility, pelvic inflammatory disease, pregnancy complications, and increased risk of HIV acquisition. According to the CDC, in 2018, new infections of chlamydia and gonorrhea accounted for $962 million in direct medical costs alone, which does not include indirect costs (such as lost productivity and other non-medical costs). The American Congress of Obstetricians and Gynecologists recommends annual CT/NG screening of all sexually active women ages 25 and younger and of all women over the age of 25 with certain risk factors. We believe the availability of a reliable testing

option that can be performed in the privacy of the home and that provides fast results will increase testing for these STIs and which will drive immediate and increased intervention.

Our CT/NG test is in the phase 3, chemistry proof of concept, stage of development with initial bioinformatic analysis and primer design underway. Development of run buffer for bacterial lysis is underway and primer test in cartridges has started. Additional detection chemistry is also under development. The sample for this test can be either urine, collected by the Cue fluid collection wand, or a vaginal swab, taken with the Cue Wand.

Hepatitis C

Hepatitis C is a viral infection that causes liver inflammation, sometimes leading to serious liver damage. It is caused by the hepatitis C virus, or HCV, spreading through contaminated blood. The virus can cause both acute and chronic hepatitis and its severity ranges from a mild, few weeks, and more than half of people infected, it becomes a chronic illness. It is also a major cause of liver cancer.

About 50 percent of people with HCV do not know that they are infected as symptoms can take decades to appear. In fact, millions of people in the United States have hepatitis C and don't know they have the virus. Today, chronic HCV is usually curable with oral medications taken every day for two to six months. The U.S. Preventive Services Task Force recommends that all adults ages 18 to 79 years be screened for hepatitis C, even people without symptoms. We believe the availability of a reliable testing option that can be performed in the privacy of the home or easily at the point-of-care and that provides fast results will increase testing for hepatitis C, which could in turn drive immediate and increased intervention for this curable disease.

Our HCV test is in the phase 2, planning/discovery, stage of development. We plan on developing a test for HCV using the Cue blood collection wand for a fingerstick of blood and using the test cartridge to detect the presence of antibodies against HCV. Later developments could include a quantitative HCV measurement from plasma to monitor the progression and effectiveness of the therapies used to treat the individuals that have had HCV diagnosis and are undergoing antiviral therapy.

Herpes Simplex Virus

Estimates show that about half a billion people globally are living with genital herpes, and several billion have an oral herpes infection. Herpes simplex virus, or HSV, is a common and easily transmissible virus that causes lifelong viral infection. HSV-1 and HSV-2, the two known subtypes, can cause painful oral and genital infections, with HSV-2 being the major cause of genital herpes. Most people living with HSV are unaware they have the infection. Symptoms are generally mild or not present at all, which makes diagnosis difficult. HSV infections are most contagious when symptoms are present, however, the infection can be spread in the absence of symptoms. Infection with HSV-2 infections increase the risk of acquiring and transmitting HIV. After becoming infected, HSV becomes latent in nerve roots and can reactivate, resulting in symptom recurrence.

Genital herpes can lead to stigma and psychological distress and can have an important impact on quality of life and sexual and reproductive health. Preventing acquisition of a new genital herpes infection is particularly important for women in late pregnancy, as this is when the risk for neonatal herpes is greatest. Immunocompromised individuals, including those who are HIV positive and those who have undergone transplants, can be at higher risk for more severe HSV infections. We believe the availability of a reliable testing option that can be performed in the privacy of the home or easily at the point-of-care and that provides fast results will increase testing for HSV, which could in turn will drive immediate and increased intervention. Our HSV test is in the phase 2, planning/discovery, stage of development.

Human Immunodeficiency Virus

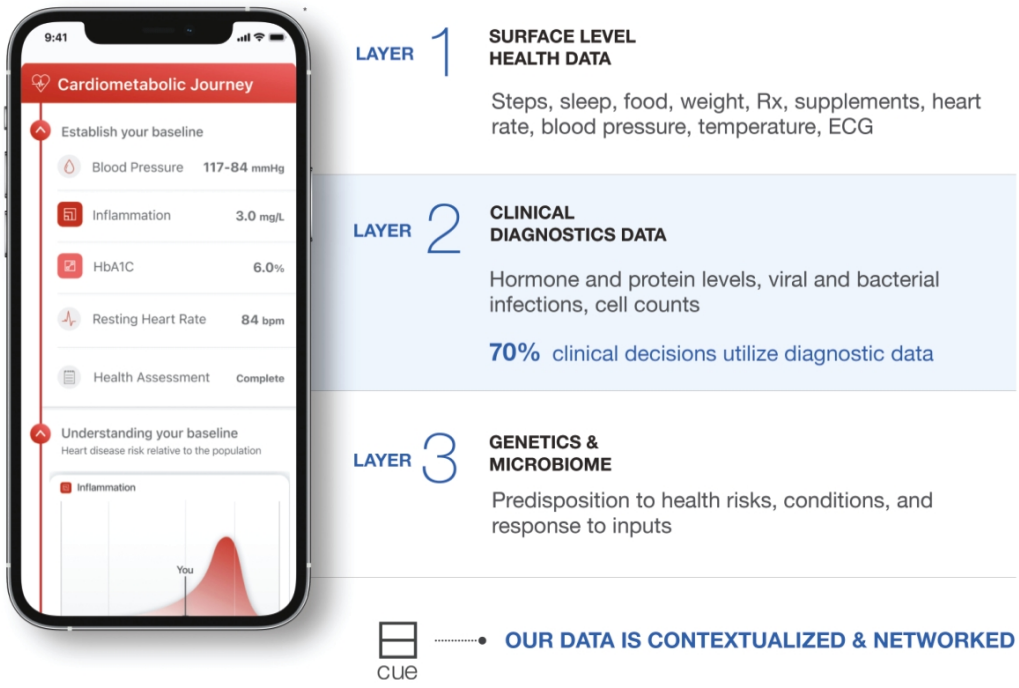
Human immunodeficiency virus, or HIV, the virus that causes acquired immunodeficiency syndrome, or AIDS, is one of the most significant global public health challenges. There are over 35 million people living with HIV, most of which are located in Sub-Saharan Africa. For individuals diagnosed with HIV, measurement of HIV viral load, or VL, in HIV-1 infected individuals is the most important indicator of response to antiretroviral therapy. However, due to logistical challenges, result mismanagement, high cost, and lack of trained personnel, implementation of VL monitoring tests has been difficult in resource limited settings. Our HIV-1 viral load monitoring test is designed to provide results at the point-of-care and improve availability of diagnostic information and better inform treatment pathways. In collaboration with Janssen Pharmaceuticals, Inc., (Janssen), we developed a cartridge to differentiate between patients with VL above and below 1,000 copies (cps)/mL from a finger prick blood sample within 20 minutes.

Our HIV viral load test is in late-stage technical development and has completed feasibility testing to detect HIV-1 samples in accordance with the intended use population. We have completed the fundamental HIV-1 chemistry development and have built multiple prototype lots of cartridges. Cartridges were tested using clinical samples and the relevant Cue fluid collection want, in the Cue Reader connected to the Cue App. The test demonstrated the ability to detect selected HIV-1 Group M subtypes, Group O and N viruses and preliminary capability to achieve analytical sensitivity. We intend to build on this technical development to pursue commercialization of a nucleic acid amplification test for HIV detection from blood or plasma samples.

Chronic Disease Management

Chronic diseases are the leading driver of the nearly $4.0 trillion dollar annual direct medical expenditures in the U.S. Chronic disease management represents one of the largest opportunities for an integrated care solution to drive improved outcomes for all stakeholders. Chronic diseases such as heart disease, diabetes, autoimmune disorders, and cancer are the leading causes of death and disability in the United States. It is estimated that six in ten adults have one chronic disease and four in ten have two or more. For individuals living with a chronic disease, ongoing disease management is required including regular in-person testing with in-person consultation with a healthcare provider. These visits are time-consuming, inefficient and we believe often leads to poor disease management because of the various friction points and lack of contextualized and connected care.

We believe the Cue Integrated Care Platform has the potential to streamline how consumers with chronic conditions access the diagnostic data they need and the associated provider consultations. By making it more convenient to measure the diagnostic information that measures the present state of a chronic condition, the platform can help drive adherence as people can see the impact more quickly of the various interventions such as medications and digital health interventions. In addition, we believe this end-to-end solution to ongoing care management can allow people to have a more comprehensive picture of one's health through Cue Ecosystem Integration and Apps from third party sensors which help monitor layers of health information including activity levels, diet, and sleep. The graphic below illustrates one example of how we anticipate that the Cue Integrated Care Platform will be able to be used for chronic disease management.

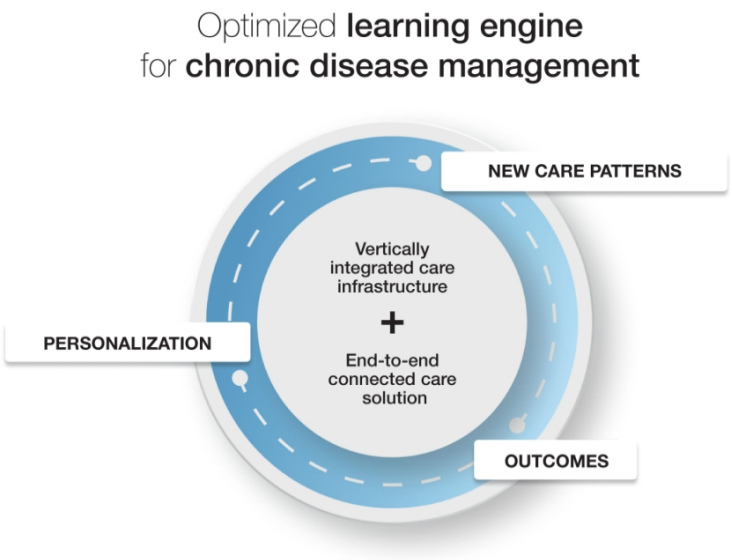


* Depicts future product developments.

Furthermore, as more health layers, such as genetic predisposition information, become available within the ecosystem of integrations, we believe chronic disease populations will be able to be subclassified in order to personalize the care patterns. Other ways to subclassifying the larger cohort of affected consumers could be to use some of the clinical biomarkers such as hsCRP in the case of heart disease to help stratify risk levels and thereby subclassify by risk level. Over time, by having the diagnostic data that actually measures the outcomes, we believe that a feedback loop to improve care can be optimized.

Key healthcare stakeholders all benefit from alleviating some of the high costs associated with chronic diseases.

Our pipeline of care offerings for chronic disease management and general health and wellness includes products for measuring cholesterol, inflammation, HbA1c, vitamin D, cortisol, and thyroid hormones. The following products represent some of our near-term priorities:



Cardiometabolic Health

Coronary heart disease is the leading cause of death in the United States. It is estimated that 47 million people in United States have cardiometabolic disorders, putting them at an increased risk of developing heart disease or type 2 diabetes. Cardiometabolic risk factors are a group of conditions that often occur together and are a major cause of heart and vascular disease and they include diabetes.

Cardiometabolic disorders represent a cluster of interrelated risk factors, primarily hypertension, elevated fasting blood sugar, dyslipidemia, abdominal obesity and elevated triglycerides. This strong association between diabetes and cardiovascular health provides a compelling reason for health care providers to work together to reduce cardiometabolic risk factors through early assessment and targeted interventions.

Our planned cardiometabolic offerings are an illustration of how consistent testing and our natively digital and connected system could benefit health plans as well as the consumer. Continuous tracking of measures like inflammation, HbA1c, and cholesterol can indicate to the consumer and their healthcare provider signs of a more serious disease, which would help prevent those other diseases. The ability to view current as well as historical diagnostic data side-by-side in a natively digital system directly connected to the healthcare provider can initiate immediate changes in behavior based on real-time data. The continuous monitoring of health indicators such as inflammation, HbA1c, and cholesterol is made easy by our convenient and connected platform and we believe will result in early detection, prevention, and control of heart disease, stroke, and other cardiovascular diseases, saving money and lives, benefiting all the key stakeholders in healthcare.

Inflammation

Heart disease, stroke, and other cardiovascular diseases cause one in three deaths in the United States. These diseases cost the U.S. healthcare system $214 billion per year and cause $138 billion in lost productivity from

premature death alone. The C-reactive protein, or CRP, is produced by the liver when inflammation is present somewhere in the body. The high sensitivity CRP, or hsCRP, test measures small amounts of CRP in the blood. Research has shown that elevated hsCRP levels can indicate heart attack and stroke risk, even in apparently healthy individuals. Elevated hsCRP levels are also a risk factor for people who do not have other risk factors that medical practitioners commonly look for such as high cholesterol or high blood pressure. For people who have had a heart attack, elevated hsCRP levels may indicate if they are at risk for another heart attack or an ischemic stroke. The periodic monitoring of hsCRP could be made easy by our convenient and connected platform and we believe will result in early detection, prevention, and control of heart disease, stroke, and other cardiovascular diseases.

The measurement of hsCRP, since it is a measure of inflammation generally, could also have significant implications in monitoring other chronic conditions that often have chronic inflammation as a unifying factor and indication of underlying disease state. These diseases include autoimmune disorders such as rheumatoid arthritis, lupus and inflammatory bowel diseases such as Crohn's disease and ulcerative colitis.

Our hsCRP test is in phase 2, late-stage technical development and includes working test cartridge prototypes that have demonstrated concordance with other laboratory predicate methods for quantified hsCRP determination across the clinically relevant range from a small blood sample collected on the blood collection sample wand. We have designed and developed the blood collector wand and its interface with the cartridge. We are currently completing development work prior to starting verification and validation studies, including scaling up manufacturing of the test chemistry pellet and blood collection wand, and increasing supply of other components needed for manufacture of the test. Clinical studies for the inflammation test are not driven by seasonality. We expect to start these studies in the second half of 2022 and, assuming successful completion of these studies, seek 510(k) clearance in 2023. Assuming we are successful in obtaining FDA clearance, we would expect to be able to commercialize this test shortly thereafter.

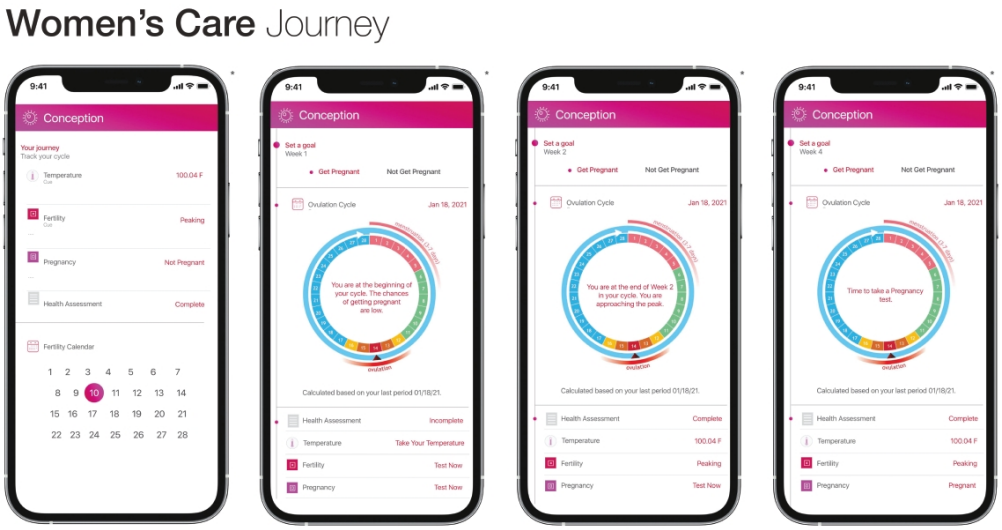
HbA1c

Early detection of heart disease risk through biomarker measurement can enable interception of the disease state and allow the individual the opportunity to make lifestyle changes. Glycated hemoglobin (HbA1c) is a important biomarker which is used to measure of the percentage of hemoglobin proteins in the blood which have glycated, or bound with sugar molecules. Elevated hemoglobin A1c (HbA1c) levels are strongly associated with an increased risk of cardiovascular disease (CVD) in people with and without diabetes. An HbA1C measurement reflects the average blood sugar levels over the previous 60-90 days which is used in conjunction with other factors to assess risk of cardiovascular disease.

Technical development for the Cue HbA1c test is in the chemistry proof of concept stage of the development phase. We have substantially completed the development of the test chemistry including screening and selection of antibody pairs and performed testing with relevant run, wash and detection buffers, using clinical blood samples. The HbA1c test shares the same the blood collector wand and cartridge interface as hsCRP.

Remaining development work includes optimizing the performance of the chemistry and biosensor components, scaling up manufacturing of the test chemistry pellet and blood collection wand, and increasing supply of other components needed for manufacture of the test.

Women's Health



* Depicts future product developments.

We believe that the women's health market around fertility, conception, and pregnancy monitoring could be well served with an integrated care solution that brings together the Cue Ecosystem Integrations and Apps layer for incorporating cycle monitoring, the Virtual Care Delivery App for connecting consumers to reproductive health specialist providers via telemedicine, and the Cue Health Monitoring System for occasional monitoring of the biomarkers indicative of ovulation, such as quantitative measurements of luteinizing hormone, and pregnancy detection via human chorionic gonadotropin (hCG).

Consumers who have reproductive health goals will have a natural alignment with enterprises that want to support their female employee workforce's personal goals, which promote employee satisfaction and do so in a way that minimizes the hassle of having to take time out of the workday for a significant number of in-person visits with reproductive health specialists. We believe that a woman's reproductive health journey can be made significantly more convenient and potentially more effective.

Some of the near-term priorities on the actual test cartridge development side include fertility testing via quantitative LH measurement, hCG detection for pregnancy test and post-conception support around quantitative hCG measurement for preeclampsia monitoring. Folic acid quantification will be a new area of development but we expect to be able to develop the test around a fingerstick of blood, rather than urine.

Fertility

Luteinizing hormone, or LH, plays a key role in the female reproductive system. LH levels increase or decrease at various stages of pregnancy, puberty, and ovulation. LH levels can indicate whether a woman is having problems with egg supply and consistent monitoring of LH levels can signal how fertile a woman is on different days of the menstrual cycle. While at-home LH tests are readily available, we believe our natively digital platform will provide a unique offering to accurately compare historical datapoints day-by-day and month-by-month. The sample type for our Cue LH test will be urine.

Our LH test is in phase 2, late-stage technical development. We have created and successfully tested LH test cartridges that are able to quantitatively determine LH levels in urine. We have completed the LH chemistry development and built multiple prototypes of the cartridge. Cartridges were tested using clinical urine samples and the relevant fluid Cue Wand, in the Cue Reader connected to the Cue App. The fluid collection Cue Wand for collecting urine has been designed, developed and successfully interfaces with the cartridges. The software for helping create the integrated care solution around the Cue Health Monitoring System requires further development. We have also built the manufacturing unit to mass produce the fluid collection wand.

We are currently completing development work prior to starting verification and validation studies, including scaling up manufacturing of the test chemistry pellet and fluid collection wand, and increasing supply of other components needed for manufacture of the LH test. Clinical studies for the LH test are not driven by seasonality. We expect to start these studies in the first half of 2022. LH tests for over-the-counter at-home use are exempt from the requirement for a 510(k). We intend to commercialize the LH test for over-the-counter at home use upon successful completion of our clinical studies. For professional use, assuming successful completion of our clinical studies, we expect to receive FDA clearance by the end of 2022 and, if we are able to obtain FDA clearance, to be able to commercialize this test shortly thereafter.

Pregnancy

Human chorionic gonadotropin, or hCG, is a hormone produced by the placenta of pregnant women. Early in pregnancy, the level of hCG increases in the blood and is eliminated in the urine. Detection of hCG in blood or urine confirms and rules out pregnancy, respectively.

Our hCG test is in phase 2, late-stage technical development. We have created and successfully tested hCG test cartridges that are able to qualitatively determine hCG levels above and below a pregnancy cutoff threshold. The sample type for our hCG test will be urine. We intend to continue to develop the test cartridge but consider this in an advanced stage of development. However, given the wide dynamic range required for quantitative hCG monitoring for preeclampsia, there is more work required to make the hCG test cartridges capable of effectively monitoring for preeclampsia. In addition, the software for helping create the integrated care solution around the Cue Health Monitoring System requires further development. We have completed the hCG chemistry development and built multiple prototype lots of cartridges. Cartridges were tested using clinical urine samples and the relevant fluid sample wand, in the Cue Reader connected to the Cue App. We are completing development work prior to starting verification and validation studies, including scaling up manufacturing of the test chemistry pellet and fluid collection wand, and increasing supply of other components needed for manufacture of the test. Clinical studies for our hCG test are not driven by seasonality. We expect to start these clinical studies in the first half of 2022. If the clinical studies are successful, we expect to submit for over-the-counter 510(k) clearance in the second half of 2022. Assuming we receive FDA clearance, we would expect to be able to commercialize this test shortly thereafter.

Men's Health

Testosterone

Although testosterone is the primary male sex hormone, both men and women require it for proper physical development. Testosterone is responsible for building muscle mass and strength, bone mass, and the production of red blood cells. Millions of people globally suffer from chronically low testosterone levels due to genetic, lifestyle, and environmental factors. If diagnosed, a healthcare provider can determine a treatment pathway to better regulate the patient's testosterone levels and improve their quality of life.

Testosterone levels follow diurnal patterns and vary throughout the day. They are typically at their peak in the morning and reach their lowest levels in the middle of the night. This diurnal pattern makes testing challenging, because measurements must be taken in the middle of the night. More convenient access to testosterone testing can allow monitoring of endogenous levels and determine if they remain within the age-specific normal range. This data can be utilized by the healthcare provider to better assess and treat the patient.

Technical development for the Cue free testosterone test is in the chemistry proof of concept stage of the development process. We have substantially completed the development of the test chemistry including screening and selection of antibody pairs and performed testing with relevant run, wash and detection buffers, using processed clinical saliva samples. The free testosterone test shares the same the fluid collection wand and cartridge interface as fertility and pregnancy. The Cue free testosterone test may be paired with a saliva processing device, which works to condition the saliva sample before it's loaded into the cartridge, without the use of laboratory equipment. Prototype saliva processing devices have been developed and tested in conjunction with the fluid wand.

Remaining development work includes optimizing the performance of the chemistry and biosensor components, scaling up manufacturing of the test chemistry pellet and fluid collection wand, and increasing supply of other components needed for manufacture of the test.

Wellness

Vitamin D

Vitamin D (25(OH) Vitamin D) is a hormone produced by the body when ultraviolet rays from sunlight strike the skin and trigger Vitamin D synthesis. Vitamin D helps regulate the immune system and the neuromuscular system and also plays major roles in the life cycle of human cells and to reduce the risk of osteoporosis. The prevalence of Vitamin D deficiency is high and often present in persons without any obvious risk factors.

To boost Vitamin D levels, many people take supplementation, either unmonitored or in concert with advisement from an HCP. Inappropriately high levels of vitamin D supplementation can lead to arterial calcification. A 25(OH) Vitamin D test result measures the levels of Vitamin D circulating in the body. Technical development for the Cue Vitamin D test is in the chemistry proof of concept stage of the development process. We have substantially completed the development of the test chemistry including screening and selection of antibody pairs, and performed testing with relevant run, wash and detection buffers, using clinical blood samples. The Vitamin D test shares the same the blood collector-style wand and cartridge interface as hsCRP.

Remaining development work includes optimizing the performance of the chemistry and biosensor components, scaling up manufacturing of the test chemistry pellet and blood collection wand, and increasing supply of other components needed for manufacture of the test.

Cortisol

Cortisol is a steroid hormone released from the adrenal glands in response to physical and psychological stressors. Cortisol helps to regulate stress response, nervous system function, and metabolism of fats, carbohydrates, and protein.

Measuring cortisol levels can help evaluate the function of pituitary and adrenal glands and can help diagnose conditions such as Cushing’s disease. Chronically elevated or deficient cortisol levels is associated with undesirable changes in body composition, immune response, and high blood pressure.

Technical development for the Cue cortisol test is in the chemistry proof of concept stage of the development process. We have substantially completed the development of the test chemistry including screening and selection of antibody pairs and performed testing with relevant run, wash and detection buffers, using processed clinical saliva samples. The cortisol test shares the same the fluid collection wand and cartridge interface as fertility and pregnancy. The Cue cortisol test may be paired with a saliva processing device, which works to condition the saliva sample before it’s loaded into the cartridge, without the use of laboratory equipment. Prototype saliva processing devices have been developed and tested in conjunction with the fluid wand.

Remaining development work includes optimizing the performance of the chemistry and biosensor components, scaling up manufacturing of the test chemistry pellet and fluid collection wand, and increasing supply of other components needed for manufacture of the test.

Vertically-Integrated Manufacturing Solutions

Our manufacturing facilities were developed alongside our science and technology and are vertically-integrated, fully automated and scalable. Our integrated manufacturing and bioproduction gives us complete control over the quality of our finished product.

We own and control the intellectual property that makes the platform possible. Our manufacturing process is replicable, and our manufacturing production pods can produce any type of test in our expected future test menu. We believe our manufacturing capabilities are differentiated and allow us not only to scale quickly and efficiently, but also to adapt our production quickly to market demands or evolving consumer needs.

We produce our Cue Cartridges in-house, including critical enzymes, antibodies, and primers for the test cartridges. We have complete production oversight and quality control over finished products and protection against global fluctuations in supply chain and costs. We achieve this by manufacturing all of our Cue Cartridges in our state-of-the-art facilities in San Diego, California using our modular, scalable production pods. Our fully automated production pods build raw components into fully assembled, packaged cartridges.

Our Cue Readers are manufactured by our partners. Our Cue Wands are manufactured by us or our partners. For our Cue Readers and Cue Wands, we own and control all of the intellectual property developed by us and rely on multiple suppliers.

On October 13, 2020, we announced a $480.9 million agreement with the U.S. DoD, on behalf of U.S. HHS, to expand our U.S.-based production capacity and deploy six million Cue COVID-19 Test Kits by March 2021, which agreement with the U.S. DoD was subsequently amended to require delivery by October 2021. This agreement included an upfront payment of $184.6 million to scale our manufacturing. This payment was intended to help us onshore our supply chain and rapidly increase our production capacity to enable and support domestic production of critical medical resources. In connection with this effort, we were able to rapidly scale our production, going from producing hundreds of Cue Cartridges per day to tens of thousands in a matter of months.

Reimbursement

We believe payment for our products, including our Cue COVID-19 Test Kits, will be billable by a physician, reimbursable by government payors or insurance companies, paid for by a self-insured employer, or eligible under FSA and HSA guidelines. For example, most of our contemplated future tests that are currently offered by others through central labs are reimbursable by third-party payors, including commercial health plans and governmental payors if properly ordered by a physician. These third-party payors decide which products will be covered and establish reimbursement levels for those products. Coverage criteria and reimbursement rates for clinical laboratory tests are subject to adjustment by payors, and current reimbursement rates could be reduced, or coverage criteria restricted in the future. We believe that the benefits of our portable, intuitive, accurate and connected system align incentives for all stakeholders, the user and the payors (self-insured employers and health plans), and that this will encourage payors to pay for or subsidize the Cue Health Monitoring System and associated tests for the end-user.

Coverage and reimbursement for our Cue COVID-19 Test Kit will vary by setting of care, payor type, and region. In the United States, we believe that healthcare providers that purchase our Cue COVID-19 Test Kit will likely look to various third-party payors, such as Medicare, Medicaid, private commercial insurance companies, health maintenance organizations, accountable care organizations and other healthcare-related organizations, to cover and pay for our Cue COVID-19 Test Kit.

The Coronavirus Aid, Relief and Economic Security Act of 2020, or the CARES Act, provides coverage for EUA COVID-19 tests when such tests are medically appropriate and ordered by a healthcare provider. Presently, COVID-19 testing coverage exists for tests run in clinical laboratories and point-of-care settings. Under the first EUA we received, our COVID-19 test is eligible for reimbursement in point-of-care settings as a molecular point-of-care test.

CMS covers medically appropriate COVID-19 testing and currently reimburses $100 for high throughput laboratory tests to detect the SARS-CoV-2 virus if they return results within two days, $75 for such high throughput laboratory tests that take longer than two days to return results, $51 for such tests when not performed in high throughput laboratories (which would include our Cue COVID-19 Test Kit) and around $42 for antibody tests. However, one payor's determination to provide coverage for a product does not assure that other payors will also provide coverage for the product. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to ensure profitability. We have active engagement with the relevant federal agencies regarding reimbursement status of our Cue COVID-19 Test Kit. We continue to explore and enhance our coverage efforts with public and private payors.

Since we received an EUA for over-the-counter use in March 2021, we expect to receive payment directly from point-of-care customers and not to bill third-party payors directly. For point-of-care use, the success of our Cue COVID-19 Test Kit will depend substantially on the extent to which the costs of our Cue COVID-19 Test Kit will be covered by third-party payors, such as government health programs, commercial insurance and management healthcare organizations. These third-party payors decide which products will be covered and establish reimbursement levels for those products.

We believe that automation at scale would allow us to achieve a cost structure that would optimize value to the over-the-counter consumer and also reduce the impact of reimbursement on our sales.

Intellectual Property

Our commercial success depends in part on our ability to obtain and maintain patent and other proprietary protection for our commercially important technology, inventions and know-how, including our Cue Reader, our Cue Cartridge, and our Cue Wand; to defend and enforce our patents; to operate without infringing, misappropriating or violating the proprietary rights of others; and to prevent others from infringing, misappropriating or violating our

proprietary rights. We rely on a combination of patent, trademark and trade secret laws, and confidentiality and invention assignment agreements to protect our intellectual property rights. We also rely on know-how and continuing technological innovation to develop and maintain our competitive position. Notwithstanding these efforts, we cannot be sure that patents will be granted with respect to any patent applications we have filed or may license or file in the future, and we cannot be sure that any patents we own or license or patents that may be licensed or granted to us in the future will not be challenged, invalidated, or circumvented or that such patents will be commercially useful in protecting our test kits and technology. For more information regarding the risks related to our intellectual property, see "Risk Factors—Risks Related to Our Intellectual Property."

As of August 31, 2021, we owned twenty-one (21) issued U.S. utility patents, four (4) pending U.S. utility patent applications, thirty-five (35) issued foreign utility patents (including patents in Australia, Canada, China, Hong Kong, India, Israel, Japan, South Korea, South Africa, the United Kingdom, and various European countries), and twenty-eight (28) pending foreign utility patent applications (including pending PCT applications).

Our utility patents and patent applications are directed to many different aspects of our platform. By way of example, our granted patents and pending patent applications cover various structural features of our Cue Cartridge, sensors within the Cue Cartridge for use in detecting target analytes, systems and methods for analyte detection and quantification, and our Cue Reader.

The term of individual patents depends on the legal term for patents in the countries in which they are granted. In most countries, including the United States, the patent term for a utility patent is generally 20 years from the earliest claimed filing date of a nonprovisional patent application in the applicable country. Our issued U.S. and foreign utility patents are anticipated to naturally expire between 2034 and 2036, and our U.S. pending utility patent applications and pending PCT applications, if issued into patents, are anticipated to naturally expire between 2034 and 2041, excluding any additional patent term adjustment(s) or extension(s), and assuming payment of all applicable maintenance or annuity fees. Once a patent expires, patent protection ends and an invention enters the public domain allowing anyone to commercially exploit the invention without infringing the patent.

In addition, we hold design patents and patent applications that cover various ornamental features of our Cue Reader, our Cue Cartridge, and our Cue Wand. As of August 31, 2021, we owned nine (9) granted U.S. design patents, two (2) pending U.S. design patent applications, thirty-six (36) granted foreign design patents and design registrations (with protection in Canada, China, Japan, the United Kingdom, and the European Union), and four (4) pending foreign design applications. Our granted U.S. design patents are anticipated to naturally expire between 2029 and 2036. Our foreign design patents and design registrations are anticipated to naturally expire between 2024 and 2042.

We cannot guarantee that patents will be issued from any of our pending applications or that issued patents will be of sufficient scope or strength to provide meaningful protection for our technology. Notwithstanding the scope of the patent protection available to us, a competitor could develop methods or devices that are not covered by our patents or circumvent these patents. Furthermore, because patent applications can take many years to publish, there may be applications unknown to us which may result in issued patents that our existing or future products or technologies may be alleged to infringe.

There has been substantial litigation regarding patent and other intellectual property rights in the medical device industry. We may need to engage in litigation to enforce patents issued to us, to protect our trade secrets or know-how, to defend against claims of infringement of the rights of others or to determine the scope and validity of the proprietary rights of others. Such litigation could be costly and could divert our attention from other functions and responsibilities. Furthermore, even if our patents are found to be valid and infringed, a court may refuse to grant injunctive relief against the infringer and instead grant us monetary damages or ongoing royalties. Such monetary compensation may be insufficient to adequately offset the damage to our business caused by the infringer's competition in the market. Adverse determinations in litigation could subject us to significant liabilities to third parties, require us to seek licenses from third parties or prevent us from manufacturing, selling or using the product determined to be infringing, any of which could harm our business. See "Risk Factors—Risks Related to Our Intellectual Property" for additional information regarding these and other risks related to our intellectual property portfolio.

We also rely upon trademarks to build and maintain the integrity of our brand. As of August 31, 2021, we owned three (3) U.S. trademark registrations, forty-four (44) foreign trademark registrations (including registrations in China, Hong Kong, the European Union, India, Israel, Japan, Mexico, Russia, South Korea, and Singapore), and two (2) pending trademark applications in Mexico. We also rely, in part, on unpatented trade secrets, know-how,

continuing technological innovation, and confidential information, to develop and maintain our competitive position and protect aspects of our business that are not amenable to, or that we do not consider appropriate for, patent protection. However, such proprietary rights are difficult to protect. We seek to protect our proprietary rights through a variety of methods, including confidentiality and assignment agreements with suppliers, employees, consultants and others who may have access to our proprietary information. However, these agreements may not provide meaningful protection. These agreements may be breached, and we may not have an adequate remedy for any such breach. We also seek to preserve the integrity and confidentiality of our data and trade secrets by maintaining physical security of our premises and physical and electronic security of our information technology systems. While we have implemented measures to protect and preserve our trade secrets, such measures can 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 discovered by competitors or misused by any collaborator to whom we disclose such information. Despite any measures taken to protect our intellectual property, unauthorized parties may attempt to copy aspects of our Cue Health Monitoring System or any of our current or expected future tests or to obtain or use information that we regard as proprietary. As a result, we may be unable to meaningfully protect our trade secrets and proprietary information. For more information regarding the risks related to our intellectual property, see “Risk Factors—Risks Related to Our Intellectual Property.”

Competition

We do not believe there are currently any competitors that offer the portable, intuitive, accurate and connected platform provided we provide, comprised of the Cue Health Monitoring System and associated tests, our Cue Health App and our Cue Enterprise Dashboard. That said, the traditional diagnostic testing industry is highly competitive and rapidly changing. For our Cue COVID-19 Test specifically, we expect ongoing intense competition from different sources, including from manufacturers and producers of diagnostic tests, as well as vaccines and therapeutic treatments that may decrease demand for COVID-19 tests. Notably, however, we are the first molecular COVID-19 test approved for at-home and over-the-counter use without a prescription. As we broaden our test menu, we expect ongoing intense competition from companies that develop or have already developed molecular tests, whether for at-home and over-the-counter use or at the point-of-care, as well as companies that have or are developing antigen and antibody tests. While we believe that our differentiated technology, customer-centric design, and vertically-integrated manufacturing provide us with competitive advantages, we face potential competition from many different sources, including public and private companies, academic institutions, public and private research institutions and governmental agencies.

Competitors with diagnostic testing platforms include private and public companies, such as Abbott Laboratories, Becton, Dickinson and Company, BioMerieux SA, Bio-Rad Laboratories, Inc., Danaher Corp., Ellume Limited, Everly Health, Inc., F. Hoffman-La Roche Ltd., Fluidigm Corporation, GenMark Diagnostics Inc., Ginkgo Bioworks, Inc., Mammoth Biosciences, Inc., LetsGetChecked, Lucira Health, Inc., Qiagen N.V., Quidel Corporation, Sherlock Biosciences, Inc., Siemens AG, Talis Biomedical Corporation, Thermo Fisher Scientific, Inc. and Visby Medical, Inc. as well as several retailers, such as The Kroger Company, Walmart Inc. and Alberstons Companies, Inc. Large lab companies like Quest Diagnostics, Inc. and Laboratory Corporation of America have also expanded beyond centralized laboratory testing into at-home sample collection.

As we expand our service offerings, we anticipate integrating with a variety of technology platforms. These platforms may have products or services that compete with our offerings, and include companies such as 1Life Healthcare, Inc. (d/b/a OneMedical), American Well, Inc., Hims & Hers Health, Inc., and Teladoc Health, Inc. We may also face competition from other companies, including other technology companies. For example, it has been public reported that Amazon.com, Inc. may be considering launching an at-home diagnostic testing business.

Many of the companies we currently compete with or which we may compete with in the future have significantly greater financial resources and more experience in research and development, manufacturing, pre-clinical and clinical development, obtaining regulatory approvals and marketing approved tests. Smaller or early-stage companies may also prove to be significant competitors, whether independently or with strategic partners. These competitors also compete with us in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites and enrolling subjects for our clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs.

We believe key competitive factors impacting our success in the market include accuracy of results, ease-of-use, accessibility, time to result, clinical performance, pricing, ability to meet consumer demand, and reimbursement levels.

Employees and Human Capital Resources

As of August 31, 2021, we had 1,254 full-time employees. Our employees are primarily located in the San Diego, California area. None of our employees are represented by a labor union or are subject to a collective bargaining agreement. We consider our relationship with our employees to be good.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors and consultants. The principal purposes of our equity and cash incentive plans are to attract, retain and reward personnel through the granting of stock-based and cash-based compensation awards, in order to increase stockholder value and the success of our company by motivating such individuals to perform to the best of their abilities and achieve our objectives.

Facilities

We follow Good Manufacturing Practice, or GMP, guidelines and are ISO 13485 certified, the key certification for medical device manufacturing, providing confidence and assurance in our final product. We are routinely audited to maintain our ISO 13485:2016 status.

During the fall of 2020, we launched a significant expansion of our manufacturing capacity, leasing an approximately 197,000 square-foot facility in Vista, California and an approximately 63,000 square-foot facility in San Diego, California. As of August 31, 2021, the Vista facility was producing cartridges from six production pods (with space for an additional four production pods) and is serving as our warehousing and distribution hub. Our Waples facility will serve as a second reagent production hub, house certain cartridge component manufacturing, and has space for five production pods, all of which are currently in operation. Our Nancy Ridge facility is also producing cartridges from two production pods. We believe our current facilities are sufficient to meet our current needs, and that we will be able to find appropriate space for expansion when appropriate. Our Vista facility lease expires on July 1, 2026 and our Waples facility lease expires on July 1, 2031. Both leases have options to extend.

Government Regulation

Regulation of Medical Devices in the United States

Our product and operations are subject to extensive and ongoing regulation by the FDA under the Federal Food, Drug, and Cosmetic Act of 1938, as amended, and its implementing regulations, collectively referred to as the FDCA, as well as other federal and state regulatory bodies in the United States. The laws and regulations govern, among other things, product design and development, pre-clinical and clinical testing, manufacturing, packaging, labeling, storage, record keeping and reporting, clearance or approval, marketing, distribution, promotion, import and export and post-marketing surveillance.

The FDA regulates the development, design, pre-clinical and clinical research, manufacturing, safety, efficacy, labeling, packaging, storage, installation, servicing, recordkeeping, premarket clearance or approval, import, export, adverse event reporting, advertising, promotion, marketing and distribution of medical devices in the United States to ensure that medical devices distributed domestically are safe and effective for their intended uses and otherwise meet the requirements of the FDCA. Failure to comply with applicable requirements may subject a device and/or its manufacturer to a variety of administrative sanctions, such as FDA refusal to approve pending premarket applications, issuance of warning letters, mandatory product recalls, import detentions, civil monetary penalties, and/or judicial sanctions, such as product seizures, injunctions and criminal prosecution.

FDA Premarket Clearance and Approval Requirements

Unless an exemption applies, each medical device commercially distributed in the United States requires either FDA clearance of a 510(k) premarket notification, approval of a premarket approval, or PMA, or grant of a de novo request for classification. During public emergencies, the FDA also may grant emergency use authorizations, or EUA, to allow commercial distribution of devices intended to address the public health emergency. Under the FDCA, medical devices are classified into one of three classes—Class I, Class II or Class III—depending on the degree of risk associated with each medical device and the extent of manufacturer and regulatory control needed to provide reasonable assurance of its safety and effectiveness. Classification of a device is important because the class to which a device is assigned determines, among other things, the necessity and type of FDA review required prior to marketing the device.

Class I devices include those with the lowest risk to the patient and are those for which safety and effectiveness can be reasonably assured by adherence to the FDA's "general controls" for medical devices, which include compliance with the applicable portions of the FDA's Quality System Regulation, or QSR, facility registration and product listing, reporting of adverse medical events and malfunctions through the submission of Medical Device Reports, or MDRs, and appropriate, truthful and non-misleading labeling, advertising, and promotional materials. Some Class I or low risk devices also require premarket clearance by the FDA through the 510(k) premarket notification process described below.

Class II devices are moderate risk devices subject to the FDA's general controls, and any other "special controls" deemed necessary by the FDA to ensure the safety and effectiveness of the device, such as performance standards, product-specific guidance documents, special labeling requirements, patient registries or post-market surveillance. Premarket review and clearance by the FDA for Class II devices is accomplished through the 510(k) premarket notification process, though certain Class II devices are exempt from this premarket review process. When required, the manufacturer must submit to the FDA a premarket notification, or 510(k), submission demonstrating that the device is "substantially equivalent" to a legally marketed predicate device, which in some cases may require submission of clinical data. Unless a specific exemption applies, 510(k) premarket notification submissions are subject to user fees. If the FDA determines that the device, or its intended use, is not substantially equivalent to a legally marketed device, the FDA will place the device, or the particular use of the device, into Class III, and the device sponsor must then fulfill more rigorous premarketing requirements.

Class III devices include devices deemed by the FDA to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices and devices deemed not substantially equivalent to a predicate device following a 510(k) submission. The safety and effectiveness of Class III devices cannot be reasonably assured solely by general or special controls. Submission and FDA approval of a PMA application is required before marketing of a Class III device can proceed. As with 510(k) submissions, unless an exemption applies, PMA submissions are subject to user fees. The PMA process is much more demanding than the 510(k) premarket notification process. A PMA application, which is intended to demonstrate that the device is reasonably safe and effective for its intended use and must be supported by extensive data, typically including data from pre-clinical studies and clinical trials.

The FDA also has the authority to allow the commercialization of unapproved medical devices, or new uses of existing devices in times of emergency, such as during a pandemic.

Emergency Use Authorization

In emergency situations, such as a pandemic, the FDA has the authority to allow unapproved medical products or unapproved uses of cleared or approved medical products to be used in an emergency to diagnose, treat or prevent serious or life-threatening diseases or conditions caused by chemical, biological, radiological or nuclear warfare threat agents when there are no adequate, approved, and available alternatives.

Under this authority, the FDA may issue an EUA for an unapproved device if the following four statutory criteria have been met: (1) a serious or life-threatening condition exists; (2) evidence of effectiveness of the device exists; (3) a risk-benefit analysis shows that the benefits of the product outweigh the risks; and (4) no other alternatives exist for diagnosing, preventing or treating the disease or condition. Evidence of effectiveness includes medical devices that "may be effective" to prevent, diagnose, or treat the disease or condition identified in a declaration of emergency issued by the Secretary of U.S. HHS. The "may be effective" standard for EUAs requires a lower level of evidence than the "effectiveness" standard that FDA uses for product clearances or approvals in non-emergency situations. The FDA assesses the potential effectiveness of a possible EUA product on a case-by-case basis using a risk-benefit analysis. In determining whether the known and potential benefits of the product outweigh the known and potential risks, the FDA examines the totality of the scientific evidence to make an overall risk-benefit determination. Such evidence, which could arise from a variety of sources, may include (but is not limited to) results of domestic and foreign clinical trials, in vivo efficacy data from animal models, in vitro data, as well as the quality and quantity of the available evidence.

Once granted, an EUA will remain in effect and generally terminate on the earlier of (1) the determination by the Secretary of U.S. HHS that the public health emergency has ceased or (2) a change in the approval status of the product such that the authorized use(s) of the product are no longer unapproved. After the EUA is no longer valid, the product is no longer considered to be legally marketed and one of the FDA's non-emergency premarket pathways would be necessary to resume or continue distribution of the subject product.

The FDA also may revise or revoke an EUA if the circumstances justifying its issuance no longer exist, the criteria for its issuance are no longer met, or other circumstances make a revision or revocation appropriate to protect the public health or safety.

On January 31, 2020, the Secretary of U.S. HHS issued a declaration of a public health emergency related to COVID-19. On February 4, 2020, U.S. HHS determined that COVID-19 represents a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and, subsequently, declared on March 24, 2020, that circumstances exist to justify the authorization of emergency use of medical devices, including alternative products used as medical devices, during the COVID-19 pandemic, subject to the terms of any authorization as issued by the FDA. On February 29, 2020, the FDA issued an immediately in effect guidance with policy specific to development of in vitro diagnostic tests during the COVID-19 public health emergency. This guidance was updated on March 16, 2020, May 4, 2020 and May 11, 2020.

We received an EUA from the FDA on June 10, 2020 for our Cue COVID-19 Test Kit for use at the point-of-care with specimens collected using the Cue Wand from individuals who are suspected of having COVID-19 by their healthcare provider. On August 20, 2020, the FDA granted an amendment to our EUA to add testing of previously collected nasal specimens in viral transport media from individuals who are suspected of having COVID-19 by their healthcare provider.

In September 2020, the FDA required us to evaluate the analytical limit of detection and to assess the traceability of our Cue COVID-19 Test with FDA reference materials, which requirements we have complied with. Additionally, in September 2020, we submitted a post-market clinical data report required under our EUA, which included results from the Mayo Clinic's evaluation of Cue versus an institutional reference panel. The FDA subsequently notified us that our post-market study and report were sufficient to satisfy the conditions in our EUA.

We received a second EUA from the FDA on March 5, 2021 for our Cue COVID-19 Test Kit for home and over-the-counter use without a prescription with specimens collected using the Cue Wand from adults or children greater than or equal to two years of age (swabbed by an adult) with or without symptoms or other epidemiological reasons to suspect COVID-19.

510(k) Clearance Marketing Pathway

Our current products are Class II and, but for the immediate ability to seek an EUA, would be subject to premarket notification and clearance under section 510(k) of the FDCA. To obtain 510(k) clearance for a medical device, an applicant must submit to the FDA a 510(k) submission demonstrating that the proposed device is "substantially equivalent" to a legally marketed device, known as a "predicate device." A legally marketed predicate device may include a device that was legally marketed prior to May 28, 1976 (a pre-amendment device), a device that has been reclassified from Class III to Class II or Class I, or a device that was found substantially equivalent through the 510(k) process. A device is substantially equivalent if, with respect to the predicate device, it has the same intended use and has either (1) the same technological characteristics, or (2) different technological characteristics, but the information provided in the 510(k) submission demonstrates that the device does not raise new questions of safety and effectiveness and is at least as safe and effective as the predicate device. A showing of substantial equivalence sometimes, but not always, requires clinical data. Once the 510(k) submission is accepted for review, by regulation, the FDA has 90 calendar days to review and issue a determination. As a practical matter, clearance may take and often takes longer. Upon review, the FDA may require additional information, including clinical data, to make a determination regarding substantial equivalence. In addition, the FDA collects user fees for certain medical device submissions and annual fees and for medical device establishments. For fiscal year 2021, the standard user fee for a 510(k) premarket notification application is $12,432.

Before the FDA will accept a 510(k) submission for substantive review, the FDA will first assess whether the submission satisfies a minimum threshold of acceptability. If the FDA determines that the 510(k) submission is incomplete, the FDA will issue a "Refuse to Accept" letter which generally outlines the information the FDA believes is necessary to permit a substantive review and to reach a determination regarding substantial equivalence. An applicant must submit the requested information within 180 days before the FDA will proceed with additional review of the submission.

If the FDA agrees that the device is substantially equivalent to a predicate device currently on the market, it will grant 510(k) clearance to commercially market the device. If the FDA determines that the device is "not substantially equivalent" to a previously cleared device, for example, due to a finding of a lack of a predicate device, that the

device has a new intended use or different technological characteristics that raise different questions of safety or effectiveness when the device is compared to the cited predicate device, the device is automatically designated as a Class III device. The device sponsor must then fulfill more rigorous PMA requirements, or can request a risk-based classification determination for the device in accordance with the "de novo" process, which is a route to market for novel medical devices that are low to moderate risk and are not substantially equivalent to a predicate device. If the FDA determines that the information provided in a 510(k) submission is insufficient to demonstrate substantial equivalence to the predicate device, the FDA generally identifies the specific information that needs to be provided so that the FDA may complete its evaluation of substantial equivalence, and such information may be provided within the time allotted by the FDA or in a new 510(k) submission should the original 510(k) submission have been withdrawn.

After a device receives 510(k) marketing clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change or modification in its intended use, will require a new 510(k) marketing clearance or, depending on the modification, PMA approval. The determination as to whether or not a modification could significantly affect the device's safety or effectiveness is initially left to the manufacturer using available FDA guidance. Many minor modifications today are accomplished by a "letter to file" in which the manufacturer documents the rationale for the change and why a new 510(k) submission is not required. However, the FDA may review such letters to file to evaluate the regulatory status of the modified product at any time and may require the manufacturer to cease marketing and recall the modified device until 510(k) marketing clearance or PMA approval is obtained. The manufacturer may also be subject to significant regulatory fines or penalties.

Over the last several years, the FDA has proposed reforms to its 510(k) clearance process, and such proposals could include increased requirements for clinical data and a longer review period, or could make it more difficult for manufacturers to utilize the 510(k) clearance process for their products. For example, in November 2018, FDA officials announced forthcoming steps that the FDA intends to take to modernize the premarket notification pathway under Section 510(k) of the FDCA. Among other things, the FDA announced that it planned to develop proposals to drive manufacturers utilizing the 510(k) pathway toward the use of newer predicates. These proposals included plans to potentially sunset certain older devices that were used as predicates under the 510(k) clearance pathway, and to potentially publish a list of devices that have been cleared on the basis of demonstrated substantial equivalence to predicate devices that are more than 10 years old. In May 2019, the FDA solicited public feedback on these proposals. The FDA requested public feedback on whether it should consider certain actions that might require new authority, such as whether to sunset certain older devices that were used as predicates under the 510(k) clearance pathway. These proposals have not yet been finalized or adopted, and the FDA may work with Congress to implement such proposals through legislation. More recently, in September 2019, the FDA finalized the aforementioned guidance to describe an optional "safety and performance based" pre-market review pathway for manufacturers of "certain, well-understood device types" to demonstrate substantial equivalence under the 510(k) clearance pathway, by demonstrating that such device meets objective safety and performance criteria established by the FDA, obviating the need for manufacturers to compare the safety and performance of their medical devices to specific predicate devices in the clearance process. The FDA intends to maintain a list of device types appropriate for the "safety and performance based pathway" and develop product-specific guidance documents that identify the performance criteria for each such device type, as well as the testing methods recommended in the guidance documents, where feasible.

We expect that many of our future tests will require clearance under the 510(k) regulatory pathway, unless otherwise authorized pursuant to and EUA.

PMA Approval Pathway

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

not accept the panel's recommendation. In addition, the FDA will generally conduct a pre-approval inspection of the applicant or its third-party manufacturers' or suppliers' manufacturing facility or facilities to ensure compliance with the QSR.

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

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

None of our tests are currently approved under a PMA, nor are we currently seeking approval under a PMA for our Cue COVID-19 Test or any additional test. However, we may in the future develop devices which will require the approval of a PMA.

De Novo Classification

Medical device types that the FDA has not previously classified as Class I, II or III are automatically classified into Class III regardless of the level of risk they pose. To market low to moderate risk medical devices that are automatically placed into Class III due to the absence of a predicate device, a manufacturer may request a de novo down-classification. This procedure allows a manufacturer whose novel device is automatically classified into Class III to request classification of its medical device into Class I or Class II on the basis that the device presents low or moderate risk, rather than requiring the submission and approval of a PMA application. A medical device may be eligible for de novo classification if the manufacturer first submitted a 510(k) premarket notification and received a determination from the FDA that the device was not substantially equivalent or a manufacturer may request de novo classification directly without first submitting a 510(k) premarket notification to the FDA and receiving a not substantially equivalent determination. The FDA is required to classify the device within 120 calendar days following receipt of the de novo application, although in practice, the FDA's review may take significantly longer. During the pendency of the FDA's review, the FDA may issue an additional information letter, which places the de novo request on hold and stops the review clock pending receipt of the additional information requested. In the event the de novo requestor does not provide the requested information within 180 calendar days, the FDA will consider the de novo request to be withdrawn. If the manufacturer seeks reclassification into Class II, the manufacturer must include a draft proposal for special controls that are necessary to provide a reasonable assurance of the safety and effectiveness of the medical device. In addition, the FDA may reject the de novo request for classification if it identifies a legally marketed predicate device that would be appropriate for a 510(k) or determines that the device is not low to moderate risk or that general controls would be inadequate to control the risks and special controls cannot be developed. In the event the FDA determines the data and information submitted demonstrate that general controls or general and special controls are adequate to provide reasonable assurance of safety and effectiveness, the FDA will grant the de novo request for classification. When the FDA grants a de novo request for classification, the device is granted marketing authorization and further can serve as a predicate for future devices of that type, through a 510(k) premarket notification.

Clinical Trials

Clinical trials are typically required to support a PMA, oftentimes for a de novo request for classification, and are sometimes required to support a 510(k) submission. All clinical investigations of devices to determine safety and effectiveness must be conducted in accordance with the FDA's investigational device exemption, or IDE, regulations which govern investigational device labeling, prohibit promotion of the investigational device, and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. If the device presents a "significant risk," as defined by the FDA, to human health, the FDA requires the device sponsor to submit an IDE application to the FDA, which must be approved prior to commencing clinical trials. A significant risk device is one that presents a potential for serious risk to the health, safety or welfare of a patient and either is implanted, purported or represented to be used in supporting or sustaining human life, is for a use that is substantially important in diagnosing, curing, mitigating or treating disease or otherwise preventing impairment of human health, or otherwise presents a potential for serious risk to a subject. An IDE application must be supported by appropriate data, such as animal and laboratory test results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. A clinical trial may begin 30 days after receipt of the IDE by the FDA unless the FDA notifies the company that the investigation may not begin. If the FDA determines that there are deficiencies or other concerns with an IDE for which it requires modification, the FDA may permit a clinical trial to proceed under a conditional approval. Acceptance of an IDE application for review does not guarantee that the FDA will approve the IDE and, if it is approved, the FDA may or may not determine that the data derived from the trials support the safety and effectiveness of the device or warrant the continuation of clinical trials. An IDE supplement must be submitted to, and approved by, the FDA before a sponsor or investigator may make a change to the investigational plan that may affect its scientific soundness, study plan or the rights, safety or welfare of human subjects.

In addition, the clinical trials must be approved by, and conducted under the oversight of, an Institutional Review Board, or IRB, for each clinical site. The IRB is responsible for the initial and continuing review of the IDE and may pose additional requirements for the conduct of the study. If an IDE application is approved by the FDA and one or more IRBs, clinical trials may begin at a specific number of investigational sites with a specific number of patients, as approved by the FDA.

If the device is considered a "non-significant risk," IDE submission to FDA is not required. Instead, only approval from the IRB overseeing the investigation at each clinical trial site is required. Abbreviated IDE requirements, such as monitoring the investigation, ensuring that the investigators obtain informed consent, and labeling and record-keeping requirements also apply to non-significant risk device studies.

During a study, the sponsor is required to comply with the applicable FDA requirements, including, for example, trial monitoring, selecting clinical investigators and providing them with the investigational plan, ensuring IRB review, adverse event reporting, record keeping and prohibitions on the promotion of investigational devices or on making safety or effectiveness claims for them. The clinical investigators in the clinical trial are also subject to FDA's regulations and must obtain patient informed consent, rigorously follow the investigational plan and study protocol, control the disposition of the investigational device, and comply with all applicable reporting and record keeping requirements.

Additionally, after a trial begins, we, the FDA or the IRB could suspend or terminate a clinical trial at any time for various reasons, including a belief that the risks to study subjects outweigh the anticipated benefits. Even if a clinical trial is completed, there can be no assurance that the data generated during a clinical trial will meet the safety and effectiveness endpoints or otherwise produce results that will lead the FDA to grant marketing clearance or approval.

Post-market Regulation

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

- establishment registration and device listing with the FDA;
- QSR requirements, which require manufacturers and contract manufacturers, including any third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the design and manufacturing process;
- labeling regulations and FDA prohibitions against the promotion of investigational products, or "off-label" uses of cleared or approved products;

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

Advertising and promotion of medical devices, in addition to being regulated by the FDA, are also regulated by the Federal Trade Commission, or FTC, and by state regulatory and enforcement authorities. Recently, promotional activities for FDA-regulated products have been the subject of enforcement action brought under healthcare reimbursement laws and consumer protection statutes. In addition, under the federal Lanham Act and similar state laws, competitors and others can initiate litigation relating to advertising claims. In general, if the FDA determines that our promotional materials or training constitutes promotion of an unapproved or uncleared use, it could request that we modify our training or promotional materials or subject us to regulatory or enforcement actions. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our promotional or training materials to constitute promotion of an unapproved or uncleared use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement.

Manufacturing processes for commercial products are required to comply with the applicable portions of the QSR, which cover the methods and the facilities and controls for the design, manufacture, testing, production, processes, controls, quality assurance, labeling, packaging, distribution, installation and servicing of finished devices intended for human use. The QSR also requires, among other things, maintenance of a device master file, design history file, device history records, and complaint files. As a manufacturer, we are subject to periodic scheduled or unscheduled inspections by the FDA. Failure to maintain compliance with the QSR requirements could result in the shut-down of, or restrictions on, manufacturing operations and the recall or seizure of products, which would harm our business. The discovery of previously unknown problems with any of our Cue Health Monitoring Systems or any of our tests, including unanticipated adverse events or adverse events of increasing severity or frequency, whether resulting from the use of the device within the scope of its clearance or off-label by a physician in the practice of medicine, could result in restrictions on the device, including the removal of the product from the market or voluntary or mandatory device recalls.

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

- untitled letters, warning letters, fines, injunctions, consent decrees and civil penalties;
- unanticipated expenditures to address or defend such actions;
- customer notifications for repair, replacement, refunds;
- recall, withdrawal, administrative detention or seizure of our Cue Health Monitoring System or any of our current or future test cartridges;
- operating restrictions or partial suspension or total shutdown of production;
- refusal of or delay in granting our requests for 510(k) clearance or PMA approval of new tests or modified tests;
- operating restrictions, partial suspension or total shutdown of production;

- withdrawing 510(k) clearance or PMA approvals that are already granted;
- refusal to grant export approval for our Cue Health Monitoring System or any of our current or future tests; or
- criminal prosecution.

Clinical Laboratory Improvements Amendments of 1988

CLIA Regulations Relating to In Vitro Diagnostic Tests

The Cue Health Monitoring system and our Cue COVID-19 Test also are subject to categorizaion by the FDA pursuant to CLIA and its implementing regulations in the United States which establish quality standards for all laboratory testing to ensure the accuracy, reliability and timeliness of patient test results regardless of where the test is performed. A laboratory is broadly defined to include any facility that performs laboratory testing on specimens derived from humans for the purpose of providing information for the diagnosis, prevention or treatment of disease, or the impairment of, or assessment of health. CLIA regulations establish standards for proficiency testing; facility administration; general laboratory systems; pre-analytic, analytic systems, post-analytic systems; personnel qualifications and responsibilities; quality control, quality assessment; and specific provisions for laboratories performing moderate to high complexity tests.

The regulations promulgated under CLIA establish three levels of in vitro diagnostic tests: (1) waived; (2) moderately complex; and (3) highly complex. When a test is categorized as waived, it may be performed by laboratories that have a Certificate of Waiver.

Tests that are waived by the CLIA regulations are automatically categorized as waived following 510(k) clearance or PMA approval. Otherwise, following clearance or approval, the FDA will classify in vitro diagnostics in accordance with the CLIA regulations. Manufacturers of clinical laboratory test systems, such as in vitro diagnostics, that are categorized as moderate complexity according to the CLIA categorization criteria may request categorization of the text as waived through a CLIA Waiver by Application submission to FDA. Waived tests are simple laboratory examinations and procedures that have an insignificant risk of an erroneous result, including those that (A) employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible or (B) FDA has determined pose no reasonable risk of harm to patients if the examinations or procedures are performed incorrectly. These tests are waived from regulatory oversight of the user other than the requirement to follow the manufacturer's labeling and directions for use. Further, when FDA authorizes tests for use at the point-of-care under an EUA, such tests are deemed to be CLIA waived tests. As such, such tests can be performed in a patient care setting that is qualified to have the test performed there as a result of operating under a CLIA Certificate of Waiver for the duration of the emergency declaration. We are also required to maintain a license to conduct testing in California. California laws establish standards for day-to-day operation of our clinical laboratory, including the training and skills required of personnel and quality control. We provide testing services only to our employees, visitors, and contractors and do not provide laboratory testing services for purposes other than operation of our business.

Licensing and Regulation of Medical Device Manufacturers and Distributors

We are licensed by the California Department of Public Health as a medical device manufacturer. As a medical device manufacturer, one of the criteria is that Our Quality Management System, or QMS, holds an ISO 13485:2016 certificate. The ISO is an independent, non-governmental international organization that defines world-class specifications for products, services and systems, to ensure quality, safety and efficiency. ISO 13485:2016 is a harmonized, international regulatory benchmark for quality management systems that addresses most or all of the QMS requirements in markets including the United States, European Union, Australia, Japan and Canada. The ISO 13485:2016 certificate confirms that an organization operates a QMS that conforms to the standards established by ISO. The FDA recently proposed a rule to harmonize and modernize its QSR, which would supplant the existing requirements with ISO 13485:2016.

In addition, we may be required to obtain additional licenses as we increase our direct sale and distribution of tests. Medical device manufacturers who distribute over-the-counter devices are subject to complex and varying state licensing requirements that can attach to their manufacturing and/or distribution activity. While some states have no licensing regimen for medical device manufacturing and distribution at all, others, such as California, regulate certain types of distribution activity. For example, California separately licenses home use medical device retail facilities.

Massachusetts has codified a Code of Conduct that applies to any entity that employs or contracts with any person to sell or market prescription drugs or medical devices in Massachusetts. In preparation for our expansion of direct marketing of its home use tests, we are reviewing state regulatory requirements that may apply to us as a medical device manufacturer or distributor.

European Medical Device Regulation

Sales of in vitro diagnostics in the European Economic Area are subject to the European regulatory framework. The time required to obtain clearance or approval by a foreign country may be longer or shorter than that required for FDA clearance or approval, and the requirements may be different. Set forth below are highlights of the key European regulatory schemes applicable to our business.

European Conformity Marking ("CE Mark") and Certifications

In order to place an in vitro diagnostic, or an accessory to an in vitro diagnostic, on the market in the European Union/European Economic Area, the device must be designed, developed, manufactured, and marketed in compliance with the relevant legal framework. Currently, in vitro diagnostics must be compliant with Directive 98/79/EEC, or the Directive; however, from May 26, 2022 Regulation (EU) 2017/746, or the Regulation, will replace the Directive. While the Regulation will have direct effect in all European Economic Area countries, the Directive required national implementing legislation in each country, which had historically led to some variation in the regimes in each country.

Prior to May 26, 2022, in vitro diagnostics that have been assessed for conformity with the requirements of the Directive, including notably the "essential requirements" set out in Annex I of the Directive, are entitled to bear a CE Mark indicating that the device conforms to the standards required by the Directive. In vitro diagnostics that have been CE marked may be placed on the market throughout the Member States of the European Union and the European Economic Area, and other countries that comply with or mirror the Directive.

The method of assessing conformity of in vitro diagnostics will depend on the type and classification of the in vitro diagnostic. For in vitro diagnostics that are in the lowest risk classification (meaning that they do not appear in the list set out in Annex II of the Directive nor are they used for the purpose of self-testing by the user/patient), the manufacturer can self-assess that the in vitro diagnostics comply with the essential requirements in the Directive without any review or intervention by any regulatory body and/or third-party. In doing so, the manufacturer must comply with Common Technical Specifications adopted by the European Commission for certain diagnostic tests, unless they can justify not doing so. The manufacturer may choose to comply with harmonized technical standards adopted by European standards bodies. Although compliance with these standards is not mandatory, compliance raises a presumption of conformity with the essential requirements that each standard addresses.

Once the manufacturer has gathered the technical documentation necessary to demonstrate this in the form of a technical file, it must draw up a declaration of conformity and can then affix a CE Mark to the device and place it on the market. The only additional requirements are (i) that the manufacturer (or its authorized representative if the manufacturer is outside the European Economic Area) must maintain a copy of the relevant technical file, so that it can be inspected by national device regulators; (ii) that the manufacturer and, where relevant, its authorized representative must register themselves and their in vitro diagnostics, so that these authorities know when the products are to be marketed; and (iii) that the manufacturer must perform device vigilance to monitor the safety and performance of the in vitro diagnostics on the market, reporting both adverse incidents and any field safety corrective actions, or FSCAs, to the authorities, as appropriate. Challenges by European regulatory authorities may arise subsequently if there is an issue related to the compliance, safety or performance of the device. Such challenges may arise from a routine audit or enquiry by a regulatory authority or following device vigilance reports by the company or others, or reports of FSCAs by the company, or complaints made by competitors.

Under the Directive, any in vitro diagnostic that is for self-testing or that appears in Annex II (meaning that these devices cannot use the self-certification process) must have their compliance with the Directive reviewed and certified by a European Notified Body. Notified bodies are usually private, non-governmental, independent bodies that are authorized/licensed by governmental authorities to perform conformity assessments. They enter into a contractual arrangement with manufacturers to carry out the conformity assessment of in vitro diagnostics. The Notified Body will review the technical documentation, including assessing the available clinical evidence, literature data for the product and any available post-market experience. There is some flexibility regarding the conformity assessment procedure the manufacturer uses. If the manufacturer decides to base its conformity assessment on an

assessment of its Full Quality Assurance System (rather than a more product-focused "Type Examination"), the Notified Body will also perform an audit of the manufacturer's quality system against an international standard, EN ISO 13485:2016. If the Notified Body deems the in vitro diagnostic (and where applicable the manufacturer's quality system) conforms to the Directive it will issue a certificate of conformity for the device and, where applicable, a certificate of conformity for the manufacturer's quality system, which the manufacturer can use as the basis for its declaration of conformity, then affix a CE Mark and thus place the in vitro diagnostic on the market in the European Union / European Economic Area.

On May 26, 2017 the Regulation entered into force and, from May 26, 2022, the Regulation will apply and will replace the Directive. From that date, in vitro diagnostics should have been assessed for conformity with the Regulation and should not be CE marked and placed on the market unless they are in compliance. However, the Regulation provides for a transition period that allows manufacturers or products that benefit from certificates of conformity issued by European Notified Bodies under the Directive prior to May 26, 2022 to continue to place those products on the market until May 26, 2024. Where they have been placed on the market prior to that date, they may then be distributed and supplied to end-users until May 26, 2025. However, this transition period does not apply to in vitro diagnostics that have undergone manufacturer self-certification nor does it to products that benefit from Notified Body certificates of conformity but where the manufacturer has made significant changes to a device since the certificate was issued. These products must be in compliance with the Regulation from May 26, 2022, or from the date of the change if that occurs prior to May 26, 2024.

As with the Directive, the Regulation requires that in vitro diagnostics must undergo a conformity assessment procedure, have a declaration of conformity drawn up and bear the CE Mark before a manufacturer can place them on the European Union / European Economic Area market. However, the Regulation will up-classify many in vitro diagnostics that the Directive currently allows manufacturers to self-assess and declare conformity, so that the vast majority of in vitro diagnostics, including all diagnostic tests, will require a European Notified Body conformity assessment as part of the conformity assessment process. In practice, manufacturers may only be able to self-assess and declare the conformity of consumables and apparatus that are regulated as in vitro diagnostics but are not the tests themselves. The Regulation will also provide for greater use of common specifications that are presumed to be binding, unless a manufacturer can justify not doing so.

Following the United Kingdom's departure from the European Union on January 31, 2020, the United Kingdom continued to follow the same regulations as the European Union during a Transition Period until the end of 2020. Now that the Transition Period has ended, the United Kingdom has implemented Directive 98/79/EC into U.K. law (along with other European Union legislation on medical devices) through the Medical Devices Regulations 2002. Therefore, the two regulatory systems are independent but currently broadly aligned (although under the Northern Irish Protocol, the European Union regulatory framework will continue to apply in Northern Ireland). The United Kingdom has implemented certain new regulatory requirements, including that all medical devices and in vitro diagnostics must be registered with the Medicines and Healthcare products Regulatory Authority before being placed on the market in Great Britain. There is a grace period to allow time for compliance with the new registration process, with higher risk devices (i.e. List A products) requiring registration by May 1, 2021, and lower risk devices requiring registration later in 2021 (List B products from September 1, 2021 and general in vitro diagnostics from January 1, 2022). CE marking will continue to be recognized in Great Britain for medical devices until June 30, 2023, following which a UK Conformity Assessment mark will be required for a medical device or in vitro diagnostic device to be marketed in Great Britain. The new European Union medical device and in vitro diagnostics regulations will not apply in Great Britain and it remains uncertain at present how the U.K. regulatory regime will change in future and the extent to which it will diverge from European Union regulations.

Privacy Regulation

U.S. Privacy Regulation

The privacy and security regulations under HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, collectively referred to herein as HIPAA, establish uniform standards governing the conduct of certain electronic healthcare transactions and require covered entities, such as certain healthcare providers, health plans, and healthcare clearinghouses and their respective business associates, as well as their covered contractors, that perform services for them which involve the creation, receipt, use, maintenance, transmission or disclosure of, individually identifiable health information for or on behalf of a covered entity, to comply with standards that relate to the privacy and security of protected health information, or PHI. HIPAA also sets forth certain rights that an individual may have with respect to his or her PHI maintained by a covered entity,

including the right to access or amend certain records containing PHI, or to request restrictions on the use or disclosure of PHI. HIPAA's breach notification provisions require covered entities to report breaches of PHI that have not been encrypted or otherwise secured in accordance with guidance from the Secretary of the U.S. HHS. Required breach notices must be made as soon as is reasonably practicable, but no later than sixty (60) days following discovery of the breach. Reports must be made to affected individuals and to the Secretary of the U.S. HHS and, in some cases depending on the size of the breach, they must be reported through local and national media. HIPAA further requires that covered entities enter into agreements meeting certain regulatory requirements with their business associates, which are independent contractors or agents of covered entities that create, receive, maintain or transmit PHI in connection with providing a service on behalf of the covered entity. These agreements require business associates to safeguard the covered entity's PHI against improper use and disclosure. Certain of HIPAA's privacy and security standards are directly applicable to business associates. In the event we begin to bill health plans or health insurers for our Cue Health Monitoring System and our associated tests, using standard electronic transactions, we would become a covered health care provider subject to HIPAA. Because we maintain PHI on behalf of the laboratories that are covered entities and conduct testing with the Cue COVID-19 Test, and we create, receive, maintain, and use or disclose PHI on our behalf, we are considered a business associate subject to certain provisions of HIPAA and the terms of any business associate agreements we enter into with such healthcare providers or health plans and our vendors that may access, use or disclose PHI. Covered entities and business associates may be subject to significant civil and criminal penalties for noncompliance with HIPAA. Both the Office for Civil Rights within the U.S. HHS and state attorneys general have authority to enforce HIPAA.

In addition, various states in the United States have laws and regulations governing the use and disclosure of health information, such as the California Confidentiality of Medical Information Act; these laws are not preempted by HIPAA to the extent they are more stringent than HIPAA. These laws frequently change, and we may not be able to maintain compliance in all jurisdictions in which we do business. To the extent that any of these laws were to apply to medical device manufacturers or mobile applications, we would be required to comply. However, other than the Confidentiality of Medical Information Act, or CMIA, which governs mobile applications, most of these laws apply to either health care providers or certain sensitive information, such as sexually transmitted diseases. If we were to obtain approval for tests which involved the collection and maintenance of sensitive information, we may be subject to laws in certain jurisdictions. These laws frequently change, and we may not be able to maintain compliance in all jurisdictions in which we do business.

Specifically, the CMIA deems to be a "health care provider" subject to its requirements any business that, as one of its purposes, maintains medical information for health care providers or individuals, or offer mobile applications or other related devices to consumers that maintains medical information in order to make the information available to an individual or a provider of health for purposes of allowing the individual to manage his or her information, or for the diagnosis, treatment, or management of a medical condition, in addition to other types of entities. Further, under CMIA, an affected individual whose privacy is breached has a private right of action for actual or nominal damages.

Additionally, the FTC and many state attorneys general are interpreting existing federal and state consumer protection laws (including online privacy laws) to impose evolving standards for the online collection, use, dissemination and security of health-related and other personal information.

State laws, such as the California Online Privacy Protection Act, similarly regulate such practices for mobile applications. Consumer protection laws such as these require us to publish statements that describe how we handle personal information and choices individuals may have about the way we handle their personal information. If such information that we publish is considered untrue, we may be subject to government claims of unfair or deceptive trade practices at the federal or state level, which could lead to significant liabilities and consequences. Furthermore, according to the FTC violating consumers' privacy rights or failing to take appropriate steps to keep consumers' personal information secure may constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act.

We seek to utilize biological samples and data from participants in our clinical trials in accordance with applicable law, IRB stipulations, and participant permissions (through consent forms and HIPAA authorizations). If we are unable or significantly restricted in using participant samples and data for secondary research purposes, our ability to develop additional products and/or improve or refine existing products will be limited, which may impact our business and prospects.

The California Consumer Privacy Act, or the CCPA, became effective in January 2020 and imposes many requirements on covered businesses that collect or process the personal information of California residents, including providing notice to data subjects regarding the information collected about them and providing data subjects the right to restrict the use of their personal information and to request access to or removal of such personal information. The CCPA contains significant penalties for companies that violate its requirements. The CCPA currently excepts HIPAA covered entities, business associates, or health care providers subject to CMIA. In addition, many states have enacted laws that impose fines on entities that experience a data breach involving certain types of personal data, permit consumers to bring private actions against parties that experience a breach involving their data or requiring notification of data subjects and state authorities in the event of a data breach. Further, the California Privacy Rights Act, or the CPRA, was recently voted into law by California residents. The CPRA significantly amends the CCPA, and imposes additional data protection obligations on covered companies doing business in California, including additional consumer rights processes and opt outs for certain uses of sensitive data. We may become subject to laws such as CCPA and CPRA in the future, in relation to some of the personal information that our business holds on customers and/or our employees. If we violate any of these laws applicable to our operations, we could face significant financial penalties and reputational damage.

There are also foreign privacy and security laws and regulations that impose restrictions on the access, use, and disclosure of personal information. As a business that operates both internationally and throughout the United States, any wrongful use or disclosure of personally identifiable information, even if it does not constitute PHI, by us or our third-party contractors, including disclosure due to data theft or unauthorized access to our or our third-party contractors' computer networks, could subject us to fines or penalties that could adversely affect our business or impose additional costs on our operations, including the cost of providing credit monitoring and identity theft prevention services to affected consumers.

If we or our operations are found to be in violation of HIPAA, as amended by HITECH or their implementing regulations, and similar state laws, we may be subject to significant penalties, including civil, criminal and administrative penalties, fines, imprisonment, and the curtailment or restructuring of our operations. HIPAA has four tiers of civil monetary penalties, as well as criminal penalties, both of which may be applied to business associates as well as covered entities, and state attorneys have authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorneys' fees and costs associated with pursuing federal civil actions. State privacy and security laws also may include penalties for noncompliance, as well as a private right of action.

General Data Protection Regulation and the United Kingdom Data Protection Act 2018

The General Data Protection Regulation (Regulation (EU) 2016/679), the GDPR, and the U.K. General Data Protection Regulation or the U.K. GDPR, and the U.K. Data Protection Act 2018 or the U.K. DPA, and other related privacy and data protection legislation in the jurisdictions in which we operate impose strict requirements on controllers and processors of personal data, including special protections for sensitive personal data categories, which include health and genetic information of data subjects residing in the European Union or the United Kingdom. The GDPR and the U.K. GDPR and U.K. DPA impose several requirements on organizations that process such data, including: to observe core data processing principles; to comply with various accountability measures; to provide more detailed information to individuals about data processing activities; to establish a legal basis to process personal data (including enhanced consent requirements); to maintain the integrity, security and confidentiality of personal data; and to report personal data breaches. The GDPR and the U.K. GDPR and U.K. DPA grant individuals the opportunity to object to the processing of their personal data, allows them to request deletion of personal data in certain circumstances, and provides an individual with an express right to seek legal remedies in the event the individual believes his or her rights have been violated. Further, the GDPR and the U.K. GDPR and U.K. DPA impose strict rules on the transfer of personal data out of the European Economic Area (or the United Kingdom) (i.e. to "third countries") to the United States or other regions that have not been deemed to offer "adequate" privacy protections under their domestic laws. The GDPR and the U.K. GDPR and U.K. DPA may impose additional responsibility and liability in relation to personal data that we process and we may be required to put in place additional mechanisms ensuring compliance with European Union and U.K. data protection rules. This may be onerous and adversely affect our business, financial condition, results of operations and prospects. Failure to comply with the requirements of the GDPR and the U.K. GDPR and U.K. DPA and related privacy and data protection legislation may result in a variety of enforcement measures, including significant fines and other administrative measures. The GDPR and the U.K. GDPR and U.K. DPA have introduced substantial fines for breaches of the data protection rules, increased powers

for regulators, enhanced rights for individuals, and new rules on judicial remedies and collective redress (the maximum fine is the higher of €20 million (or £17.5 million in the United Kingdom) or 4% of the total annual worldwide turnover in the preceding financial year). We may be subject to claims by third parties, such as patients or regulatory bodies, that we or our employees or independent contractors inadvertently or otherwise breached GDPR or the U.K. GDPR and U.K. DPA and related data protection rules. Litigation may be necessary to defend against these claims. There is no guarantee of success in defending these claims, and if we do not prevail, we could be required to pay substantial fines and/or damages and could suffer significant reputational harm. Even if we are successful, litigation could result in substantial cost and be a distraction to management and other employees.

The GDPR and the U.K. GDPR and U.K. DPA are complex laws and the regulatory guidance is still evolving, including with respect to how the GDPR and the U.K. GDPR and U.K. DPA should be applied in the context of transactions from which we may gain access to personal data. Data protection authority activity differs across the European Union between member states (and the United Kingdom), with certain authorities applying their own agenda which shows there is significant uncertainty in the manner in which data protection authorities will seek to enforce compliance with GDPR in the medical and research fields. For example, it is not yet clear if such authorities will conduct random audits of companies subject to the GDPR or the U.K. GDPR and U.K. DPA or will only respond to complaints filed by individuals who claim their rights have been violated. Enforcement actions to date in other industries has resulted in significant fines and other penalties. Failure to comply with the requirements of the GDPR and the related national data protection laws of European Union member states, which may deviate slightly from the GDPR, or the U.K. GDPR and U.K. DPA, may result in material fines.

Other International Privacy and Security Regulations

Our business is subject to a complex and evolving global web of laws and regulations governing data privacy, data security, cross-border data transfers, and data localization. Federal, state, local, and foreign governments are increasingly implementing or expanding their data protection regimes, resulting in additional compliance costs and risks. Many of these laws and regulations are subject to change and uncertain interpretation, and could result in regulatory or litigation claims or actions, changes to our business practices, monetary penalties, increased cost of operations, declines in clinical study participation or engagement, or otherwise harm our business.

We rely on information technology systems, including third-party hosted services, to support our business processes and activities and to store personal data (including employee and patient data). Consequently, we are at risk of a cybersecurity-related attack, intrusion, or disruption, including by criminal organizations, hackers, foreign governments, and terrorists. A cybersecurity incident could result in some or all of our systems being unavailable; the loss, misuse, or unauthorized disclosure of personally identifiable information or other personal data; negative publicity and reputational damage; exposure to risk of loss; and litigation and regulatory investigations. In the event we are a victim of a cyberattack, data breach notification laws may require us to notify regulators, affected individuals, and potentially other third parties in multiple jurisdictions. Cyber threats are constantly evolving, increasing the difficulty of detecting and successfully defending against them. Despite our security measures, we cannot guarantee that these measures will prevent all possible security breaches or attacks.

U.S. Federal, State and Foreign Fraud and Abuse Laws

U.S. Federal and State and Abuse Laws

The U.S. federal and state governments have enacted, and actively enforce, a number of laws to address fraud and abuse in federal healthcare programs. Our business is subject to compliance with these laws.

Anti-Kickback Statutes. The federal Anti-Kickback Statute prohibits, among other things, knowingly and willfully soliciting, offering, receiving or paying remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to induce or reward either the referral of an individual, or the purchase, order, arrangement for, or recommendation of, items or services for which payment may be made, in whole or in part, under a federal healthcare program such as Medicare or Medicaid. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation.

The definition of “remuneration” has been broadly interpreted to include anything of value, including, for example, gifts, certain discounts, the furnishing of free supplies, equipment or services, credit arrangements, payment of cash and waivers of payments. The government takes the position, and courts have agreed with the government’s interpretation, that the statute’s intent requirement is satisfied if any one purpose of an arrangement involving

remuneration is to induce referrals of federal healthcare covered businesses, even if there are other legitimate purposes. Violations of the federal Anti-Kickback Statute can result in criminal penalties and fines, imprisonment of up to ten years, civil and administrative penalties for each violation, damages, and exclusion from participation in federal healthcare programs like Medicare or Medicaid. A claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act, or the FCA, discussed in greater detail below.

There are a number of statutory exceptions and regulatory "safe harbors" protecting some common activities from prosecution, but the exceptions and safe harbors are drawn narrowly and require strict compliance to offer protection. The failure of a transaction or arrangement to fit precisely within one or more safe harbors does not necessarily mean that it is illegal or that prosecution will be pursued. However, conduct and business arrangements that do not fully satisfy an applicable safe harbor may result in increased scrutiny by government enforcement authorities such as the U.S. HHS, Office of the Inspector General, or the OIG.

Many states have adopted laws similar to the federal Anti-Kickback Statute. Some of these state prohibitions apply to referral of recipients for healthcare products or services reimbursed by any source, not only government healthcare programs, and may apply to payments made directly by the patient.

Government officials have focused their enforcement efforts on the marketing of healthcare services and products, among other activities, and recently have brought cases against companies, and certain individual sales, marketing and executive personnel, for allegedly offering unlawful inducements to potential or existing customers in an attempt to procure their business.

Federal False Claims Laws. The federal false claims and civil monetary penalties laws, including the Civil Monetary Penalties Law, and the FCA prohibit any person or entity, among other things, to knowingly present, or cause to be presented, a false or fraudulent claim for payment of government funds and knowingly making, using or causing to be made or used, a false record or statement to get a false claim paid or to avoid, decrease or conceal an obligation to pay money to the federal government. The qui tam provisions of the FCA allow a private individual to bring actions on behalf of the federal government alleging that the defendant has violated the FCA and to share in any monetary recovery. In addition, various states have enacted false claims laws analogous to the FCA, and many of these state laws apply where a claim is submitted to any third-party payor and not only a federal healthcare program.

When an entity is found to have violated the FCA, it may be required to pay treble damages and significant mandatory penalties, civil monetary penalties, and may be subject to exclusion from participation in federal healthcare programs such as Medicare and Medicaid. Many medical device manufacturers and healthcare companies have reached substantial financial settlements with the federal government for a variety of alleged improper activities and have entered into corporate integrity agreements with OIG, under which the companies undertake certain compliance, certification and reporting obligations, to avoid exclusion from federal health care program. The federal government has used the FCA to assert liability on the basis of kickbacks, or in instances in which manufacturers have provided billing or coding advice to providers that the government considered to be inaccurate. In these cases, the manufacturer is subject to liability for "causing" a false claim. In addition, the federal government has pursued companies under the FCA in connection with off-label promotion of products. Our activities, including those relating to the reporting of discount and rebate information and other information affecting federal, state and third-party reimbursement of our Cue Health Monitoring System and any of our future tests (once approved) and the sale and marketing of our tests (once approved), may be subject to scrutiny under the federal Anti-Kickback Statute and the FCA. We are also subject to other criminal federal laws that prohibit making false or fictitious claims and false statements to the federal government.

While we are unaware of any current investigations or allegations for violations of anti-kickback or false claims laws, we are unable to predict whether we will be subject to actions under the FCA or a similar state law, or the impact of such actions. However, the costs of defending such claims, even if successful or if any sanctions imposed, could significantly affect our business as well as our financial performance.

HIPAA Fraud Statute. HIPAA, among other things, imposes criminal liability for knowingly and willfully executing or attempting to execute a scheme to defraud any healthcare benefit program, including private third-party payors, knowingly and willfully embezzling or stealing from a healthcare benefit program, willfully obstructing a criminal investigation of a healthcare offense, and creates federal criminal laws that prohibit knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement

or representation, or making or using any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the federal healthcare Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation.

Open Payments. The federal Physician Payments Sunshine Act, implemented as the Open Payments Program, requires certain manufacturers of drugs, medical devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program to report annually to CMS information related to payments and other "transfers of value" to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), and teaching hospitals, and requires applicable manufacturers to report annually ownership and investment interests held by physicians and their immediate family members. Beginning in 2022, applicable manufacturers will also be required to report information and transfers of value provided (beginning in 2021) to physician assistants, nurse practitioners, clinical nurse specialists, anesthesiologist assistants, certified nurse anesthetists, and certified nurse-midwives. Failure to submit timely, accurate and complete reports may result in substantial monetary penalties. We are or will be subject to the Open Payments Program and the information we disclose may lead to greater scrutiny, which may result in modifications to established practices and additional costs. Additionally, similar reporting requirements have also been enacted on the state level domestically, and an increasing number of countries worldwide either have adopted or are considering similar laws requiring transparency of interactions with healthcare professionals.

Eliminating Kickbacks in Recovery Act of 2018. The federal Eliminating Kickbacks in Recovery Act of 2018, or EKRA, prohibits payments for referrals to recovery homes, clinical treatment facilities, and laboratories. EKRA's reach extends beyond federal health care programs to include private insurance (i.e., it is an "all payor" statute). The full scope of such law is uncertain and is subject to a variety of interpretations.

European Fraud and Abuse Laws

In Europe, various countries have adopted anti-bribery laws providing for severe consequences, in the form of criminal penalties and/or significant fines, for individuals and/or companies committing a bribery offense. Violations of these anti-bribery laws, or allegations of such violations, could have a negative impact on our business, results of operations and reputation. For instance, in the United Kingdom, under the Bribery Act 2010, a bribe occurs when a person offers, gives or promises to give a financial or other advantage to induce or reward another individual to improperly perform certain functions or activities, including any function of a public nature. Bribery of foreign public officials also falls within the scope of the Bribery Act 2010. Infringement of these laws could result in substantial fines and imprisonment.

Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act of 1977, or the FCPA, prohibits any U.S. individual or business from paying, offering or authorizing payment or offering of anything of value, directly or indirectly, to any foreign official, political party or candidate for the purpose of influencing any act or decision of the foreign entity in order to assist the individual or business in obtaining or retaining business. The FCPA also obligates companies whose securities are listed in the United States to comply with accounting provisions requiring them to maintain books and records that accurately and fairly reflect all transactions of the corporation, including international subsidiaries, if any, and to devise and maintain an adequate system of internal accounting controls for international operations.

U.S. Centers for Medicare and Medicaid Services

Medicare is a federal program administered by CMS through Medicare Administrative Contractors, or MACs. Available to people age 65 or over, and certain other people, Medicare provides, among other things, healthcare benefits that cover, within prescribed limits, the major costs of most medically necessary care for such people, subject to certain deductibles and copayments.

CMS has established guidelines for the coverage and reimbursement of certain products and procedures by Medicare. In general, in order to be reimbursed by Medicare, a healthcare procedure furnished to a Medicare beneficiary must be reasonable and necessary for the diagnosis or treatment of an illness or injury, or to improve the functioning of a malformed body part. The methodology for determining coverage status and the amount of Medicare reimbursement varies based upon, among other factors, the setting in which a Medicare beneficiary received healthcare products and services. The reimbursement rate for certain services, including clinical laboratory services,

is established under fee schedules that are developed and periodically updated pursuant to specific statutory or regulatory provisions. Any changes in federal legislation, regulations and policy affecting CMS coverage and reimbursement relative to the procedure using our Cue Health Monitoring System and our current and future tests (once approved) could have a material effect on our performance.

CMS also administers the Medicaid program, a cooperative federal/state program that provides medical assistance benefits to qualifying low income and medically needy people. State participation in Medicaid is optional, and each state is given discretion in developing and administering its own Medicaid program, subject to certain federal requirements pertaining to payment levels, eligibility criteria and minimum categories of services. The coverage, method and level of reimbursement vary from state to state and is subject to each state's budget restraints. Changes to the availability of coverage, method or level of reimbursement for relevant procedures may affect future revenue negatively if reimbursement amounts are decreased or discontinued.

All CMS programs are subject to statutory and regulatory changes, retroactive and prospective rate adjustments, administrative rulings, interpretations of policy, intermediary determinations, and government funding restrictions, all of which may materially increase or decrease the rate of program payments to healthcare facilities and other healthcare providers.

U.S. Health Reform

Changes in healthcare policy could increase our costs, decrease our revenue and impact sales of and reimbursement for our current and future products once approved. The United States and some foreign jurisdictions are considering or have enacted a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell our Cue Health Monitoring System and any of our current or future tests profitably once approved. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality or expanding access. Current and future legislative proposals to further reform healthcare or reduce healthcare costs may limit coverage of or lower reimbursement for the procedures associated with the use of our Cue Health Monitoring System and any of our current or future tests once approved. The cost containment measures that payors and providers are instituting and the effect of any healthcare reform initiative implemented in the future could impact our revenue from the sale of our Cue Health Monitoring System and our current and future tests once approved.

By way of example, the U.S. federal and state governments continue to propose and pass legislation designed to reduce the cost of healthcare. In March 2010, the U.S. Congress enacted the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, the "ACA"), which, among other things, includes changes to the coverage and payment for products under government healthcare programs.

Since enactment of the ACA, there have been, and continue to be, numerous judicial, administrative, executive, and legislative challenges to certain aspects of the ACA, and we expect there will be additional challenges and amendments to the ACA in the future. For example, December 14, 2018, a Texas U.S. District Court Judge ruled that the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress as part of legislation enacted in 2017, informally titled the Tax Cuts and Jobs Act of 2017. Additionally, on December 18, 2019, the U.S. Court of Appeals for the 5th Circuit upheld the District Court ruling that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. On June 17, 2021, the Supreme Court held that the states and individuals that brought the lawsuit challenging the ACA's individual mandate do not have standing to challenge the law. The Supreme Court did not reach the merits of the challenge, but the decision ends the case. It is unclear how the Supreme Court ruling, other such litigation and the healthcare reform measures of the Biden Administration will impact the ACA.

Environmental, Health and Safety Regulations

We are subject to various federal, state, local, and foreign environmental, health and safety laws and regulations and permitting and licensing requirements. Such laws include those governing laboratory practices, the generation, storage, use, manufacture, handling, transportation, treatment, remediation, release and disposal of, and exposure to, hazardous materials and wastes and worker health and safety. Our operations involve the generation, use, storage and disposal of hazardous materials, and the risk of injury, contamination or non-compliance with environmental, health and safety laws and regulations or permitting or licensing requirements cannot be eliminated. In particular, the introduction of our COVID-19 test requires that we maintain compliance with applicable and evolving federal and

state laws and regulations relating to COVID-19, including the generation, use, storage, and disposal of testing materials and agents. agents. To date, compliance with environmental laws and regulations has not had a material effect on our business.

Legal Proceedings

From time to time, we are or may become involved in legal proceedings. Regardless of outcome, litigation can have an adverse impact on us due to defense and settlement costs, diversion of management resources, negative publicity, reputational harm and other factors, and there can be no assurances that favorable outcomes will be obtained.

In February 2018, the staff of the U.S. Securities and Exchange Commission's Division of Enforcement issued a subpoena to us requesting certain documents and information. The SEC's subpoena called for the production of documents and information, including documents and information related to one of our prior private financing rounds. We have been cooperating fully with the SEC's investigation. At this time, however, we cannot predict the outcome of this investigation as to us or our officers, nor can we predict the timing associated with any such conclusion or resolution. Based on information currently known to us, we do not believe the SEC's investigation will have a material adverse effect on our business, financial condition or results of operations. However, we cannot assure you that we will not be required to devote significant time or resources to resolving the SEC investigation, or that the ultimate resolution of the investigation will not have a material adverse effect on our business, financial condition or results of operations.

We are not currently a party to any other legal proceedings that we believe may have a material adverse effect on our business, financial condition or results of operations.

MANAGEMENT

Executive Officers and Directors

The following table sets forth certain information concerning our executive officers and directors as of the effective date of the registration statement of which this prospectus forms a part:

Name	Age	Position
Executive Officers and Employee Directors		
Ayub Khattak	36	Chief Executive Officer, Director, Chairman of the Board and Co-Founder
Chris Achar	36	Chief Strategy Officer and Director
John Gallagher	48	Chief Financial Officer
Erica Palsis	36	General Counsel
Clint Sever	36	Chief Product Officer and Co-Founder
Non-Employee Directors		
Xiangmin "Min" Cui	52	Director
Scott Stanford(1)	51	Director
Director Nominees		
Joanne Bradford	58	Director Nominee
Carole Faig(1)	59	Director Nominee
Maria Martinez(1)	64	Director Nominee

(1) Member of the Audit Committee.
(2) Member of the Compensation Committee.
(3) Member of the Nominating and Corporate Governance Committee.

Executive Officers and Employee Directors

Ayub Khattak. Mr. Khattak is the co-founder of our company and has served as our Chief Executive Officer and member of our board of directors since January 2010. He holds a B.S. in mathematics from the University of California, Los Angeles. We believe Mr. Khattak is qualified to serve as a member of our board of directors based on his experience in the healthcare technology industry and his extensive knowledge of our company.

Chris Achar. Mr. Achar has served as a member of our board of directors since May 2018 and was appointed as our Chief Strategy Officer in June 2021. Mr. Achar is the founder of Genzum Life Sciences, Inc., a pharmaceutical company, and has served as its chief executive officer since 2010. Prior, Mr. Achar founded Synergy Ventures, a venture capital company where he serves as a general partner, whose investments include seed stage funding to several medical technology companies including Cue BioPharma Inc. and Provention Bio Inc. Mr. Achar has served as a member of the board of directors of the Network for Teaching Entrepreneurship since 2018. Mr. Achar holds a B.S. in business marketing from California State University and a M.B.A. from Pepperdine University School of Business. We believe Mr. Achar is qualified to serve as a member of our board of directors based on his experience as a healthcare executive and an investor in multiple healthcare and biotech companies.

Clint Sever. Mr. Sever is the co-founder of our company and has served as our Chief Product Officer since January 2010. He holds a B.S. in retail and consumer science from the University of Arizona.

Erica Palsis. Ms. Palsis has served as our General Counsel since February 2021. She was previously General Counsel, Corporate Secretary and Privacy Officer at Livongo Health, Inc. (acquired by Teladoc Health, Inc. in October 2020), a public consumer digital health company, from December 2018 to October 2020 and Vice President and Associate General Counsel from March 2017 to December 2018. Ms. Palsis also served as Corporate Counsel for Allscripts Healthcare Solutions, Inc., a public company providing practice management and electronic health record technology, from May 2014 to March 2017, and Associate Corporate Counsel from March 2010 to May 2014. Ms. Palsis received her B.A. in political science from Loyola University Chicago and J.D. from DePaul University College of Law.

John Gallagher. Mr. Gallagher has served as our Chief Financial Officer since March 2021. Prior to this, Mr. Gallagher served in various capacities at Becton, Dickinson & Company, or BD, a public multinational medical technology company, including Senior Vice President, Chief Financial Officer, Medical Segment and Treasurer from July 2018 to February 2021, Senior Vice President, Corporate Finance, with responsibility for Financial, Planning & Analysis, Treasury and Chief Accounting Officer/Controller from December 2014 to July 2018 and Vice President, Treasurer from September 2012 to December 2014. Prior to BD, Mr. Gallagher served as Vice President, Financial Planning and Analysis for NBCUniversal Media, LLC, or NBC, an American mass media and entertainment conglomerate, from October 2009 to September 2012. Prior to NBC, Mr. Gallagher served as Assistant Controller, Corporate Treasury for General Electric Company, a public multinational conglomerate, from October 2006 to October 2009. Mr. Gallagher holds a B.S. degree in finance from Clemson University and received his M.B.A. degree from the University of Pittsburgh.

Non-Employee Directors

Joanne Bradford. Ms. Bradford was nominated to our board of directors in August 2021 and is expected to join our board of directors immediately prior to the effectiveness of the registration statement of which this prospectus forms a part. Ms. Bradford currently serves as Chief Growth Officer of Mountain, a connected TV Ad platform. Ms. Bradford has served as President of Honey Science Corp., or Honey, an e-commerce technology platform, since August 2019. Honey was acquired by PayPal in January 2020. Prior to joining Honey, Ms. Bradford was Chief Marketing Officer of Social Finance, Inc., or SoFi, an online personal finance company, from June 2017 to May 2019. She previously served as Chief Operating Officer of SoFi from July 2015 to June 2017. Ms. Bradford served as Head of Partnerships at Pinterest, a social media web and mobile application company, from November 2013 to December 2015. She previously held executive-level roles at the Hearst Corporation, Demand Media, Yahoo!, and Microsoft Corporation. Ms. Bradford serves on the board of directors of private and public companies, Snap Commerce, Katapult and Kahoot! Ms. Bradford has served as a director of Wave App, a small business software company, since October 2018 and OneLogin, a unified access management company, since July 2019 and previously served as a director of Comscore, Inc., a global information and analytics company, from April 2019 until April 2020. Ms. Bradford holds a B.A. in journalism from San Diego State University. We believe Ms. Bradford is qualified to serve on our board of directors due to her over 20 years of experience leading product marketing, business development and programming, as well as building global sales and marketing teams.

Xiangmin "Min" Cui. Dr. Cui has served as a member of our board of directors since June 2020. He is Founder and Managing Director of Decheng Capital, an investment firm focused on life sciences companies. Prior to founding Decheng, Dr. Cui was an investment partner at Bay City Capital, an international life science venture capital firm in San Francisco, California. Dr. Cui was previously director of strategic investment for the Southern Research Institute, a not-for-profit research organization. Prior to that, Dr. Cui co-founded two biopharmaceutical companies, where he led efforts in discovery and development of several key technologies in the fields of oncology, cardiology, infectious and inflammatory diseases. Dr. Cui has served on the board of directors of Alpine Immune Sciences, Inc. (Nasdaq: ALPN), a public clinical-stage biopharmaceutical company, since January 2019. From August 2017 to May 2018, Dr. Cui served as a member of the board of directors of ARMO BioSciences, Inc., a publicly traded immuno-oncology company acquired by Eli Lilly and Company in May 2018. Dr. Cui also serves on the boards of directors of several private companies. Dr. Cui holds a Ph.D. in cancer biology from Stanford University and a B.S. and an M.S. in molecular biology from Peking University. We believe that Dr. Cui's venture capital and management experience in the pharmaceuticals industry provides him with the qualifications and skills necessary to serve as a member of our board of directors.

Carole Faig. Ms. Faig was nominated to our board of directors in August 2021 and is expected to join our board of directors immediately prior to the effectiveness of the registration statement of which this prospectus forms a part. Ms. Faig has more than 38 years of audit and public accounting experience with Ernst & Young LLP, or EY, where she was a partner focused on the healthcare industry. Prior to her retirement from EY in July 2021, Ms. Faig served in a number of leadership roles including U.S. Health Leader and West Region Health and Life Sciences leader, where she managed a $500 million practice. In addition, Ms. Faig has extensive experience as an audit partner serving public and private companies in the health sector. Ms. Faig holds a B.B.A. in accounting from Sam Houston State University and is a certified public accountant. We believe Ms. Faig is qualified to serve on our board of directors due to her extensive experience in the healthcare industry and audit practices.

Maria Martinez. Ms. Martinez was nominated to our board of directors in August 2021 and is expected to join our board of directors immediately prior to the effectiveness of the registration statement of which this prospectus

forms a part. Maria stepped into the role of chief operating officer at Cisco Systems, Inc., or Cisco, in 2021 after having joined Cisco as executive vice president and chief customer experience officer in 2018. Prior to this, Ms. Martinez has served in a variety of senior executive roles at leading companies such as Salesforce.com, Inc., where she was president of Global Customer Success from March 2016 and chief growth officer from February 2012 to February 2013, and Microsoft Corporation, where she led their global services organization. Ms. Martinez has held additional leadership positions at telecom giants Motorola, Inc. and AT&T Inc., and also served as chief executive officer of Embrace Networks, Inc.

Ms. Martinez's board occupancy has spanned industries across both public and non-profit sectors, including roles at Plantronics, Inc. from September 2015 to April 2018, Declara Inc., and Genesys Works Bay Area. Ms. Martinez actively serves on the board of directors for McKesson Corporation and Silicon Valley Education Foundation, where her experience in leading large, global companies through transformation will help us to advance our mission of empowering people to live their healthiest lives. Ms. Martinez holds a B.S. in electrical engineering from the University of Puerto Rico and a M.S. in electrical engineering from Ohio State University. We believe Ms. Martinez is qualified to serve on our board of directors due to her extensive experience in the technology industry.

Scott Stanford. Mr. Stanford has served as a member of our board of directors since December 2017. Mr. Stanford has served as the co-founder of several companies, including ACME, LLC and its affiliates, a venture capital firm, since February 2013; and Silicon Foundry, a membership-based corporate advisory platform, since February 2013. Prior to these roles, Mr. Stanford served as a managing director at Goldman Sachs from June 2004 until February 2013. Mr. Stanford also serves as a member of the board of directors of several private companies, including Astra Space, Inc., an orbital launch company, since December 2017; Curology, Inc., a direct to consumer prescription skincare company, since September 2015; Luka, Inc., an artificial intelligence and software development company, since April 2016; and BFA Industries (formerly known as ipsy) a personalized beauty commerce company, since September 2015. Mr. Stanford holds an M.B.A. from Harvard Business School. We believe Mr. Stanford is qualified to serve as a member of our board of directors based on his experience as a director of multiple technology and healthcare companies.

Board Composition and Election of Directors

Board Composition

As of the effectiveness of the registration statement of which this prospectus forms a part, our board of directors will consist of seven members. Immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, Dr. Farias-Eisner and Mr. Oza will each resign from our board of directors. Our directors hold office until their successors have been elected and qualified or until the earlier of their death, resignation or removal.

Our amended and restated certificate of incorporation and bylaws that will become effective immediately prior to the completion of this offering provide that the authorized number of directors may be changed only by resolution of our board of directors. Our amended and restated certificate of incorporation and bylaws will also provide that our directors may be removed only for cause by the affirmative vote of the holders of 75% of our shares of capital stock present in person or by proxy and entitled to vote, and that any vacancy on our board of directors, including a vacancy resulting from an enlargement of our board of directors, may be filled only by vote of a majority of our directors then in office.

In accordance with the terms of our amended and restated certificate of incorporation and bylaws that will become effective immediately prior to the completion of this offering, our board of directors will be divided into three classes, class I, class II and class III, with members of each class serving staggered three-year terms. Immediately prior to the completion of this offering, the members of the classes will be divided as follows:

- the class I directors will be and , and their term will expire at our first annual meeting of stockholders following this offering;
- the class II directors will be and , and their term will expire at our second annual meeting of stockholders following this offering; and
- the class III directors will be and , and their term will expire at our third annual meeting of stockholders following this offering.

Upon the expiration of the term of a class of directors, directors in that class will be eligible to be elected for a new three-year term at the annual meeting of stockholders in the year in which their term expires.

The classification of our board of directors may have the effect of delaying or preventing changes in our control or management. See "Description of Capital Stock—Delaware Anti-Takeover Law and Certain Charter and Bylaw Provisions."

Director Independence

Applicable Nasdaq rules require a majority of a listed company's board of directors to be comprised of independent directors within one year of listing. In addition, Nasdaq rules require that, subject to specified exceptions, each member of a listed company's audit, compensation and nominating and corporate governance committees be independent under the Securities Exchange Act of 1934, as amended, or the Exchange Act. Audit committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Exchange Act and compensation committee members must also satisfy the independence criteria set forth in Rule 10C-1 under the Exchange Act. Under applicable Nasdaq rules, a director will only qualify as an "independent director" if, in the opinion of the listed company's board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In order to be considered independent for purposes of Rule 10A-3, a member of an audit committee of a listed company may not, other than in his or her capacity as a member of the audit committee, the board of directors or any other board committee, accept, directly or indirectly, any consulting, advisory or other compensatory fee from the listed company or any of its subsidiaries or otherwise be an affiliated person of the listed company or any of its subsidiaries. In order to be considered independent for purposes of Rule 10C-1, the board must consider, for each member of a compensation committee of a listed company, all factors specifically relevant to determining whether a director has a relationship to such company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to: (1) the source of compensation of the director, including any consulting advisory or other compensatory fee paid by such company to the director; and (2) whether the director is affiliated with the company or any of its subsidiaries or affiliates.

In September 2021, our board of directors undertook a review of the composition of our board of directors and its committees and the independence of each director and director nominee. Based upon information requested from and provided by each director and director nominee concerning his or her background, employment and affiliations, including family relationships, our board of directors has determined that each of our directors and director nominees, with the exception of Ayub Khattak and Chris Achar, is an "independent director" as defined under applicable Nasdaq rules, including, in the case of all the members of our audit committee, the independence criteria set forth in Rule 10A-3 under the Exchange Act, and in the case of all the members of our compensation committee, the independence criteria set forth in Rule 10C-1 under the Exchange Act. In making such determination, our board of directors considered the relationships that each such non-employee director has with our company and all other facts and circumstances that our board of directors deemed relevant in determining his or her independence, including the beneficial ownership of our capital stock by each non-employee director.

Family Relationships

There are no family relationships among any of our directors or executive officers.

Board Committees

Our board of directors will establish an audit committee, a compensation committee and a nominating and corporate governance committee, each of which will operate under a charter to be adopted by our board of directors. The composition of each committee will be effective as of the date of this prospectus.

Audit Committee

The members of our audit committee are Carole Faig, Maria Martinez and Scott Stanford. Carole Faig is the chair of the audit committee. Effective at the time of this offering, our audit committee's responsibilities will include:

- appointing, approving the compensation of, and assessing the independence of our registered public accounting firm;

- overseeing the work of our independent registered public accounting firm, including through the receipt and consideration of reports from that firm;
- reviewing and discussing with management and our independent registered public accounting firm our annual and quarterly financial statements and related disclosures;
- monitoring our internal control over financial reporting, disclosure controls and procedures and code of business conduct and ethics;
- overseeing our internal audit function;
- overseeing our risk assessment and risk management policies;
- establishing policies regarding hiring employees from our independent registered public accounting firm and procedures for the receipt and retention of accounting related complaints and concerns;
- meeting independently with our internal auditing staff, if any, our independent registered public accounting firm and management;
- reviewing and approving or ratifying any related person transactions; and
- preparing the audit committee report required by Securities and Exchange Commission, or SEC, rules.

All audit and non-audit services, other than *de minimis* non-audit services, to be provided to us by our independent registered public accounting firm must be approved in advance by our audit committee.

Our board of directors has determined that Carole Faig is an "audit committee financial expert" as defined in applicable SEC rules and that each of the members of our audit committee possesses the financial sophistication required for audit committee members under Nasdaq rules. We believe that the composition of our audit committee will meet the requirements for independence under current Nasdaq and SEC rules and regulations.

Compensation Committee

The members of our compensation committee are , and . is the chair of the compensation committee. Effective at the time of this offering, our compensation committee's responsibilities will include:

- reviewing and approving, or making recommendations to our board of directors with respect to, the compensation of our chief executive officer and our other executive officers;
- overseeing an evaluation of our senior executives;
- overseeing and administering our cash and equity incentive plans;
- reviewing and making recommendations to our board of directors with respect to director compensation;
- reviewing and discussing annually with management our "Compensation Discussion and Analysis" disclosure if and to the extent then required by SEC rules; and
- preparing the compensation committee report if and to the extent then required by SEC rules.

We believe that the composition of our compensation committee will meet the requirements for independence under current Nasdaq and SEC rules and regulations.

Nominating and Corporate Governance Committee

The members of our nominating and corporate governance committee are , and . is the chair of the nominating and corporate governance committee. Effective at the time of this offering, our nominating and corporate governance committee's responsibilities will include:

- recommending to our board of directors the persons to be nominated for election as directors and to each of our board's committees;
- reviewing and making recommendations to our board with respect to our board leadership structure;
- reviewing and making recommendations to our board with respect to management succession planning;
- developing and recommending to our board of directors corporate governance principles; and

- overseeing a periodic evaluation of our board of directors.

We believe that the composition of our nominating and corporate governance committee will meet the requirements for independence under current Nasdaq and SEC rules and regulations.

Compensation Committee Interlocks and Insider Participation

None of our executive officers serves, or in the past year has served, as a member of the board of directors or compensation committee, or other committee serving an equivalent function, of any other entity that has one or more of its executive officers serving as a member of our board of directors or our compensation committee. None of the members of our compensation committee is, or has ever been, an officer or employee of our company.

Role of the Board in Risk Oversight

Our board of directors has an active role, as a whole and also at the committee level, in overseeing the management of our risks. Our board of directors is responsible for general oversight of risks and regular review of information regarding our risks, including operational risks and the other most significant risks we face and our general risk management strategies. The compensation committee is responsible for overseeing the management of risks relating to our executive compensation plans and arrangements. The audit committee is responsible for overseeing the management of financial and cybersecurity risks. The nominating and corporate governance committee is responsible for overseeing the management of risks associated with the independence of our board of directors and potential conflicts of interest. Although each committee is responsible for evaluating certain risks and overseeing the management of such risks, the entire board of directors is regularly informed through discussions from committee members about such risks. Our board of directors believes its administration of its risk oversight function has not negatively affected our board of directors' leadership structure.

Code of Ethics and Code of Conduct

We intend to adopt a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. We intend to post a current copy of the code on our website, www.cuehealth.com. In addition, we intend to post on our website all disclosures that are required by law or listing standards concerning any amendments to, or waivers from, any provision of the code.

EXECUTIVE AND DIRECTOR COMPENSATION

The following discussion relates to the compensation of Ayub Khattak, our chief executive officer and Clint Sever, our chief product officer. Mr. Khattak and Mr. Sever are together referred to in this prospectus as our named executive officers.

In preparing to become a public company, we have begun a thorough review of all elements of our executive compensation program, including the function and design of our equity incentive programs. We have begun, and expect to continue in the coming months, to evaluate the need for revisions to our executive compensation program to ensure that our program is competitive with the companies with which we compete for executive talent and is appropriate for a public company. This discussion may contain forward-looking statements that are based on our current plans, considerations, expectations and determinations regarding future compensation programs.

Summary Compensation Table

The following table sets forth information regarding the compensation awarded to, earned by or paid to each of our named executive officers for the year ended December 31, 2020.

Name and Principal Position	Year	Salary ($)	Bonus ($)(1)	Stock Awards ($)(2)	All Other Compensation	Total ($)
Ayub Khattak *Chief Executive Officer*	2020	$276,923(3)	$250,000	$6,930,773	$ 8,694(4)	$7,466,390
Clint Sever *Chief Product Officer*	2020	$243,235(5)	$233,331	$3,465,387	$257,155(6)	$4,199,108

(1) Except where noted otherwise, the amounts reported in the "Bonus" column reflect discretionary annual cash bonuses earned by each of our named executive officers for their performance, as determined by the board of directors in its sole discretion.

(2) The amounts noted above relate to the purchase of shares of common stock in exchange for promissory notes issued by each of Mr. Khattak and Mr. Sever to us, which notes are partially personally recourse and secured by the shares of common stock purchased therewith. Pursuant to ASC 718, these instruments are treated as grants of stock options for accounting purposes and the amount disclosed is the grant date fair value of these instruments. The assumptions used in calculating the grant date fair value of these instruments are set forth in Note 13 to the audited financial statements included elsewhere in this prospectus.

(3) The amount noted above reflects a $150,000 increase in Mr. Khattak's annual base salary, which took effect as of August 20, 2020.

(4) The amount noted above consists of premiums for medical, vision, dental, and life insurance paid for by us.

(5) The amount noted above reflects a $145,000 increase in Mr. Sever's annual base salary, which took effect August 20, 2020.

(6) The amount noted above consists of compensation resulting from forgiveness of indebtedness of $246,142 and premiums for medical, dental, and life insurance paid for by us.

Narrative to Summary Compensation Table

Base Salary. In 2020, we paid Mr. Khattak an annualized base salary of $225,000 until August 20, 2020, when his annualized base salary was increased by our board of directors to $375,000. In 2020, we paid Mr. Sever an annualized base salary of $205,000 until August 20, 2020, when his annualized base salary was increased by our board of directors to $350,000.

We use base salaries to attract and retain qualified talent and sets salaries at a level that is commensurate with the executive's duties and authorities, contributions, prior experience and sustained performance. We also use base salaries to recognize the experience, skills, knowledge and responsibilities required of all employees, including our named executive officers.

Annual Bonus. Our board of directors may, in its discretion, award bonuses to our named executive officers from time to time. Our employment agreements or offer letters, as applicable, with our named executive officers provide that they will be eligible for annual performance-based bonuses up to a specified percentage of their salary or target dollar amount, subject to approval by our board of directors. Performance-based bonuses, which are calculated as a percentage of base salary, are designed to motivate our employees to achieve annual goals based on our strategic, financial and operating performance objectives. From time to time, our board of directors approved discretionary annual cash bonuses to our named executive officers with respect to their prior year performance.

On August 20, 2020, our compensation committee established that Mr. Khattak and Mr. Sever would be eligible for a bonus of up to 33.33% of their then-current base salary for the fiscal year ended 2020, which was $125,000 in the case

of Mr. Khattak, and $116,667 in the case of Mr. Sever, with the ultimate bonus amount for each to be determined based on our overall financial performance and the level of such executive's contribution to our overall financial performance, as determined at the discretion of the compensation committee after completion of our fiscal year. In recognition of the company's positive 2020 performance, and the particularly notable efforts of our key management despite the ongoing challenges of the COVID-19 pandemic, in December 2020 our board of directors approved cash bonus payouts at two times the target bonus amount for certain of our employees. As a result, our compensation committee approved bonus payments of $250,000 and $233,331 for Mr. Khattak and Mr. Sever, respectively.

Equity Incentives. Although we do not have a formal policy with respect to the grant of equity incentive awards to our executive officers, or any formal equity ownership guidelines applicable to them, we believe that equity grants provide its executive officers with a strong link to its long-term performance, create an ownership culture and help to align the interests of executive officers and stockholders. In addition, we believe that equity grants with a time-based vesting feature promote executive retention because this feature incentivizes our executive officers to remain employed during the vesting period. In addition, our board of directors periodically reviews the equity incentive compensation of our executive officers, including our named executive officers, and from time to time may grant equity incentive awards to them in the form of stock options, restricted stock or restricted stock units.

Outstanding Equity Awards at 2020 Fiscal Year-End

The following table sets forth information regarding all outstanding equity awards held by each of our named executive officers as of December 31, 2020:

	Option Awards				Stock Awards	
Name	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable[1]	Option exercise price ($)	Option expiration date	Number of shares of stock that have not vested (#)[2]	Market value of shares of stock that have not vested ($)[3]
Ayub Khattak	295,900	—	0.40	07/29/2024	305,517[6]	$
					2,099,304[7]	$
Clint Sever	729,166	104,167[4]	0.48	08/07/2028	55,000[8]	$
	989,447	141,350[5]	0.48	08/07/2028	1,075,253[9]	$
	295,900	—	0.40	07/29/2024		$
	880,000	—	0.20	12/31/2022		$
	400,000[10]	—	0.20	07/11/2021		$

(1) Of the unvested options reflected in this table, options are expected to have vested prior to completion of this offering in accordance with their terms. On May 26, 2021, our board of directors approved the accelerated vesting of any remaining unvested options held by Messrs. Khattak and Sever upon the effectiveness of an initial public offering satisfying certain conditions, which conditions may be satisfied in connection with this offering. Accordingly, the remaining unvested options included in this table may vest in connection with the completion of this offering.

(2) Of the unvested shares reflected in this table, shares are expected to have vested prior to completion of this offering in accordance with their terms. On May 26, 2021, our board of directors approved the accelerated vesting of any remaining unvested restricted stock awards held by Messrs. Khattak and Sever upon the effectiveness of an initial public offering satisfying certain conditions, which conditions may be satisfied in connection with this offering. Accordingly, the remaining unvested shares included in this table may vest in connection with the completion of this offering.

(3) The market price of common stock is based on an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus.

(4) These options were granted on August 8, 2018 and vest over four years in equal monthly installments, subject to continuous service. On December 29, 2020, our board of directors approved accelerated vesting of 50% of the unvested options as of January 1, 2021, effective as of December 29, 2020. The share numbers in the table reflect this acceleration.

(5) These options were granted on August 8, 2018 and vest over four years, with 25% of the shares having vested on December 31, 2018, and the remainder vesting in equal monthly installments thereafter, subject to continuous service. On December 29, 2020, our board of directors approved accelerated vesting of 50% of the unvested options as of January 1, 2021, effective as of December 29, 2020. The share numbers in the table reflect this acceleration.

(6) These restricted stock awards were granted on August 8, 2018 and vest over four years, with 25% of the shares having vested on December 31, 2018, and the remainder vesting in equal monthly installments thereafter, subject to continuing service. On December 29, 2020, our board of directors approved accelerated vesting of 50% of the unvested shares as of January 1, 2021, effective as of December 29, 2020. The share numbers in the table reflect this acceleration.

(7) These restricted stock awards were granted on July 24, 2020 and vest over four years in equal monthly installments, subject to continuing service. On December 29, 2020, our board of directors approved accelerated vesting of 50% of the unvested shares as of January 1, 2021, effective as of December 29, 2020. The share numbers in the table reflect this acceleration.

(8) These restricted stock awards were granted on August 8, 2018 and vest over four years, with 25% of the shares having vested on

December 31, 2018, and the remainder vesting in equal monthly installments thereafter, subject to continuing service. On December 29, 2020, our board of directors approved accelerated vesting of 50% of the unvested shares as of January 1, 2021, effective as of December 29, 2020. The share numbers in the table reflect this acceleration.

(9) These restricted stock awards were granted on July 24, 2020 and vest over four years in equal monthly installments, subject to continuing service. On December 29, 2020, our board of directors approved accelerated vesting of 50% of the unvested shares as of January 1, 2021, effective as of December 29, 2020. The share numbers in the table reflect this acceleration.

(10) On July 8, 2021, our board of directors approved an amendment to this stock option to permit the option to be "net exercised" with respect to the payment of the exercise price and applicable tax withholding.

2021 Co-Founder Equity Awards

Pursuant to the terms of the Khattak employment agreement and the Sever employment agreement (described below under the heading "—Employment Agreements"), effective as of the effective date of the registration statement of which this prospectus forms a part, our board of directors is expected to approve the grant of restricted stock unit awards, which we refer to as the Founder RSUs, covering an aggregate of 6,707,320 shares of our common stock to Messrs. Khattak and Sever, whom we refer to as the Co-Founders, of which 3,629,225 Founder RSUs are expected to be granted to Mr. Khattak and 3,078,095 Founder RSUs are expected to be granted to Mr. Sever.

Our compensation committee and board of directors worked closely with an independent compensation consultant in an effort to design an equity compensation structure for Messrs. Khattak and Sever that would align with our commitment to the long-term interests of our stockholders and require high levels of performance across multiple performance metrics to achieve meaningful value while not encouraging short-term gains through risk-taking, incentivize long-term performance beyond typical market-pay constructs, and be equitable and justifiable to the Co-Founders and our stockholders. As a result, approximately 75% of the Founder RSUs (2,653,114 in the case of Mr. Khattak and 2,279,459 in the case of Mr. Sever) vest based on the satisfaction of both a continued employment condition and the achievement of certain performance goals, which we refer to as the Performance-Vesting RSUs, and approximately 25% (976,111 in the case of Mr. Khattak and 798,636 in the case of Mr. Sever) vest solely based on the satisfaction of a continued employment condition, which we refer to as the Time-Vesting RSUs.

Each Founder RSU that vests in accordance with its terms will be settled with one share of our common stock within 30 days of the applicable vesting date. However, to further encourage the Co-Founders to focus on the long-term success of our business, the Co-Founders must hold any shares that are earned by them pursuant to the Performance-Vesting RSUs (excluding the sale of any shares necessary to satisfy any income or employment tax obligations resulting from the vesting of Performance-Vesting RSUs) for at least one year following the date on which such Performance-Vesting RSU vests. This post-vesting holding period would end before the first anniversary of vesting only in the event of an earlier change in control of our company or a termination of the Founder's employment due to death or disability.

The Time-Vesting RSUs will vest as to 12.5% of the shares of our common stock subject to the award on the six-month anniversary of the grant date and as to an additional 6.25% of the shares of our common stock subject to the award at the end of each three-month period thereafter until the award is fully vested on the fourth anniversary of the grant date, subject, in each case, to the Founder's continuous employment with us. In the event of the termination of the Founder's employment by us without cause or by him with good reason, each as defined in the Founder's employment agreement, the vesting of the Time-Vesting RSUs will accelerate such that the number of Time-Vesting RSUs that, but for such termination, would have otherwise vested in the one-year period following the date of such termination will immediately vest as of the date of such termination. Furthermore, in the event of the termination of the Founder's employment by us without cause or by him with good reason, in either case in the period (i) beginning three months before a change in control (as defined in the Founder's employment agreement), or, in the event we have executed a definitive agreement to effect a change in control as of the date the Founder's employment is terminated by us without cause or by the Founder with good reason, beginning six months before the change in control contemplated by such definitive agreement is consummated, and (ii) ending 24 months following the change in control (which we refer to as the Khattak equity CIC severance period or the Sever equity CIC severance period, as applicable), the vesting of any unvested Time-Vesting RSUs will accelerate in full; provided, however, that if any then-unvested Time-Vesting RSUs are not assumed or substituted for by the resulting or acquiring company (or affiliate of the resulting or acquiring company) in connection with such change in control, the vesting of the Founder's unvested Time-Vesting RSUs will be accelerated in full as of immediately prior to the consummation of the change in control.

The Performance-Vesting RSUs vest upon the achievement of certain stock price performance goals (approximately 70% of the Performance-Vesting RSUs granted to each of the Co-Founders), target revenue

performance goals (approximately 20% of the Performance-Vesting RSUs granted to each of the Co-Founders), and a product milestone goal (approximately 10% of the Performance-Vesting RSUs granted to each of the Co-Founders). 1,774,614 of the Performance-Vesting RSUs granted to Mr. Khattak and 1,560,686 of the Performance-Vesting RSUs granted to Mr. Sever, or the Stock Price Target RSUs, are eligible to vest based on our stock price performance over a performance period beginning on the date that is 60 days prior to the date that is nine months after the grant date and ending on the seven-year anniversary of the grant date, which period we refer to as the Stock Price Performance Period. The Stock Price Target RSUs are divided into seven tranches that are eligible to vest based on the achievement of stock price goals, measured based on an average closing price of our common stock over all trading days within a 60 consecutive calendar day period during the Stock Price Performance Period as set forth below.

	Number of Stock Price Target RSUs Eligible to Vest	
Price Goal	**Khattak**	**Sever**
$30.07	17,615	123,140
$37.13	292,833	239,591
$45.86	292,833	239,591
$56.63	292,833	239,591
$69.94	292,833	239,591
$86.38	292,833	239,591
$106.68	292,834	239,591

There is no linear interpolation between price goals and numbers of Stock Price Target RSUs eligible to vest. The price goals will be adjusted to reflect any stock split, reverse stock split, stock dividend, recapitalization, combination of shares, reclassification of shares, spin-off or other similar change in capitalization or event, or any dividend or distribution to holders of our common stock other than an ordinary cash dividend.

The remainder of the Performance-Vesting RSUs vest as follows:

- 292,833 of the Performance-Vesting RSUs granted to Mr. Khattak and 239,591 of the Performance-Vesting RSUs granted to Mr. Sever, or the FY21 Revenue Target RSUs, are eligible to vest based on the achievement of a specified level of our total revenue (as reported under U.S. generally accepted accounting principles on our financial statement), which we refer to as total revenue, for fiscal year 2021 or, if such total revenue for fiscal year 2021 is not achieved, based on the achievement of a specified level of our aggregate total revenue for fiscal years 2021 and 2022.
- 292,833 of the Performance-Vesting RSUs granted to Mr. Khattak and 239,591 of the Performance-Vesting RSUs granted to Mr. Sever, or the FY22 Revenue Target RSUs, are eligible to vest based on the achievement of a specified level of our total revenue for fiscal year 2022 or, if such total revenue for fiscal year 2022 is not achieved, based on the achievement of a specified level of our aggregate total revenue for fiscal years 2022 and 2023.
- 292,834 of the Performance-Vesting RSUs granted to Mr. Khattak and 239,591 of the Performance-Vesting RSUs granted to Mr. Sever, or the Milestone Target RSUs, are eligible to vest based upon the achievement of a specified product milestone by December 31, 2022. If such milestone is not achieved on or before December 31, 2022 but is achieved during the six-month period beginning on January 1, 2023 and ending on June 30, 2023, 50% of the Milestone Target RSUs will be eligible to vest.

For any tranche of the Performance-Vesting RSUs to vest, except as described below, the Founder generally must remain employed by us as of the date that our compensation committee certifies achievement of the performance goal applicable to that tranche. If the Founder's employment with us terminates, other than a termination by us without cause or by the Founder for good reason, then except as set forth below, any Performance-Vesting RSUs for which the applicable performance objective has not been achieved will be forfeited immediately and automatically to us. If the Founder's employment is terminated by us without cause or by the Founder for good reason other than in connection with a change in control, then:

- 50% of the Stock Price Target RSUs with respect to any price goal that has not been achieved as of the termination date will be retained by the Founder and may be earned after the termination date as follows: (1) if a price goal is achieved within six months of the termination date, 100% of the retained Stock Price

Target RSUs associated with the price goal will be earned, (2) if a price goal is achieved after the date that is six months after the termination date but on or prior to the date that is 18 months after the termination date, 50% of the retained Stock Price Target RSUs associated with the price goal will be earned, and (3) if a price goal is achieved after the date that is 18 months after the termination date but on or prior to the date that is 36 months after the termination date, 25% of the retained Stock Price Target RSUs associated with the price goal will be earned;

- 100% of the FY21 Revenue Target RSUs, to the extent then outstanding, will be retained by the Founder and may be earned after the termination date as follows: (1) if the applicable total revenue is achieved within 12 months of the termination date, 100% of the FY21 Revenue Target RSUs will be earned and (2) if the applicable total revenue is achieved more than 12 months following the termination date, 50% of the FY21 Revenue Target RSUs will be earned;
- 100% of the FY22 Revenue Target RSUs, to the extent then outstanding, will be retained by the Founder and may be earned after the termination date as follows: (1) if the applicable total revenue is achieved within 12 months of the termination date, 100% of the FY22 Revenue Target RSUs will be earned and (2) if the applicable total revenue is achieved more than 12 months following the termination date, 50% of the FY22 Revenue Target RSUs will be earned; and
- 100% of the Milestone Target RSUs, to the extent then outstanding, will be retained by the Founder and may be earned after the termination date as follows: (1) if the milestone performance goal is achieved within 12 months of the termination date and on or before December 31, 2022, 100% of the Milestone Target RSUs will be earned, (2) if such goal is achieved within 12 months of the termination date and between January 1, 2023 and June 30, 2023, 50% of the Milestone Target RSUs will be earned, (3) if such goal is achieved more than 12 months following the termination date and on or before December 31, 2022, 50% of the Milestone Target RSUs will be earned, and (4) if such goal is achieved more than 12 months following the termination date and between January 1, 2023 and June 30, 2023, 25% of the Milestone Target RSUs will be earned.

Any Performance-Vesting RSUs that are not retained by the Founder will be forfeited immediately and automatically to us. If the Founder's employment is terminated with cause, (i) all of the Performance-Vesting RSUs will be forfeited immediately and automatically to us, (ii) to the extent any Performance-Vesting RSUs were settled by us prior to the date of termination, any shares that were delivered to the Founder upon such settlement will be automatically forfeited for no consideration, and (iii) to the extent any shares received upon settlement have been sold, the proceeds of such dispositions shall be paid over to us immediately following such termination.

In the event of a change in control of the company:

- Our compensation committee will determine whether any price goals that have not previously been achieved are achieved as a result of the change in control, which determination will be based solely on the price to be paid to our stockholders in connection with the transaction, and the Stock Price Target RSUs with respect to any price goal that is achieved as a result of the change in control will vest immediately prior to the closing of the change in control.
- 50% of any Stock Price Target RSUs have not been earned by the Founder prior to the change in control, taking into account any Stock Price Target RSUs that are earned based on the price paid to our stockholders in the change in control as described above, will be retained by the Founder and converted into time-vested RSUs that vest in equal quarterly installments over the two-year period following the closing of the change in control, subject to the Founder's continued employment on each vesting date. If the Founder's employment is terminated by us without cause or by the Founder for good reason during the period beginning three months before the change in control (or, in the event we have executed a definitive agreement to effect the change in control as of the termination date, the period beginning six months before such change in control) and ending 24 months following the change in control, the retained Stock Price Target RSUs will vest in full as of the date of termination. If the retained Stock Price Target RSUs are not assumed (or substituted for substantially equivalent awards) by the resulting or acquiring company, the retained Stock Price Target RSUs will vest in full immediately prior to the change in control.
- Any FY21 Revenue Target RSUs, FY22 Revenue Target RSUs, or Milestone Target RSUs outstanding immediately prior to the change in control will be eligible to vest immediately prior to the closing of the

change in control based on our compensation committee's reasonable and good-faith determination as to the projected level of achievement of the applicable performance objective as of the closing of the change in control. Any such RSUs that do not vest immediately prior to the change in control will be forfeited for no consideration.

Employment Agreements

The following are summaries of employment agreements we have entered into with our executive officers.

Employment Agreement with Ayub Khattak

In connection with Mr. Khattak's continued service following our IPO, we entered into an employment agreement with him dated as of July 8, 2021, which we refer to as the Khattak agreement. Under the Khattak agreement, Mr. Khattak is an at-will employee, and his employment with us can be terminated by him or us at any time and for any reason upon written notice.

The Khattak agreement provides that Mr. Khattak is entitled to an annualized base salary of $575,000, and that he is eligible, at our sole discretion, to earn an annual performance bonus of up to 100% of his base salary, or the Khattak post-IPO target bonus; provided that for the 2021 performance year, the amount of any bonus payable to Mr. Khattak shall be based on, for the period beginning on January 1, 2021 and ending on the day prior to the effectiveness of this offering, Mr. Khattak's target bonus and base salary, in each case, as in effect prior to the effectiveness of this offering, and for the period beginning on the effectiveness of this offering and ending on December 31, 2021, the Khattak post-IPO target bonus. The amount of any annual bonus will be determined by our board, or a committee of the board, based on Mr. Khattak's performance and the achievement of individual and corporate goals established by our board following consultation with Mr. Khattak. Except in the event of certain involuntary terminations of Mr. Khattak's employment as described below, Mr. Khattak must be employed on the date that any bonus is approved by the board or the committee in order to earn such bonus. Mr. Khattak is entitled under the Khattak agreement to reimbursement for business expenses pursuant to company policy and the use, which our board may provide in its reasonable discretion, of personal security in connection with required business travel. The Khattak agreement also provides for the award of the Founder RSUs as further described above under the heading "—2021 Co-Founder Equity Awards." In addition, the Khattak agreement provides that we will reimburse Mr. Khattak up to $15,000 for the legal fees incurred by him in connection with the review and negotiation of the Khattak agreement and the Founder RSUs granted to him.

Under the Khattak agreement, in the event of the termination of Mr. Khattak's employment by us without cause or by him with good reason within the period beginning three months prior to and ending 12 months following a change in control, which period we refer to as the Khattak cash CIC severance period and subject to his execution and nonrevocation of a separation agreement and a release of claims in our favor, Mr. Khattak is entitled to (i) continue to receive his annual base salary, payable in equal installments, during the 12-month period following his termination date (calculated at a level without taking into account any reduction thereto that triggered good reason, if applicable), (ii) receive an amount equal to 100% of his target bonus for the year in which termination occurs (calculated at a level without taking into account any reduction thereto that triggered good reason, if applicable), or if higher, his target bonus immediately prior to the change in control, (iii) our payment of COBRA premiums for health benefit coverage on his behalf, for a period of up to 12 months following his termination date, at the same rate as we pay for active employees, subject to applicable COBRA terms and in compliance with applicable non-discrimination or other requirements under the law, and (iv) if such termination occurs following the end of the applicable performance year but before any annual bonus payable to Mr. Khattak in respect of such performance year is approved by our board, receive an amount equal to any annual performance bonus determined to be payable by our board for such prior performance year. Furthermore, in the event Mr. Khattak's employment is terminated by us without cause or by him with good reason within the Khattak equity CIC severance period, the Khattak agreement provides that Mr. Khattak will be entitled to accelerated vesting of all of his then-unvested equity awards which vest solely based on the passage of time (other than the Founder RSUs, described above under the heading "—2021 Co-Founder Equity Awards", which shall be governed by the terms of the Founder RSU agreements). However, if, in the event of a change in control of our company, Mr. Khattak's then-unvested equity awards (other than the Founder RSUs) that vest based solely on the passage of time are not assumed or substituted for by the resulting or acquiring company (or an affiliate of the resulting or acquiring company), the vesting of such equity awards will be accelerated in full and become immediately exercisable or non-forfeitable as of immediately prior to the consummation of the change in control.

In addition, under the Khattack agreement, in the event that Mr. Khattak's employment is terminated by us without cause or by him with good reason other than within the Khattak cash CIC severance period, and subject to his execution and nonrevocation of a separation agreement and a release of claims in our favor, Mr. Khattak will be entitled to (i) continue to receive his annual base salary, payable in equal installments, during the 12-month period following his termination date (calculated at a level without taking into account any reduction thereto that triggered good reason, if applicable), (ii) if such termination occurs following the end of the applicable performance year but before any annual bonus payable to Mr. Khattak in respect of such performance year is approved by our board, receive an amount equal to any annual performance bonus determined to be payable by our board for such prior performance year, and (iii) our payment of COBRA premiums for health benefit coverage on his behalf, for a period of up to 12 months following his termination date, at the same rate as we pay for active employees, subject to applicable COBRA terms and in compliance with applicable non-discrimination or other requirements under the law.

Employment Agreement with Clint Sever

In connection with Mr. Sever's continued service following our IPO, we entered into an employment agreement with him dated as of July 8, 2021, which we refer to as the Sever agreement. Under the Sever agreement, Mr. Sever is an at-will employee, and his employment with us can be terminated by him or us at any time and for any reason upon written notice.

The Sever agreement provides that Mr. Sever is entitled to an annualized base salary of $500,000, and that he is eligible, at our sole discretion, to earn an annual performance bonus of up to 75% of his base salary, or the Sever post- IPO target bonus; provided that for the 2021 performance year, the amount of any bonus payable to Mr. Sever shall be based on, for the period beginning on January 1, 2021 and ending on the day prior to the effectiveness of this offering, Mr. Sever's target bonus and base salary, in each case, as in effect prior to the effectiveness of this offering, and for the period beginning on the effectiveness of this offering and ending on December 31, 2021, the Sever post- IPO target bonus. The amount of any annual bonus will be determined by our board, or a committee of the board, based on Mr. Sever's performance and the achievement of individual and corporate goals established by our board following consultation with Mr. Sever. Except in the event of certain involuntary terminations of Mr. Sever's employment as described below, Mr. Sever must be employed on the date that any bonus is approved by the board or the committee in order to earn such bonus. Mr. Sever is entitled under the Sever agreement to reimbursement for business expenses pursuant to company policy and the use, which our board may provide in its reasonable discretion, of personal security in connection with required business travel. The Sever agreement also provides for the award of the Founder RSUs as further described above under the heading "—2021 Co-Founder Equity Awards." In addition, the Sever agreement provides that we will reimburse Mr. Sever up to $15,000 for the legal fees incurred by him in connection with the review and negotiation of the Sever agreement and the Founder RSUs granted to him.

Under the Sever agreement, in the event of the termination of Mr. Sever's employment by us without cause or by him with good reason within the period beginning three months prior to and ending 12 months following a change in control, which period we refer to as the Sever cash CIC severance period and subject to his execution and nonrevocation of a separation agreement and a release of claims in our favor, Mr. Sever is entitled to (i) continue to receive his annual base salary, payable in equal installments, during the 12-month period following his termination date (calculated at a level without taking into account any reduction thereto that triggered good reason, if applicable), (ii) receive an amount equal to 100% of his target bonus for the year in which termination occurs (calculated at a level without taking into account any reduction thereto that triggered good reason, if applicable), or if higher, his target bonus immediately prior to the change in control, (iii) our payment of COBRA premiums for health benefit coverage on his behalf, for a period of up to 12 months following his termination date, at the same rate as we pay for active employees, subject to applicable COBRA terms and in compliance with applicable non-discrimination or other requirements under the law, and (iv) if such termination occurs following the end of the applicable performance year but before any annual bonus payable to Mr. Sever in respect of such performance year is approved by our board, receive an amount equal to any annual performance bonus determined to be payable by our board for such prior performance year. Furthermore, in the event Mr. Sever's employment is terminated by us without cause or by him with good reason within the Sever equity CIC severance period, the Sever agreement provides that Mr. Sever will be entitled to accelerated vesting of all of his then-unvested equity awards which vest solely based on the passage of time (other than the Founder RSUs, described above under the heading "—2021 Co-Founder Equity Awards", which shall be governed by the terms of the Founder RSU agreements). However, if, in the event of a change in control of our company, Mr. Sever's then-unvested equity awards (other than the Founder RSUs) that vest based

solely on the passage of time are not assumed or substituted for by the resulting or acquiring company (or an affiliate of the resulting or acquiring company), the vesting of such equity awards will be accelerated in full and become immediately exercisable or non-forfeitable as of immediately prior to the consummation of the change in control.

In addition, under the Sever agreement, in the event that Mr. Sever's employment is terminated by us without cause or by him with good reason other than within the Sever cash CIC severance period, and subject to his execution and nonrevocation of a separation agreement and a release of claims in our favor, Mr. Sever is entitled to (i) continue to receive his annual base salary, payable in equal installments, during the 12-month period following his termination date (calculated at a level without taking into account any reduction thereto that triggered good reason, if applicable), (ii) if such termination occurs following the end of the applicable performance year but before any annual bonus payable to Mr. Sever in respect of such performance year is approved by our board, receive an amount equal to any annual performance bonus determined to be payable by our board for such prior performance year, and (iii) our payment of COBRA premiums for health benefit coverage on his behalf, for a period of up to 12 months following his termination date, at the same rate as we pay for active employees, subject to applicable COBRA terms and in compliance with applicable non-discrimination or other requirements under the law.

Employment Agreement with John Gallagher

In connection with our initial hiring of Mr. Gallagher as our chief financial officer, we entered into an employment agreement with Mr. Gallagher, dated February 23, 2021, which we refer to as the Gallagher agreement. Under the Gallagher agreement, Mr. Gallagher is an at-will employee, and his employment with us can be terminated by him or us at any time and for any reason upon written notice.

The Gallagher agreement provides that Mr. Gallagher is entitled to an annualized base salary of $550,000, and that he is eligible, at our sole discretion, to earn an annual performance bonus of up to 50% of his base salary based upon the achievement of corporate and individual goals, as agreed by our board. Additionally, the Gallagher agreement provides for a $400,000 signing bonus, $250,000 of which was paid upon his commencement of employment, and the remaining $150,000 of which will be paid on the six-month anniversary of his commencement of employment, provided he remains employed on such date. The entire signing bonus must be repaid to us in the event that Mr. Gallagher terminates his employment with or without good reason, as defined in the Gallagher agreement, prior to the first anniversary of the commencement of his employment. Mr. Gallagher's agreement also provides for the award of 549,499 restricted stock units, which refer to as the Gallagher RSU Award, which was granted to Mr. Gallagher on March 1, 2021. The Gallagher RSU Award vests with respect to one-fourth of the shares of our stock subject to the award on each of the first four anniversaries of the grant date, provided Mr. Gallagher continues to provide services to us through the relevant vesting dates. Additionally, 25% of the Gallagher RSU award will vest upon the closing of a going public event, as is defined in the Gallagher agreement and to include this offering, with the remaining unvested portion of the Gallagher RSU Award vesting in equal quarterly installments following the closing of the going public event. Finally, Mr. Gallagher is entitled under the Gallagher agreement to reimbursement for business expenses pursuant to company policy and reimbursement of up to $100,000 in relocation expenses.

Under the Gallagher agreement, Mr. Gallagher is entitled, subject to his execution and nonrevocation of a separation agreement and a general release of claims in our favor, in the event of the termination of his employment by us without cause or by him with good reason, each as defined in the Gallagher agreement, to (i) continue to receive his annual base salary, payable in equal installments, during the nine-month period following his termination date, (ii) our payment of COBRA premiums for health benefit coverage on his behalf, for a period of nine months following his termination date, at the same rate as we pay for active employees, subject to applicable COBRA terms and in compliance with applicable non-discrimination or other requirements under the law, (iii) receive any annual discretionary bonus for the preceding calendar year that our board of directors has approved but not yet paid, (iv) receive an amount equal to a pro rata portion of his target bonus for the year of his termination, based on the number of days he is employed in such year, (v) if such termination occurs prior to the one-year anniversary of the RSU Award grant date, accelerated vesting of the number of shares subject to the RSU Award that would have vested between the grant date and his termination date had the RSU Award vested on a 1/48 per month basis following the grant date, and (v) if such termination occurs within the 60 days prior to or the one year following a change in control of the company (as defined in the Gallagher agreement), the accelerated vesting of 100% of his then-outstanding equity awards which vest solely based on continued service.

Employment Agreement with Erica Palsis

In connection with our initial hiring of Ms. Palsis as our general counsel, we entered into an employment agreement with Ms. Palsis, dated February 1, 2021, which we refer to as the Palsis agreement. Under the Palsis agreement, Ms. Palsis is an at-will employee, and her employment with us can be terminated by her or us at any time and for any reason upon written notice.

The agreement provides that Ms. Palsis is entitled to an annualized base salary of $360,000, and that she is eligible, at our sole discretion, to earn an annual bonus of 33% of her base salary based upon the achievement of corporate and individual goals, as agreed by the board of directors. Ms. Palsis' agreement also provided for the award of 499,544 restricted stock units, which we refer to as the Palsis RSU Award, which was granted to Ms. Palsis on February 1, 2021. The Palsis RSU Award vests with respect to one-fourth of the shares of our stock subject to the award on each of the first four anniversaries of the grant date, provided Ms. Palsis continues to provide services to us through the relevant vesting dates. The Palsis agreement also provides for our reimbursement of her business expenses pursuant to company policy.

Under the Palsis agreement, Ms. Palsis is entitled, subject to her execution and nonrevocation of a separation agreement and a general release of claims in our favor, in the event of the termination of her employment by us without cause or by Ms. Palsis with good reason, each as defined in the Palsis agreement, to: (i) continue to receive her annual base salary, payable in equal installments, during the nine-month period following her termination date, (ii) our payment of COBRA premiums for health benefit coverage on her behalf, for a period of nine months following her termination date, at the same rate as we pay for active employees, subject to applicable COBRA terms and in compliance with applicable non-discrimination or other requirements under the law, (iii) receive any annual discretionary bonus for the preceding calendar year that our board has approved but not yet paid, (iv) if such termination occurs prior to the one-year anniversary of the RSU Award grant date, accelerated vesting of the number of shares subject to the RSU Award that would have vested between the grant date and her termination date had the RSU Award vested on a 1/48 per month basis following the grant date, and (v) if such termination occurs within the 60 days prior to or the one year following a change in control of the company (as defined in the Palsis agreement), accelerated vesting of 100% of her then-outstanding equity awards which vest solely based on continued service.

Employment Agreement with Chris Achar

In connection with the appointment of Mr. Achar as our chief strategy officer, we entered into an employment agreement, with him effective July 8, 2021, which we refer to as the Achar agreement. Under the Achar agreement, Mr. Achar is an at-will employee, and his employment with us can be terminated by him or us at any time and for any reason upon written notice.

The agreement provides that Mr. Achar is entitled to an annualized base salary of $400,000, and that he is eligible, at our sole discretion, to earn an annual bonus of 40% of his base salary based upon the achievement of corporate and individual goals, as agreed by the board of directors. Mr. Achar's agreement also provides for the award, subject to board approval, of 1,388,246 restricted stock units, which we refer to as the Achar RSU Award, which is expected to be granted to Mr. Achar prior to the commencement of trading of our common stock on the Nasdaq Stock Market. The Achar RSU Award vests with respect to one-fourth of the shares of our stock subject to the award on each of the first four anniversaries of the grant date, provided Mr. Achar continues to provide services to us through the relevant vesting dates. The Achar agreement also provides for our reimbursement of his business expenses pursuant to company policy.

Under the Achar agreement, Mr. Achar is entitled, subject to his execution and nonrevocation of a separation agreement and a general release of claims in our favor, in the event of the termination of his employment by us without cause or by Mr. Achar with good reason, each as defined in the Achar agreement, to: (i) continue to receive his annual base salary, payable in equal installments, during the nine-month period following his termination date, (ii) our payment of COBRA premiums for health benefit coverage on his behalf, for a period of nine months following his termination date, at the same rate as we pay for active employees, subject to applicable COBRA terms and in compliance with applicable non-discrimination or other requirements under the law, (iii) receive any annual discretionary bonus for the preceding calendar year that our board has approved but not yet paid, (iv) if such termination occurs prior to the one-year anniversary of the Achar RSU Award grant date, accelerated vesting of the number of shares subject to the Achar RSU Award that would have vested between the grant date and his termination

date had the Archar RSU Award vested on a 1/48 per month basis following the grant date, and (v) if such termination occurs within the 60 days prior to or the one year following a change in control of the company (as defined in the Achar agreement), accelerated vesting of 100% of his then-outstanding equity awards which vest solely based on continued service.

Employee Benefits and Perquisites

Our named executive officers participate in employee benefit programs available to its employees generally, including a tax-qualified 401(k) plan. We did not maintain any executive-specific benefit of perquisite programs in 2020.

Equity Incentive Plans

In this section, we describe our Amended and Restated 2014 Equity Incentive Plan, as amended, which we refer to as the 2014 Plan, our 2021 Stock Incentive Plan, which we refer to as the 2021 Plan and our 2021 Employee Stock Purchase Plan, which we refer to as the 2021 ESPP. Prior to this offering, we granted awards to eligible participants under our 2014 Plan. Following the effectiveness of the 2021 Plan, no additional awards will be granted under the 2014 Plan and we expect to grant awards to eligible participants from time to time only under the 2021 Plan.

Amended and Restated 2014 Equity Incentive Plan, as amended

Our 2014 Plan was initially approved by our board of directors and stockholders in August 2014 was subsequently amended and restated in December 2017, and further amended in April 2018, September 2018, June 2020 and January 2021. The 2014 Plan provides for the grant of incentive stock options, nonqualified stock options, stock appreciation rights, performance shares, awards of restricted stock and awards of restricted stock units. Officers and other employees, non-employee directors, consultants and advisors of Cue and its affiliates are eligible to receive awards under the 2014 Plan; however, incentive stock options may only be granted to us or our subsidiaries' employees. Pursuant to the terms of the 2014 Plan, our board of directors (or a committee delegated by our board of directors or one or more officers to whom our board of directors has delegated authority) administers the plan and, subject to the terms of the 2014 Plan, selects:

- the participants to receive awards;
- the type or types of awards to be granted to each participant;
- the number of shares of common stock with respect to which an award relates;
- the terms and conditions of any award.

Awards may be granted alone or in addition to, in tandem with, or in substitution for any other award granted under the 2014 Plan (or any other award granted under another plan of ours or an affiliate of us). The exercise price per share of any stock options granted under the 2014 Plan may not be less than the fair market value, as determined by our board of directors, of a share of common stock on the date of the grant unless the option is not an incentive stock option and complies with Section 409A of the Internal Revenue Code of 1986, as amended, which we refer to as the Code. We may, but are not required, to purchase shares acquired by a participant under the 2014 Plan upon the occurrence of (i) a participant's termination of employment or service or (ii) the issuance of shares following the participant's termination of employment or service pursuant to the terms of an award, such as upon the exercise of an option following termination of employment. The purchase price for the shares subject to repurchase is the fair market value of the shares on the date of the event triggering our right to purchase and may be paid by us in whole or in part with cash, provided that if we do not elect to pay the entire purchase price in cash, we must, at a minimum, pay the participant at least 10% of the purchase price in cash and deliver the participant a promissory note with a principal amount equal to the remainder of the purchase price, on the terms set forth in the 2014 Plan.

Subject to adjustment in the event of certain changes in our capitalization (as described below), the maximum number of shares of common stock authorized for issuance under the 2014 Plan is 22,399,691 shares, all of which may be issued as incentive stock options. Our board of directors may amend, suspend, discontinue or terminate the 2014 Plan at any time, except that stockholder approval is required to (i) materially increase the maximum number of shares authorized for issuance (except as permitted upon certain changes in our capitalization, as described below), (ii) to comply with applicable law, or (iii) for any amendment that would diminish the 2014 Plan's protections relating to certain repricings of options and stock appreciation rights.

Effect of Certain Changes in Capitalization

If we are involved in a merger or other transaction in which our shares of common stock or other securities are changed or exchanged; we subdivide or combine our shares of common stock or other securities or we declare a dividend payable in shares of common stock, other securities or other property; we effect a cash dividend that exceeds, on a per share basis, 10% of the fair market value, as determined by the board, of a share at the time the dividend is declared or we effect any other dividend or other distribution on shares of our common stock or other securities in the form of cash, or a repurchase of our shares of common stock or other securities, that our board of directors determines by resolution is special or extraordinary or that is in connection with a transaction that is a recapitalization or reorganization; we undergo a recapitalization, combination, reclassification or other distribution of our shares of common stock without receipt of consideration by us; or any other event occurs that in the judgment of our board of directors necessitates an adjustment to prevent dilution or enlargement of benefits or potential benefits intended to be made available under the 2014 Plan, our board of directors is required to adjust, in a manner it may deem to be equitable, any or all of:

- the number and type of shares of common stock subject to the 2014 Plan, including the number and type of shares of common stock that may be issued pursuant to incentive stock options;
- the number and types of shares of common stock subject to outstanding awards;
- the grant, purchase, or exercise price with respect to any award; and
- the performance goals established under any award.

Our board of directors may also make a provision for a cash payment, in an amount determined by our board, to the holder of an outstanding award in exchange for the cancellation of all or a portion of the award, without the consent of the holder of the award, effective at such time as may be specified by our board. Any such adjustment to an award that is exempt from Section 409A of the Code must be made in a manner that ensures the award remains exempt from Section 409A of the Code and any such adjustment to an award that is subject to Section 409A of the Code must be made in a manner that complies with Section 409A of the Code. No such adjustment may be made to incentive stock options to the extent that such authority would cause the 2014 Plan to violate Section 422(b) of the Code.

In the event of any reorganization, merger, consolidation, combination or other similar corporate transaction or event, whether or not such event constitutes a change of control (as defined in the 2014 Plan), other than any such transaction in which we are the continuing corporation and in which our outstanding common stock is not being converted into or exchanged for different securities, cash or other property, or any combination thereof, our board of directors may substitute, on an equitable basis as the board determines, for each share of common stock then subject to an award, the number and kind of shares of stock, other securities, cash or other property to which holders of common stock are or will be entitled in respect of each share of common stock pursuant to the transaction. In addition, in the case of a stock dividend (other than a stock dividend declared in lieu of an ordinary cash dividend) or subdivision or combination of our shares of common stock (including a reverse stock split), if no action is taken by our board of directors, proportionate adjustments described in the foregoing discussion shall nevertheless automatically be made as of the date of such stock dividend or subdivision or combination of shares of common stock.

Effect of Certain Corporate Transactions

Upon a change of control of Cue, our board of directors may, in its discretion, determine that any or all outstanding awards held by participants who are then in the employ or service of us or our affiliates shall vest or be deemed to have been earned in full (assuming the maximum performance goals provided under such award were met, if applicable). In addition, if the successor or surviving corporation (or its parent) so agrees, all outstanding awards will be assumed, or replaced with the same type of award with similar terms and conditions, by the successor or surviving corporation (or its parent) in the change of control with appropriate adjustments. In such a case, if an award has not vested in full upon the change of control, then, if the participant is terminated without cause (as defined in the 2014 Plan) or as a result of death or disability within one year following the change of control, the award will vest in full on the date of such termination. If the foregoing provisions do not apply, then all outstanding awards will be cancelled as of the date of the change of control in exchange for a payment in cash and/or shares of common stock (which may include shares or other securities of any surviving or successor entity or the purchasing entity or any parent thereof) equal to:

- in the case of an option or stock appreciation right, the excess of the fair market value as determined by our board of directors of the shares of common stock on the date of the change of control covered by the vested portion of the option or stock appreciation right that has not been exercised over the exercise or grant price of such shares under the award (provided that, if such fair market value does not exceed the exercise or grant price, the option or stock appreciation rate will be cancelled for no consideration);
- in the case of restricted stock and restricted stock units, the fair market value of a share on the date of the change of control multiplied by the number of vested shares or units; and
- in the case of performance shares, the fair market value of a share on the date of the change of control multiplied by the number of earned shares.

In the event the holders of a majority of our voting capital stock then outstanding, or the majority stockholders, determine to sell or otherwise dispose of all or substantially all of our assets or 50% or more of our capital stock, in each case in a transaction constituting a change of control, to any of our non-affiliate(s) or any of the majority stockholders, or to cause us to merge with or into or consolidate with any non-affiliate(s) or any of the majority stockholders, or in each case, the Buyer, in a bona fide negotiated transaction, which we refer to as a Sale, participants who have acquired shares pursuant to the 2014 Plan are obligated to and must upon the written request of the majority stockholders, among other things, sell, transfer and deliver, or cause to be sold, transferred and delivered, to the Buyer, some or all of such shares (including for this purpose all of such shares of common stock that presently or as a result of any such transaction may be acquired upon the exercise of an option (following the payment of the exercise price for such option)) on substantially the same terms applicable to the majority stockholders (with appropriate adjustments to reflect the conversion of convertible securities, the redemption of redeemable securities and the exercise of exercisable securities as well as the relative preferences and priorities of preferred stock). These rights terminate as to any shares of common stock upon the earlier of (i) the first sale of shares of common stock to the general public in an initial public offering, or (ii) the occurrence of a change of control in which the successor corporation has equity securities that are publicly traded.

As of June 30, 2021, there were 1,049,043 shares subject to outstanding restricted stock units under the 2014 Plan. In addition, as of June 30, 2021, there were options to purchase 9,994,197 shares of common stock outstanding under the 2014 Plan at a weighted-average exercise price of $4.93 per share and 1,138,635 shares of common stock were available for future issuance under the 2014 Plan. No further awards will be made under the 2014 Plan on or after the effectiveness of the registration statement for this offering; however, awards outstanding under the 2014 Plan will continue to be governed by their existing terms.

2021 Stock Incentive Plan

We expect our board of directors to adopt and our stockholders to approve the 2021 Plan, which will become effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part. The 2021 Plan provides for the grant of incentive stock options, nonstatutory stock options, stock appreciation rights, restricted stock awards, restricted stock units and other stock-based awards. Upon effectiveness of the 2021 Plan, the number of shares of our common stock that will be reserved for issuance under the 2021 Plan will be the sum of: (1) shares; plus (2) the number of shares as is equal to the sum of (x) the number of shares of our common stock reserved for issuance under the 2014 Plan that remain available for grant under the 2014 Plan immediately prior to the effectiveness of the registration statement of which this prospectus forms a part and (y) the number of shares

of our common stock subject to outstanding awards under the 2014 Plan that expire, terminate or are otherwise surrendered, canceled, forfeited or repurchased by us at their original issuance price pursuant to a contractual repurchase right; plus (3) an annual increase, to be added on the first day of each fiscal year, commencing on January 1, 2022 and continuing for each fiscal year until, and including, January 1, 2031, equal to the lesser of (i) % of the number of shares of our common stock outstanding on the first day of such fiscal year and (ii) the number of shares of our common stock determined by our board of directors. Subject to adjustment in the event of a change in capitalization or reorganization, up to of the shares of our common stock available for issuance under the 2021 Plan may be issued as incentive stock options.

Our employees, officers, directors, consultants and advisors will be eligible to receive awards under the 2021 Plan. Incentive stock options, however, may only be granted to our employees.

Pursuant to the terms of the 2021 Plan, our board of directors (or a committee delegated by our board of directors) will administer the plan and, subject to any limitations in the plan, will select the recipients of awards and determine:

- the number of shares of our common stock covered by options and the dates upon which the options become exercisable;
- the type of options to be granted;
- the duration of options, which may not be in excess of ten years;
- the exercise price of options, which must be at least equal to the fair market value of our common stock on the date of grant; and
- the number of shares of our common stock subject to and the terms of any stock appreciation rights, restricted stock awards, restricted stock units or other stock-based awards and the terms and conditions of such awards, including conditions for repurchase, issue price and repurchase price (though the measurement price of stock appreciation rights must be at least equal to the fair market value of our common stock on the date of grant and the duration of such awards may not be in excess of ten years).

If our board of directors delegates authority to one or more of our officers to grant awards under the 2021 Plan, the officers will have the power to make awards to all of our employees, except officers and executive officers (as such terms are defined in the 2021 plan). Our board of directors will fix the terms of the awards to be granted by any such officer, the maximum number of shares subject to awards that such officer may make, and the time period in which such awards may be granted.

The 2021 Plan contains limits on compensation that may be paid to our non-employee directors. In any calendar year, the maximum aggregate amount of cash and value (calculated based on grant date fair value for financial reporting purposes) of awards granted under the 2021 Plan to an individual non-employee director in his or her capacity as a non-employee director may not exceed $750,000. However, this maximum aggregate amount may not exceed $1,000,000 in any calendar year, for any individual non-employee director in that non-employee director’s initial year of service. Fees paid by us on behalf of any non-employee director in connection with regulatory compliance and any amounts paid to a non-employee director as reimbursement of an expense will not count towards this limitation. Our board of directors may make additional exceptions to this limit for individual non-employee directors in extraordinary circumstances, provided that the non-employee director receiving such additional compensation may not participate in the decision to award such compensation. This limitation does not apply to cash or awards granted to a non-employee director in his or her capacity as an advisor or consultant to the Company.

Effect of Certain Changes in Capitalization

Upon the occurrence of any stock split, reverse stock split, stock dividend, recapitalization, combination of shares, reclassification of shares, spin-off or other similar change in capitalization or event, or any dividend or distribution to holders of our common stock other than an ordinary cash dividend, under the terms of the 2021 Plan, we are required to equitably adjust (or make substitute awards, if applicable), in the manner determined by our board of directors:

- the number and class of securities available under the 2021 Plan, and the number and class of securities available for issuance under the 2021 Plan that may be issued as incentive stock options;
- the share counting rules of the 2021 Plan;
- the number and class of securities and exercise price per share of each outstanding option;
- the share and per-share provisions and the measurement price of each outstanding stock appreciation right;
- the number of shares subject to, and the repurchase price per share subject to, each outstanding award of restricted stock; and
- the share and per-share related provisions and the purchase price, if any, of each outstanding award of restricted stock units and each outstanding other stock-based award.

Effect of Certain Corporate Transactions

Upon the occurrence of a merger or other reorganization event (as defined in the 2021 Plan), our board of directors may, on such terms as our board determines (except to the extent specifically provided otherwise in an applicable award agreement or other agreement between the participant and us), take any one or more of the following actions pursuant to the 2021 Plan as to all or any (or any portion of) outstanding awards, other than awards of restricted stock:

- provide that outstanding awards will be assumed, or substantially equivalent awards will be substituted, by the acquiring or succeeding corporation (or an affiliate of the acquiring or succeeding corporation);
- upon written notice to a participant, provide that all of the participant's unvested awards will be forfeited immediately prior to the consummation of the reorganization event, and/or that all of the participant’s vested but unexercised awards will terminate immediately prior to the consummation of the reorganization event unless exercised by the participant (to the extent then exercisable) within a specified period following the date of the notice;
- provide that outstanding awards will become exercisable, realizable or deliverable, or restrictions applicable to an award will lapse, in whole or in part, prior to or upon such reorganization event;
- in the event of a reorganization event pursuant to which holders of shares of our common stock will receive a cash payment for each share surrendered in the reorganization event, make or provide for a cash payment to participants with respect to each award held by a participant equal to (1) the number of shares of our common stock subject to the vested portion of the award (after giving effect to any acceleration of vesting that occurs upon or immediately prior to such reorganization event) multiplied by (2) the excess, if any, of the cash payment for each share surrendered in the reorganization event over the exercise, measurement or purchase price of such award and any applicable tax withholdings, in exchange for the termination of such award; and/or
- provide that, in connection with our liquidation or dissolution, awards will convert into the right to receive liquidation proceeds (if applicable, net of the exercise, measurement or purchase price thereof and any applicable tax withholdings).

Our board of directors is not obligated under the 2021 Plan to treat all awards, all awards held by a participant, or all awards of the same type, identically.

In the case of certain restricted stock units, no assumption or substitution is permitted, and the restricted stock units will instead be settled in accordance with the terms of the applicable restricted stock unit agreement.

Upon the occurrence of a reorganization event other than our liquidation or dissolution, our repurchase and other rights with respect to outstanding awards of restricted stock will continue for the benefit of the succeeding company

and will, unless our board of directors determines otherwise, apply to the cash, securities, or other property which our common stock was converted into or exchanged for pursuant to the reorganization event in the same manner and to the same extent as they applied to the common stock subject to the restricted stock award. However, the board may provide for the termination or deemed satisfaction of such repurchase or other rights under the restricted stock award agreement or in any other agreement between a participant and us, either initially or by amendment. Upon our liquidation or dissolution, except to the extent specifically provided to the contrary in the restricted stock award agreement or any other agreement between the participant and us, all restrictions and conditions on all restricted stock awards then outstanding will automatically be deemed terminated or satisfied.

At any time, our board of directors may provide that any award under the 2021 Plan will become immediately exercisable in whole or in part, free of some or all restrictions or conditions, or otherwise realizable in whole or in part as the case may be.

Except with respect to certain actions requiring stockholder approval under the Code or Nasdaq rules, our board of directors may amend, modify or terminate any outstanding award under the 2021 Plan, including but not limited to, substituting for the award another award of the same or a different type, changing the date of exercise or realization, and converting an incentive stock option to a nonstatutory stock option, subject to certain participant consent requirements. However, unless our stockholders approve such action, the 2021 Plan provides that we may not (except as otherwise permitted in connection with a change in capitalization or reorganization event):

- amend any outstanding stock option or stock appreciation right granted under the 2021 Plan to provide an exercise or measurement price per share that is lower than the then-current exercise or measurement price per share of such outstanding award;
- cancel any outstanding stock option or stock appreciation right (whether or not granted under the 2021 Plan) and grant a new award under the 2021 Plan in substitution for the cancelled award (other than substitute awards permitted in connection with a merger or consolidation of an entity with us or our acquisition of property or stock of another entity) covering the same or a different number of shares of our common stock and having an exercise or measurement price per share lower than the then-current exercise or measurement price per share of the cancelled award;
- cancel in exchange for a cash payment any outstanding option or stock appreciation right with an exercise or measurement price per share above the then-current fair market value of our common stock (valued in the manner determined by (or in the manner approved by) our board of directors); or
- take any other action that constitutes a “repricing” within the meaning of Nasdaq rules or rules of any other exchange or marketplace on which our common stock is listed or traded.

No award may be granted under the 2021 Plan on or after the date that is ten years following the effectiveness of the registration statement related to this offering. Our board of directors may amend, suspend or terminate the 2021 Plan at any time, except that stockholder approval may be required to comply with applicable law or stock market requirements.

2021 Employee Stock Purchase Plan

We expect our board of directors to adopt and our stockholders to approve the 2021 ESPP, which will become effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part. The 2021 ESPP will be administered by our board of directors or by a committee appointed by our board of directors. The 2021 ESPP initially provides participating employees with the opportunity to purchase up to an aggregate of shares of our common stock. The number of shares of our common stock reserved for issuance under the 2021 ESPP will automatically increase on the first day of each fiscal year, commencing on January 1, 2022 and continuing until, and including, January 1, 2032, in an amount equal to the lowest of (i) shares of our common stock, (ii) % of the number of shares of our common stock outstanding on such date and (iii) a number of shares of our common stock determined by our board of directors.

All of our employees and employees of any designated subsidiary, as defined in the 2021 ESPP, are eligible to participate in the 2021 ESPP, provided that:

- such person is customarily employed by us or a designated subsidiary for more than 20 hours a week and for more than five months in a calendar year;
- such person has been employed by us or by a designated subsidiary for at least three months prior to enrolling in the 2021 ESPP; and
- such person was our employee or an employee of a designated subsidiary on the first day of the applicable offering period under the 2021 ESPP.

We retain the discretion to determine which eligible employees may participate in an offering under applicable regulations.

We expect to make one or more offerings to our eligible employees to purchase stock under the 2021 ESPP beginning at such time and on such dates as our board of directors may determine, or on the first business day thereafter. Each offering will consist of a six-month offering period during which payroll deductions will be made and held for the purchase of our common stock at the end of the offering period. Our board of directors or a committee designated by the board of directors may, at its discretion, choose a different period of not more than 12 months for offerings.

On each offering commencement date, each participant will be granted an option to purchase, on the last business day of the offering period, up to a number of shares of our common stock determined by multiplying $2,083 by the number of full months in the offering period and dividing that product by the closing price of our common stock on the first day of the offering period. No employee may be granted an option under the 2021 ESPP that permits the employee's rights to purchase shares under the 2021 ESPP and any other employee stock purchase plan of ours or of any of our subsidiaries to accrue at a rate that exceeds $25,000 of the fair market value of our common stock (determined as of the first day of each offering period) for each calendar year in which the option is outstanding. In addition, no employee may purchase shares of our common stock under the 2021 ESPP that would result in the employee owning 5% or more of the total combined voting power or value of our stock or the stock of any of our subsidiaries.

On the commencement date of each offering period, each eligible employee may authorize up to a maximum of 15% of his or her compensation to be deducted by us during the offering period. Each employee who continues to be a participant in the 2021 ESPP on the last business day of the offering period will be deemed to have exercised an option to purchase from us the number of whole shares of our common stock that his or her accumulated payroll deductions on such date will pay for, not in excess of the maximum numbers set forth above. Under the terms of the 2021 ESPP, the purchase price will be determined by our board of directors or the committee for each offering period and will be at least 85% of the applicable closing price of our common stock. If our board of directors or the committee does not make a determination of the purchase price, the purchase price will be 85% of the lesser of the closing price of our common stock on the first business day of the offering period or on the last business day of the offering period.

An employee may at any time prior to the close of business on the fifteenth business day (or such other number of days as is determined by us) prior to the end of the offering period, and for any reason, permanently withdraw from participating in the offering and permanently withdraw the balance accumulated in the employee's account. If an employee elects to discontinue his or her payroll deductions during an offering period but does not elect to withdraw his or her funds, funds previously deducted will be applied to the purchase of common stock at the end of the offering period. If a participating employee's employment ends before the last business day of an offering period, no additional payroll deductions will be taken and the balance in the employee's account will be paid to the employee.

We will be required to make equitable adjustments to the extent determined by our board of directors or a committee thereof to the number and class of securities available under the 2021 ESPP, the share limitations under the 2021 ESPP, and the purchase price for an offering period under the 2021 ESPP to reflect stock splits, reverse stock splits, stock dividends, recapitalizations, combinations of shares, reclassifications of shares, spin-offs and other similar changes in capitalization or events or any dividends or distributions to holders of our common stock other than ordinary cash dividends.

In connection with a merger or other reorganization event, as defined in the 2021 ESPP, our board of directors or a committee of our board of directors may take any one or more of the following actions as to outstanding options to purchase shares of our common stock under the 2021 ESPP on such terms as our board of directors or committee thereof determines:

- provide that options will be assumed, or substantially equivalent options will be substituted, by the acquiring or succeeding corporation (or an affiliate of the acquiring or succeeding corporation);
- upon written notice to employees, provide that all outstanding options will be terminated immediately prior to the consummation of such reorganization event and that all such outstanding options will become exercisable to the extent of accumulated payroll deductions as of a date specified by our board of directors or committee thereof in such notice, which date will not be less than ten days preceding the effective date of the reorganization event;
- upon written notice to employees, provide that all outstanding options will be cancelled as of a date prior to the effective date of the reorganization event and that all accumulated payroll deductions will be returned to participating employees on such date; and/or
- in the event of a reorganization event under the terms of which holders of our common stock will receive upon consummation thereof a cash payment for each share surrendered in the reorganization event, change the last day of the offering period to be the date of the consummation of the reorganization event and make or provide for a cash payment to each employee equal to (1) the cash payment for each share surrendered in the reorganization event times the number of shares of our common stock that the employee's accumulated payroll deductions as of immediately prior to the reorganization event could purchase at the applicable purchase price, where the cash payment for each share surrendered in the reorganization event is treated as the fair market value of our common stock on the last day of the applicable offering period for purposes of determining the purchase price and where the number of shares that could be purchased is subject to the applicable limitations under the 2021 ESPP minus (2) the result of multiplying such number of shares by the purchase price; and/or provide that, in connection with our liquidation or dissolution, options will convert into the right to receive liquidation proceeds (net of the purchase price thereof).

Our board of directors may at any time, and from time to time, amend or suspend the 2021 ESPP or any portion of the 2021 ESPP. We will obtain stockholder approval for any amendment if such approval is required by Section 423 of the Code. Further, our board of directors may not make any amendment that would cause the 2021 ESPP to fail to comply with Section 423 of the Code. The 2021 ESPP may be terminated at any time by our board of directors. Upon termination, we will refund all amounts in the accounts of participating employees

401(k) Plan

We maintain a defined contribution employee retirement plan for our employees, including our named executive officers. The plan is intended to qualify as a tax-qualified 401(k) plan so that contributions to the 401(k) plan, and income earned on such contributions, are not taxable to participants until withdrawn or distributed from the 401(k) plan (except in the case of contributions under the 401(k) plan designated as Roth contributions). Under the 401(k) plan, each employee is fully vested in his or her deferred salary contributions and our discretionary match. Employee contributions are held and invested by the plan’s trustee as directed by participants. The 401(k) plan provides us with the discretion to match employee contributions, but to date we have not provided any employer matching contributions.

Limitation of Liability and Indemnification

Our amended and restated certificate of incorporation, which will become effective immediately prior to the completion of this offering, limits the personal liability of directors for breach of fiduciary duty to the maximum extent permitted by the Delaware General Corporation Law, or the DGCL, and provides that no director will have personal liability to us or to our stockholders for monetary damages for breach of fiduciary duty as a director. However, these provisions do not eliminate or limit the liability of any of our directors:

- for any breach of the director’s duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- for voting for or assenting to unlawful payments of dividends, stock repurchases or other distributions; or
- for any transaction from which the director derived an improper personal benefit.

Any amendment to or repeal of these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to such amendment or repeal. If the DGCL is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the DGCL.

In addition, our amended and restated certificate of incorporation, which will become effective immediately prior to the completion of this offering, provides that we must indemnify our directors and officers and we must advance expenses, including attorneys' fees, to our directors and officers in connection with legal proceedings, subject to very limited exceptions.

We maintain a general liability insurance policy that covers specified liabilities of our directors and officers arising out of claims based on acts or omissions in their capacities as directors or officers. In addition, have entered into indemnification agreements with all of our executive officers and directors. These indemnification agreements require us, among other things, to indemnify each such executive officer or director for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by him or her in any action or proceeding arising out of his or her service as one of our executive officers or directors.

Some of our non-employee directors may, through their relationships with their employers, be insured or indemnified against specified liabilities incurred in their capacities as members of our board of directors.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, or the Securities Act, may be permitted to directors, executive officers or persons controlling us, in the opinion of the Securities and Exchange Commission, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Rule 10b5-1 Sales Plans

Our directors and executive officers may adopt written plans, known as Rule 10b5-1 plans, in which they will contract with a broker to buy or sell shares of our common stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades pursuant to parameters established by the director or officer when entering into the plan, without further direction from the director or officer. It also is possible that the director or officer could amend or terminate the plan when not in possession of material, nonpublic information. In addition, our directors and executive officers may buy or sell additional shares outside of a Rule 10b5-1 plan when they are not in possession of material, nonpublic information.

Director Compensation

The table below shows all compensation paid to our non-employee directors during the year ended December 31, 2020.

Name	Fees earned or paid in cash ($)	Stock Awards ($)	Option Awards ($)	All Other Compensation ($)	Total ($)
Chris Achar(1)	—	—	—	—	—
Xiangmin "Min" Cui	—	—	—	—	—
Robin Farias-Eisner(2)	—	—	—	—	—
Rohan Oza(3)	—	—	—	—	—
Scott Stanford	—	—	—	—	—
Asish Xavier(4)	—	—	—	—	—

(1) In July 2021, Mr. Achar entered into an employment agreement with the Company, at which time he became an employee director of the Company.

(2) Dr. Farias-Eisner intends to resign from our board of directors immediately prior to the effectiveness of the registration statement of which this prospectus forms a part.

(3) Mr. Oza intends to resign from our board of directors immediately prior to the effectiveness of the registration statement of which this prospectus forms a part.

(4) Dr. Xavier resigned from our board of directors in April 2021.

We have historically reimbursed our non-employee directors for reasonable travel and out-of-pocket expenses incurred in connection with attending board of director and committee meetings.

Mr. Khattak, one of our directors who also serves as our chief executive officer, does not receive any additional compensation for his service as a director. Mr. Khattak is one of our named executive officers and, accordingly, the compensation that we pay to Mr. Khattak is discussed above under "—Summary Compensation Table" and "—Narrative to Summary Compensation Table." Among other things, as discussed in those sections, certain equity awards previously made to Mr. Khattak and Mr. Sever, who is our co-founder and our chief product officer, may vest in connection with the offering being made by this prospectus. Mr. Achar began serving as our chief strategy officer in June 2021. On May 26, 2021, our board of directors approved the accelerated vesting of any remaining unvested shares held by Mr. Achar and HLTH Work LLC, of which Mr. Achar is the sole member, pursuant to Mr. Achar's early exercise of stock options, upon the effectiveness of an initial public offering satisfying certain conditions, which conditions may be satisfied in connection with this offering. In addition, effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, our board of directors is expected to approve the grant of 64,000 fully vested shares of our common stock to each of Dr. Robin Farias-Eisner and Mr. Rohan Oza in recognition of their service to us as directors prior to this offering. Each of Dr. Farias-Eisner and Mr. Oza is expected to be required to hold the shares received pursuant to this grant for a period of at least one year following the date of grant.

In June 2021, our board of directors approved a director compensation program that will become effective on the effective date of the registration statement of which this prospectus forms a part. Under this director compensation program, we will pay each of our non-employee directors a cash retainer for service on the board of directors and for service on each committee of which the director is a member. The chairman of the board and of each committee will receive higher retainers for such service. These fees are payable in arrears in four equal quarterly installments on the last day of each quarter, provided that the amount of such payment will be prorated for any portion of such quarter that the director was not serving on our board of directors. The fees paid to each non-employee director for service on the board of directors and for service on each committee of the board of directors of which the director is a member are as follows:

	Member Annual Fee	Chairman Annual Fee
Board of Directors	$50,000	$95,000
Audit Committee	$ 8,000	$20,000
Compensation Committee	$ 5,000	$12,000
Nominating and Corporate Governance Committee	$ 4,000	$10,000

We also will continue to reimburse each of our non-employee directors for reasonable travel and other expenses incurred in connection with attending meetings of our board of directors and any committee of our board of directors on which he or she serves.

In addition, under our director compensation program to be effective on the effective date of the registration statement of which this prospectus forms a part, each non-employee director will receive, upon his or her initial election or appointment to our board of directors following the effective date of the registration statement of which this prospectus forms a part, a grant of restricted stock units under the 2021 Plan with a target value of $300,000. Each of these restricted stock unit grants will vest as to 34% of the shares of our common stock underlying such grant on the first anniversary of the grant date and an additional 33% of the shares of our common stock underlying such grant at the end of each successive 12-month period following the first anniversary of the grant date until the third anniversary of the grant date, subject to the non-employee director's continued service as a director. Each non-employee director who is elected to our board of directors between June 23, 2021 and the commencement of trading of shares of our common stock on the Nasdaq Stock Market following the effectiveness of our initial public offering will receive an initial grant on the terms and conditions described in this paragraph on the later of (i) the effective time of the non-employee director's election to our board of directors and (ii) immediately prior to and contingent upon the commencement of trading of shares of our common stock on the Nasdaq Stock Market.

Further, on the date of each annual meeting of our stockholders following the effective date of the registration statement of which this prospectus forms a part, each non-employee director will receive a grant of restricted stock units under the 2021 Plan with a target value of $190,000. Each of these restricted stock unit grants will vest with respect to 100% of the shares of our common stock underlying such grant on the first anniversary of the grant date, subject to the non-employee director's continued service as a director (unless otherwise provided at the time of grant). The number of restricted stock units subject to the restricted stock unit grants made to our non-employee directors will be consistent with our practice for determining the number of restricted stock units granted to our employees. All restricted stock units granted to our non-employee directors under our director compensation program will vest in full upon a change in control.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Since January 1, 2018, we have engaged in the following transactions in which the amounts involved exceeded $120,000 and any of our directors, executive officers or holders of more than 5% of our voting securities, or any member of the immediate family of, or person sharing the household with, the foregoing persons, had or will have a direct or indirect material interest. We believe that all of these transactions were on terms as favorable as could have been obtained from unrelated third parties.

Convertible Note Financing

In May 2020, we issued a convertible promissory note in the aggregate principal amount of $0.5 million to Johnson & Johnson Innovation – JJDC, Inc., or JJDC. This note, which we refer to as the JJDC Note, accrued interest at a rate of 3% per annum. On June 1, 2020, all principal and accrued but unpaid interest under the JJDC Note was converted into 155,571 shares of Cue Health's Series C-2 redeemable convertible preferred stock. Vijay Murthy, a former member of our board of directors, is a former principal at JJDC, and Asish Xavier, a former member of our board of directors, is a principal at JJDC.

In May 2021, we issued and sold Convertible Notes in the aggregate principal amount of $235.5 million in a private placement with net proceeds of $229.5 million. Interest will accrue on the Convertible Notes at a simple rate of 3% per annum. Unless earlier converted immediately prior to the closing of this offering or certain other transactions, the Convertible Notes and any unpaid accrued interest will become due in May 2023. Assuming an initial public offering price of $ per share, which is the midpoint of the range set forth on the cover page of this prospectus, the Convertible Notes will automatically convert into shares of our common stock immediately prior to the closing of this offering.

The following table sets forth the aggregate principal amounts of Convertible Notes that we issued to certain of our 5% stockholders and their affiliates and certain affiliates of members of our board of directors:

Purchaser[1]	Principal Amount of Convertible Notes
Decheng Capital China Life Sciences USD Fund III, L.P.[2]	$10,000,000
Funds managed by ACME, LLC and affiliates[3]	4,696,970
JJDC[4]	7,000,000

(1) See "Principal Stockholders" for additional information about shares held by these entities.

(2) Xiangmin "Min" Cui, a member of our board of directors, is the managing director and founder of Decheng Capital China Life Sciences USD Fund III, L.P

(3) Funds managed by ACME, LLC and affiliates are Sherpa Ventures Fund, LP and Sherpa Ventures Fund II, LP, collectively "ACME Capital.'' Scott Stanford, a member of our board of directors, is a member of, and has a financial interest in ACME Capital.

(4) Vijay Murthy, a former member of our board of directors, is a former principal at JJDC, and Asish Xavier, a former member of our board of directors, is a principal of JJDC.

Agreements with Janssen Pharmaceuticals

In December 2015, we entered into a development, marketing and distribution agreement with Janssen Pharmaceuticals, Inc., or Janssen, pursuant to which Janssen has agreed to provide us funding for the development of our HIV Test Cartridge and Sample Wand in exchange for the right to market and distribute our HIV Test Cartridges and Sample Wands in the future. In the years ended December 31, 2018, 2019, and 2020, we did not receive any payments pursuant to this development, marketing, and distribution agreement. In August 2019, we entered into a research collaboration agreement with Janssen, pursuant to which Janssen has agreed to provide us funding for the development of our respiratory syncytial virus (RSV) Test Kit in exchange for the right to market and distribute our Cue Reader and our multiplexed respiratory diagnostic Test Kit. In the years ended December 31, 2019 and 2020, we received $350,000 and $0, respectively, in payments pursuant to this agreement. In September 2020, we entered into two (2) purchase agreements with Janssen, pursuant to which Janssen purchased our Cue Readers, COVID-19 Test Kits, and Cue Control Swab Packs. In the year ended December 2020, we received $134,390 in payments pursuant to such purchase agreements. Janssen is an affiliate of Johnson & Johnson and JJDC. Vijay Murthy, a former member of our board of directors, is a former principal at JJDC, and Asish Xavier, a former member of our board of directors, is a principal at JJDC.

Promissory Notes and Restricted Stock Purchase Agreements with Executives

In September 2018, we issued 2,444,130 shares of common stock to Mr. Khattak, our Chief Executive Officer and a member of our board of directors, and 480,000 shares of common stock to Mr. Sever, our Chief Product Officer, at a price of $0.48 per share. The shares were issued pursuant to restricted stock purchase agreements with Mr. Khattak and Mr. Sever in exchange for promissory notes totaling $1.2 million and $0.2 million, respectively, to finance the purchase of the shares. Mr. Khattak pledged 2,444,130 shares of vested common stock, as well as the restricted stock purchased with the promissory note, as collateral. Mr. Sever pledged 480,000 shares of vested common stock, as well as the restricted stock purchased with the promissory note, as collateral. The promissory notes bear interest payable annually on each July 1 at a rate equal to 3.06% per year. The promissory notes may be prepaid in full or in part at any time without premium or penalty and are due in September 2028. As described below, all promissory notes between the Company and Mr. Khattak and Mr. Sever have been forgiven.

In July 2020, we issued 4,915,442 shares of common stock to Mr. Khattak, our Chief Executive Officer and a member of our board of directors, and 2,457,721 shares of common stock to Mr. Sever, our Chief Product Officer, at a price of $1.41 per share. The shares were issued pursuant to restricted stock purchase agreements with Mr. Khattak and Mr. Sever in exchange for partially recourse promissory notes totaling $6.9 million and $3.5 million, respectively, to finance the purchase of the shares. Mr. Khattak pledged the restricted stock purchased with the promissory note, as collateral. Mr. Sever pledged the restricted stock purchased with the promissory note, as collateral. The promissory notes bear interest payable annually on each July 1 at a rate equal to 1.17% per year. The promissory notes may be prepaid in full or in part at any time without premium or penalty and are due in July 2030, or earlier upon certain change in control events. As described below, all promissory notes between the Company and Mr. Khattak and Mr. Sever have been forgiven.

In December 2020, our board of directors canceled and forgave $0.2 million in principal and accrued interest under the September 2018 promissory note by and between us and Mr. Sever, or the 2018 Sever Note, and released a total of 960,000 shares of common stock held by Mr. Sever that had been pledged as collateral in connection with the 2018 Sever Note.

In September 2021, our board of directors canceled and forgave $8.3 million in principal and accrued interest, comprised of $1.3 million under the September 2018 promissory note, or the 2018 Khattak Note, and $7.0 million under the July 2020 promissory note, or the 2020 Khattak Note, in each case by and between us and Mr. Khattak, and released a total of 4,888,260 shares of common stock held by Mr. Khattak that had been pledged as collateral in connection with the 2018 Khattak Note and a total of 4,915,442 shares of common stock held by Mr. Khattak that had been pledged as collateral in connection with the 2020 Khattak Note. In September 2021, our board of directors canceled and forgave $3.5 million in principal and accrued interest under the July 2020 promissory note by and between us and Mr. Sever, or the 2020 Sever Note, and released a total of 2,457,721 shares of common stock held by Mr. Sever that had been pledged as collateral in connection with the 2020 Sever Note. Each of Mr. Khattak and Mr. Sever paid the taxes associated with the forgiveness of his promissory note(s).

Series C-1 and C-2 Redeemable Convertible Preferred Stock Financing

In June 2020, we issued and sold an aggregate of 27,308,227 shares of our Series C-1 redeemable convertible preferred stock at a price per share of $3.6619 in cash, for an aggregate purchase price of $100.0 million and issued 1,690,380 shares of our Series C-2 redeemable convertible preferred stock at a price per share of $3.2957 in exchange for an aggregate of $5.6 million in convertible notes issued between May 1, 2020 to May 19, 2020.

The following table sets forth the aggregate numbers of shares of our Series C-1 and Series C-2 redeemable convertible preferred stock that we issued and sold to certain of our 5% stockholders and their affiliates and certain affiliates of members of our board of directors in this transaction and the aggregate amount of consideration for such shares (in millions, except share data):

Purchaser[1]	Series C-1 Redeemable Convertible Preferred Stock Sold for Cash	Cash Purchase Price	Series C-2 Redeemable Convertible Preferred Stock Exchange for Convertible Notes	Principal Amount of Convertible Notes Cancelled Upon Exchange
Decheng Capital China Life Sciences USD Fund III, L.P.[2]	8,192,468	$30.0	—	$—
Madrone Opportunity Fund, L.P.	5,461,645	20.0	—	—

Purchaser[1]	Series C-1 Redeemable Convertible Preferred Stock Sold for Cash	Cash Purchase Price	Series C-2 Redeemable Convertible Preferred Stock Exchange for Convertible Notes	Principal Amount of Convertible Notes Cancelled Upon Exchange
ACME Capital[3]	2,184,658	8.0	—	—
Entities affiliated with Cove Investors I, LLC[4]	273,082	1.0	—	—
JJDC[5]	1,042,136	3.8	155,571	0.5

(1) See "Principal Stockholders" for additional information about shares held by these entities.

(2) Xiangmin "Min" Cui, a member of our board of directors, is the managing director and founder of Decheng Capital China Life Sciences USD Fund III, L.P

(3) Scott Stanford, a member of our board of directors, is a member of, and has a financial interest in ACME Capital.

(4) Robin Farias-Eisner, a member of our board of directors, is an affiliate of Cove Investors I, LP. Dr. Farias-Eisner intends to resign from our board of directors immediately prior to the effectiveness of the registration statement of which this prospectus forms a part.

(5) Vijay Murthy, a former member of our board of directors, is a former principal of JJDC, and Ashish Xavier, a former member of our board of directors, is a principal of JJDC.

Other Transactions

In December 2020, Mr. Khattak sold 1,433,691 shares of our common stock to various third-party investors for consideration in the aggregate amount of $22.2 million, 1,616,921 shares of our common stock to Madrone Opportunity Fund, L.P., a holder of more than 5% of our capital stock, for consideration in the aggregate amount of $25.0 million, and 323,385 shares of our common stock to ACME Capital entities who hold more than 5% of our capital stock, for consideration in the aggregate amount of $5 million. We held a right of first refusal and associated notice rights with respect to the shares sold by Mr. Khattak in this transaction, and such rights were waived by us, with approval by the members of our board of directors.

In December 2020, Mr. Sever sold 830,000 shares of our common stock to a third-party investor for consideration in the aggregate amount of $12.8 million. We held a right of first refusal and associated notice rights with respect to the shares sold by Mr. Sever in this transaction, and such rights were waived by us, with approval by the members of our board of directors.

In May 2021, we entered into a consulting agreement with Village Girl LLC, or the Consulting Agreement, effective as of January 1, 2021. Village Girl LLC is an entity affiliated with Chris Achar, a member of our board of directors. Pursuant to the Consulting Agreement, Village Girl LLC agreed to provide consulting services related to, among other things, brand positioning and marketing and sales, in consideration of which we agreed to pay a monthly fee of $30,000 and to reimburse certain expenses. The Consulting Agreement will terminate on September 30, 2021 unless earlier terminated by either us or Village Girl LLC upon 30 days' notice.

For a description of the compensation arrangements that we have with, and various compensation awards we have made with respect to our named executive officers and directors, see "Executive and Director Compensation."

Directed Share Program

At our request, the underwriters have reserved up to 5.0% of the shares offered by this prospectus for sale at the initial public offering price to certain individuals through a directed share program, including our directors, officers and employees. Shares purchased through this program by our directors, officers and employees will be subject to the 180-day lock-up period under the lock-up agreements described under "Shares Eligible for Future Sale—Lock-up Agreements." See the section titled "Underwriting" for additional information.

Registration Rights

We are a party to an investor rights agreement with the holders of our redeemable convertible preferred stock, including our 5% stockholders and their affiliates and entities affiliated with some of our directors. This investor rights agreement provides these holders the right, subject to certain conditions, beginning six months following the completion of this offering, to demand that we file a registration statement or to request that their shares be covered by a registration statement that we are otherwise filing. In addition, these holders also have piggyback registration rights in respect of public offerings we may make for our own account or for other stockholders of our company. Holders of Convertible Notes will also be entitled to registration rights in respect of the common stock issuable upon conversion of the Convertible Notes.

See “Description of Capital Stock—Registration Rights” for additional information regarding these registration rights.

Indemnification Agreements

Our amended and restated certificate of incorporation, which will become effective immediately prior to the completion of this offering, provides that we will indemnify our directors and officers to the fullest extent permitted by Delaware law. In addition, have entered into indemnification agreements with all of our directors and executive officers. These indemnification agreements require us, among other things, to indemnify each such director or executive officer for some expenses, including attorneys’ fees, judgments, fines and settlement amounts incurred by him or her in any action or proceeding arising out of his or her service as one of our directors or executive officers.

Policies and Procedures for Related Person Transactions

Our board of directors intends to adopt written policies and procedures for the review of any transaction, arrangement or relationship in which our company is a participant, the amount involved exceeds the lesser of $120,000 or one percent of the average of our total assets at year end for the last two completed fiscal years, and one of our executive officers, directors, director nominees or 5% stockholders, or their immediate family members, each of whom we refer to as a “related person,” has a direct or indirect material interest.

If a related person proposes to enter into such a transaction, arrangement or relationship, which we refer to as a “related person transaction,” the related person must report the proposed related person transaction to our general counsel. The policy calls for the proposed related person transaction to be reviewed and, if deemed appropriate, approved by our audit committee. Whenever practicable, the reporting, review and approval will occur prior to entry into the transaction. If advance review and approval is not practicable, the audit committee will review, and, in its discretion, may ratify the related person transaction. The policy also permits the chairman of the audit committee to review and, if deemed appropriate, approve proposed related person transactions that arise between committee meetings, subject to ratification by the committee at its next meeting. Any related person transactions that are ongoing in nature will be reviewed annually.

A related person transaction reviewed under the policy will be considered approved or ratified if it is authorized by the audit committee after full disclosure of the related person’s interest in the transaction. As appropriate for the circumstances, the audit committee will review and consider:

- the related person’s interest in the related person transaction;
- the approximate dollar value of the amount involved in the related person transaction;
- the approximate dollar value of the amount of the related person’s interest in the transaction without regard to the amount of any profit or loss;
- whether the transaction was undertaken in the ordinary course of our business;
- whether the terms of the transaction are no less favorable to us than terms that could have been reached with an unrelated third party;
- the purpose, and the potential benefits to us, of the transaction; and
- any other information regarding the related person transaction or the related person in the context of the proposed transaction that would be material to investors in light of the circumstances of the particular transaction.

Our audit committee may approve or ratify the transaction only if it determines that, under all of the circumstances, the transaction is in, or is not inconsistent with, our best interests. Our audit committee may impose any conditions on the related person transaction that it deems appropriate.

In addition to the transactions that are excluded by the instructions to the SEC’s related person transaction disclosure rule, our board of directors has determined that the following transactions do not create a material direct or indirect interest on behalf of related persons and, therefore, are not related person transactions for purposes of this policy:

- interests arising solely from the related person’s position as an executive officer of another entity, whether or not the person is also a director of such entity, that is a participant in the transaction where the related person and all other related persons own in the aggregate less than a 10% equity interest in such entity, the

related person and his or her immediate family members are not involved in the negotiation of the terms of the transaction and do not receive any special benefits as a result of the transaction and the amount involved in the transaction is less than the greater of $200,000 or 5% of the annual gross revenue of the company receiving payment under the transaction; and

- a transaction that is specifically contemplated by provisions of our amended and restated certificate of incorporation or bylaws.

The policy provides that transactions involving compensation of executive officers shall be reviewed and approved by our compensation committee in the manner specified in the compensation committee's charter.

We did not have a written policy regarding the review and approval of related person transactions prior to this offering. Nevertheless, with respect to such transactions, it has been the practice of our board of directors to consider the nature of and business reasons for such transactions, how the terms of such transactions compared to those which might be obtained from unaffiliated third parties and whether such transactions were otherwise fair to and in the best interests of, or not contrary to, our best interests.

PRINCIPAL STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our common stock as of July 31, 2021 by:

- each of our directors;
- each of our named executive officers;
- all of our directors and executive officers as a group; and
- each person, or group of affiliated persons, who is known by us to beneficially own more than 5% of our common stock.

The column entitled "Percentage of Shares Beneficially Owned—Before Offering" is based on a total of 29,128,604 shares of our common stock outstanding as of July 31, 2021 and assuming the automatic conversion of all outstanding shares of our redeemable convertible preferred stock into an aggregate of 83,526,065 shares of our common stock immediately prior to the completion of this offering. The column entitled "Percentage of Shares Beneficially Owned—After Offering" is based on shares of our common stock assumed to be outstanding after this offering, including (i) the shares of our common stock that we are selling in this offering, and (ii) shares of our common stock issuable upon the automatic conversion of the $235.5 million aggregate principal and accrued and unpaid interest on the Convertible Notes outstanding as of , 2021, based on interest accrued through , 2021 and a 20% discount to the assumed initial public offering price of $ per share upon the closing of this offering, but not including any additional shares issuable upon exercise of outstanding options.

Beneficial ownership is determined in accordance with the rules and regulations of the SEC and includes voting or investment power with respect to our common stock. Shares of our common stock that an individual has a right to acquire within 60 days after July 31, 2021 are considered outstanding and beneficially owned by the person holding such right for the purpose of calculating the percentage ownership of that person but not for the purpose of calculating the percentage ownership of any other person, except with respect to the percentage ownership of all directors and executive officers. Except as otherwise noted, the persons and entities in this table have sole voting and investing power with respect to all of the shares of our common stock beneficially owned by them, subject to community property laws, where applicable. Except as otherwise set forth below, the address of each beneficial owner is c/o 4980 Carroll Canyon Rd., Suite 100, San Diego, CA 92121.

The table below excludes any purchases that may be made through our directed share program and any potential purchases in this offering by the beneficial owners identified in the table below.

Name of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering (%)	After Offering (%)
5% Stockholders			
ACME Capital[1]	14,869,253	13.20%	
Entities affiliated with Cove Investors I, LLC[2]	12,377,254	10.99%	
Decheng Capital China Life Sciences USD Fund III, L.P.[3]	8,192,468	7.27%	
Madrone Opportunity Fund, L.P.[4]	7,078,566	6.28%	
NVGA I, LLC[5]	6,843,692	6.08%	
Directors, Director Nominees and Named Executive Officers			
Ayub Khattak[6]	10,907,055	9.66%	
Clint Sever[7]	5,728,151	5.00%	
Chris Achar[8]	1,589,710	1.41%	
Xiangmin "Min" Cui[3]	8,192,468	7.27%	
Robin Farias-Eisner[2][9]	12,421,254	11.03%	
Rohan Oza[10]	1,104,612	*	
Scott Sanford[1]	14,869,253	13.20%	
Joanne Bradford	—	—	
Carole Faig	—	—	
Maria Martinez	—	—	
All current executive officers and directors as a group (10 persons)	51,672,073	45.75%	

* Denotes less than 1%.

(1) Consists of (i) 129,354 shares of common stock held by Sherpa Ventures Fund, LP ("ACME I"), (ii) 194,031 shares of common stock held by Sherpa Ventures Fund II, LP ("ACME II"), (iii) 5,450,898 shares of common stock issuable upon conversion of our Series A redeemable convertible preferred stock held by ACME I, (iv) 3,076,224 shares of common stock issuable upon conversion of our shares of Series B redeemable convertible preferred stock held by ACME I, (v) 3,834,088 shares of common stock issuable upon conversion of our Series B redeemable convertible preferred stock held by ACME II, (vi) 1,092,329 shares of common stock issuable upon conversion of our Series C-1 redeemable convertible preferred stock held by ACME I, (vii) 1,092,329 shares of common stock issuable upon conversion of our Series C-1 redeemable convertible preferred stock held by ACME II, and (viii) shares of common stock issuable upon conversion of our Convertible Notes, based on accrued interest through 2021, and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the range set forth on the cover of this prospectus, held by ACME II. Sherpa Ventures Fund GP, LLC ("ACME GP I") is the manager of ACME I. SherpaVentures Fund II GP, LLC ("ACME GP II") is the manager of ACME II. Mr. Stanford is a managing member of each of ACME GP I and ACME GP II and may be deemed to have voting and investment power with respect to the shares held by ACME I and ACME II and as a result may be deemed to have beneficial ownership of such shares. Funds managed by ACME, LLC and affiliates of ACME I and ACME II, are collectively defined as "ACME Capital". Scott Stanford is also a member of our board of directors and a member of, and has a financial interest in, ACME Capital. The address for ACME I and ACME II is 800 Market Street, 8th Floor, San Francisco, California 94102.

(2) Consists of (i) 5,655,540 shares of common stock held by Cove Investors I, LLC ("Cove I"), (ii) 1,090,180 shares of common stock issuable upon conversion of our Series A redeemable convertible preferred stock held by Cove Investors I, LLC, (iii) 5,358,452 shares of common stock issuable upon conversion of our Series B redeemable convertible preferred stock held by Cove Investors II, LLC ("Cove II") and (iv) 273,082 shares of common stock issuable upon conversion of our Series C-1 redeemable convertible preferred stock held by Cove Investors II, LLC. Dr. Farias-Eisner is a member of Cove I and Cove II. Dr. Farias-Eisner is also currently a member of our board of directors and intends to resign from our board of directors immediately prior to the effectiveness of the registration statement of which this prospectus forms a part. The address for Cove I and Cove II is 865 S. Figueroa Street, Suite 700, Los Angeles, California 90017.

(3) Consists of (i) 8,192,468 shares of common stock issuable upon conversion of our Series C-1 redeemable convertible preferred stock held by Decheng Capital China Life Sciences USD Fund III, L.P. ("Decheng Fund III") and (ii) shares of common stock issuable upon conversion of our Convertible Notes, based on accrued interest through 2021, and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the range set forth on the cover of this prospectus, held by Decheng Capital Global Healthcare Fund (Master), LP ("Decheng Global"). Decheng Capital Management III (Cayman), LLC ("Decheng Capital Management") is the general partner of Decheng Fund III, and Decheng Capital Global Healthcare GP, LLC ("Decheng Global GP") is the general partner of Decheng Global. Dr. Cui is the sole manager of Decheng Capital Management and Decheng Global GP. Dr. Cui may be deemed to have voting and investment power with respect to the shares held by Decheng Fund III and Decheng Global and as a result may be deemed to have beneficial ownership of such shares. Dr. Cui is also a member of our board of directors. The address for Decheng is 3000 Sand Hill Road, Building 2, Suite 110, Menlo Park, California 94025.

(4) Consists of (i) 1,616,921 shares of common stock held by Madrone Opportunity Fund, L.P. ("Madrone") and (ii) 5,461,645 shares of common stock issuable upon conversion of our Series C-1 redeemable convertible preferred stock held by Madrone. Madrone Capital Partners, LLC ("Madrone Capital") is the general partner of Madrone. Thomas Patterson, Jameson McJunkin and Gregory Penner are the managers of Madrone Capital and each may be deemed to have voting and investment power with respect to the shares held by Madrone and as a result may be deemed to have beneficial ownership of such shares. The address for Madrone is 1149 Chestnut St, Suite 200, Menlo Park, California 94025.

(5) Consists of 6,843,692 shares of common stock issuable upon conversion of our Series B redeemable convertible preferred stock held by NVGA I, LLC ("NVGA"). TI Manager, LLC ("TI Manager") is the manager of NVGA. TI Manager is managed by its sole member Tarsadia Enterprises, LLC ("Enterprises"). Tushar Patel is the ultimate indirect beneficial owner of Enterprises and may be deemed to have voting and investment power with respect to the shares held by NVGA and as a result may be deemed to have beneficial ownership of such shares. The address for NVGA is c/o Tarsadia Enterprises, LLC, 520 Newport Center Dr., 21st Floor, Newport Beach, CA 92660.

(6) Consists of 10,611,155 shares of our common stock and options to purchase 295,900 shares of our common stock that are exercisable within 60 days of July 31, 2021.

(7) Consists of (i) 187,017 shares of common stock jointly held by Mr. Sever and his spouse and (ii) 3,140,000 shares of our common stock that are exercisable within 60 days of July 31, 2021.

(8) Consists of (i) 69,710 shares of common stock issuable upon conversion of our Series B redeemable convertible preferred stock held by Mr. Achar and (ii) 1,488,333 shares of our common stock and 31,667 shares of restricted common stock held by Hlth Wrk LLC as of 60 days from July 31, 2021, due to Mr. Achar's early exercise of his options to purchase shares of our common stock. Mr. Achar is the sole manager of Hlth Wrk LLC and may be deemed to have voting and investment power with respect to the shares held by Hlth Wrk LLC and as a result may be deemed to have beneficial ownership of such shares.

(9) Consists of (i) 16,000 shares of our common stock, and (ii) 28,000 shares of our common stock held in trust by the Robin Farias-Eisner and Therese Farias-Eisner joint trust with rights of survival, or the Farias-Eisner Trust. Dr. Farias-Eisner is the trustee of the Farias-Eisner Trust and may be deemed to indirectly beneficially own such shares. Dr. Farias-Eisner intends to resign from our board of directors immediately prior to the effectiveness of the registration statement of which this prospectus forms a part.

(10) Consists of (i) 280,681 shares of common stock issuable upon conversion of our Series B redeemable convertible preferred stock held by Mr. Oza, (ii) 545,089 shares of common stock issuable upon conversion of our Series A redeemable convertible preferred stock held by RONO, LLC ("RONO"), (iii) 278,842 shares of common stock issuable upon conversion of our Series B redeemable convertible preferred stock held by RONO and (iv) shares of common stock issuable upon conversion of our Convertible Notes, based on accrued interest through 2021, and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the range set forth on the cover of this prospectus, held by Cavu Venture Partners III, L.P. ("Cavu"). Mr. Oza is the managing member of RONO and may be deemed to have voting and investment power with respect to the shares held by RONO and as a result may be deemed to have beneficial ownership of such shares. Mr. Oza is a managing member and co-founder of Cavu and may be deemed to have voting and investment power with respect to the shares held by Cavu and as a result may be deemed to have beneficial ownership of such shares. Mr. Oza intends to resign from our board of directors immediately prior to the effectiveness of the registration statement of which this prospectus forms a part.

DESCRIPTION OF CAPITAL STOCK

The following description of our capital stock and provisions of our amended and restated certificate of incorporation and bylaws are summaries and are qualified by reference to the amended and restated certificate of incorporation and the bylaws that will become effective immediately prior to the completion of this offering. We will file copies of these documents with the SEC as exhibits to our registration statement of which this prospectus forms a part. The description of the capital stock reflects changes to our capital structure that will occur immediately prior to the completion of this offering.

Immediately prior to the completion of this offering, our authorized capital stock will consist of 500,000,000 shares of our common stock, par value $0.00001 per share, and 50,000,000 shares of our preferred stock, par value $0.00001 per share, all of which preferred stock will be undesignated.

As of June 30, 2021, we had issued and outstanding:

- 29,128,604 shares of common stock held by 60 stockholders of record;
- 8,350,743 shares of our Series A redeemable convertible preferred stock held by 22 stockholders of record, convertible into 8,350,743 shares of our common stock;
- 46,176,715 shares of our Series B redeemable convertible preferred stock held by 42 stockholders of record, convertible into 46,176,715 shares of our common stock;
- 27,308,227 shares of our Series C-1 redeemable convertible preferred stock held by 22 stockholders of record, convertible into 27,308,227 shares of our common stock; and
- 1,690,380 shares of our Series C-2 redeemable convertible preferred stock held by 5 stockholders of record, convertible into 1,690,380 shares of our common stock.

Immediately prior to the completion of this offering, all of the outstanding shares of our redeemable convertible preferred stock will automatically convert into an aggregate of 83,526,065 shares of our common stock and upon the closing of this offering, all of our outstanding $235.5 million in aggregate principal amount of Convertible Notes will convert into shares of common stock, based on interest accrued through , 2021 and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus.

Common Stock

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders and do not have cumulative voting rights. Each election of directors by our stockholders will be determined by a plurality of the votes cast by the stockholders entitled to vote on the election. Holders of common stock are entitled to receive proportionately any dividends as may be declared by our board of directors, subject to any preferential dividend rights of outstanding preferred stock.

In the event of our liquidation or dissolution, the holders of our common stock are entitled to receive proportionately all assets available for distribution to stockholders after the payment of all debts and other liabilities and subject to the prior rights of any of our outstanding preferred stock. Holders of our common stock have no preemptive, subscription, redemption or conversion rights. The rights, preferences and privileges of holders of our common stock are subject to and may be adversely affected by the rights of the holders of shares of any series of our preferred stock that we may designate and issue in the future.

Preferred Stock

Under the terms of our amended and restated certificate of incorporation that will become effective immediately prior to the completion of this offering, our board of directors is authorized to issue shares of preferred stock in one or more series without stockholder approval. Our board of directors has the discretion to determine the rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock.

The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate

purposes, could have the effect of making it more difficult for a third party to acquire, or could discourage a third party from seeking to acquire, a majority of our outstanding voting stock. Immediately prior to the completion of this offering, there will be no shares of preferred stock outstanding, and we have no present plans to issue any shares of preferred stock.

Convertible Notes

Please see the discussion under "Management's Discussion and Analysis of Financial Condition and Results of Operations—Convertible Notes."

Options

As of June 30, 2021, we had options to purchase an aggregate of 9,994,197 shares of our common stock outstanding, with a weighted-average exercise price of $4.93 per share.

Restricted Stock Units

As of June 30, 2021, we had 1,049,043 shares of restricted stock units outstanding.

Warrants

As of June 30, 2021, we had warrants to purchase 48,513 shares of Series A preferred stock outstanding at an exercise price of $0.92 and warrants to purchase 31,369 shares of Series B preferred stock at an exercise price of $1.43 per share and warrants to purchase 75,744 shares of common stock at an exercise price of $0.40 per share.

Delaware Anti-Takeover Law and Certain Charter and Bylaw Provisions

Delaware Law

We are subject to Section 203 of the Delaware General Corporation Law, or the DGCL. Subject to certain exceptions, Section 203 prevents a publicly held Delaware corporation from engaging in a "business combination" with any "interested stockholder" for three years following the date that the person became an interested stockholder, unless either the interested stockholder attained such status with the approval of our board of directors, the business combination is approved by our board of directors and stockholders in a prescribed manner or the interested stockholder acquired at least 85% of our outstanding voting stock in the transaction in which it became an interested stockholder. A "business combination" includes, among other things, a merger or consolidation involving us and the "interested stockholder" and the sale of more than 10% of our assets. In general, an "interested stockholder" is any entity or person beneficially owning 15% or more of our outstanding voting stock and any entity or person affiliated with or controlling or controlled by such entity or person. The restrictions contained in Section 203 are not applicable to any of our existing stockholders that will own 15% or more of our outstanding voting stock upon the closing of this offering.

Staggered Board; Removal of Directors

Our amended and restated certificate of incorporation and our bylaws to be effective immediately prior to the completion of this offering divide our board of directors into three classes with staggered three-year terms. In addition, our amended and restated certificate of incorporation and our bylaws to be effective immediately prior to the completion of this offering provide that directors may be removed only for cause and only by the affirmative vote of the holders of at least 75% of our shares of capital stock present in person or by proxy and entitled to vote. Under our amended and restated certificate of incorporation and our bylaws to be effective immediately prior to the completion of this offering, any vacancy on our board of directors, including a vacancy resulting from an enlargement of our board of directors, may be filled only by vote of a majority of our directors then in office. Furthermore, our amended and restated certificate of incorporation to be effective immediately prior to the completion of this offering provides that the authorized number of directors may be changed only by the resolution of our board of directors. The classification of our board of directors and the limitations on the ability of our stockholders to remove directors, change the authorized number of directors and fill vacancies could make it more difficult for a third party to acquire, or discourage a third party from seeking to acquire, control of our company.

Stockholder Action; Special Meeting of Stockholders; Advance Notice Requirements for Stockholder Proposals and Director Nominations

Our amended and restated certificate of incorporation and our bylaws to be effective immediately prior to the completion of this offering provide that any action required or permitted to be taken by our stockholders at an annual meeting or special meeting of stockholders may only be taken if it is properly brought before such meeting and may not be taken by written action in lieu of a meeting. Our amended and restated certificate of incorporation and our bylaws to be effective immediately prior to the completion of this offering also provide that, except as otherwise required by law, special meetings of the stockholders can only be called by our board of directors. In addition, our bylaws to be effective immediately prior to the completion of this offering establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of stockholders, including proposed nominations of candidates for election to our board of directors. Stockholders at an annual meeting may only consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of our board of directors, or by a stockholder of record on the record date for the meeting who is entitled to vote at the meeting and who has delivered timely written notice in proper form to our secretary of the stockholder's intention to bring such business before the meeting. These provisions could have the effect of delaying until the next stockholder meeting stockholder actions that are favored by the holders of a majority of our outstanding voting securities. These provisions also could discourage a third party from making a tender offer for our common stock because even if the third party acquired a majority of our outstanding voting stock, it would be able to take action as a stockholder, such as electing new directors or approving a merger, only at a duly called stockholders meeting and not by written consent.

Super-Majority Voting

The DGCL provides generally that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws unless a corporation's certificate of incorporation or bylaws, as the case may be, requires a greater percentage. Our bylaws to be effective immediately prior to the completion of this offering may be amended or repealed by a majority vote of our board of directors or the affirmative vote of the holders of at least 75% of the votes that all our stockholders would be entitled to cast in any annual election of directors. In addition, the affirmative vote of the holders of at least 75% of the votes that all our stockholders would be entitled to cast in any election of directors is required to amend or repeal or to adopt any provisions inconsistent with any of the provisions of our amended and restated certificate of incorporation described above.

Indemnification Agreements

Our amended and restated certificate of incorporation to be effective immediately prior to the completion of this offering provides that we will indemnify our directors and officers to the fullest extent permitted by Delaware law. In addition, we intend to enter into indemnification agreements with all of our directors and executive officers prior to the completion of this offering. These indemnification agreements may require us, among other things, to indemnify each such director or executive officer for some expenses, including attorneys' fees, judgments, fines, and settlement amounts incurred by him or her in any action or proceeding arising out of his or her service as one of our directors or executive officers.

Exclusive Forum

Our amended and restated certificate of incorporation to be effective immediately prior to the completion of this offering provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware does not have jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for the following types of proceedings: (1) any derivative action or proceeding brought on our behalf, (2) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, other employees or stockholders to our company or our stockholders, (3) any action asserting a claim arising pursuant to any provision of the DGCL or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (4) any action asserting a claim arising pursuant to any provision of our amended and restated certificate of incorporation or bylaws (in each case, as they may be amended from time to time) or governed by the internal affairs doctrine. This exclusive forum provision will not apply to actions arising under the Securities Act, the Exchange Act or any other claim for which federal courts have exclusive jurisdiction.

Furthermore, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act. Accordingly, both state and federal courts have jurisdiction to entertain such claims. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our amended and restated certificate of incorporation that will become effective immediately prior to the completion of this offering provides that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any claims arising under the Securities Act.

While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions. In such instance, we would expect to vigorously assert the validity and enforceability of the exclusive forum provisions of our amended and restated certificate of incorporation that will become effective immediately prior to the completion of this offering. This may require significant additional costs associated with resolving such action in other jurisdictions and there can be no assurance that the provisions will be enforced by a court in those other jurisdictions.

Registration Rights

We have entered into an amended and restated investor rights agreement dated as of June 1, 2020, or the investor rights agreement, with holders of our preferred stock. Beginning 180 days after this offering, holders of a total of shares of our common stock will have the right to require us to register these shares under the Securities Act upon demand and in connection with any registration statement that we plan to file, as described below under "—Demand Registration Rights" and "—Incidental Registration Rights." We refer to the shares with these registration rights as registrable securities. After registration pursuant to these rights, the registrable securities will become freely tradable without restriction under the Securities Act. Holders of Convertible Notes will also be entitled to registration rights in respect of the common stock issuable upon conversion of the Convertible Notes.

Demand Registration Rights

Beginning 180 days after the effective date of the registration statement of which this prospectus is a part, subject to specified limitations set forth in the investor rights agreement, at any time, the holders of outstanding registrable securities may demand that we register at least a majority of the registrable securities then outstanding under the Securities Act for purposes of a public offering for which the reasonably anticipated aggregate offering price to the public is at least $20.0 million. We are not obligated to file a registration statement pursuant to this provision on more than two occasions in any 12-month period.

In addition, subject to specified limitations set forth in the investor rights agreement, at any time after we become eligible to file a registration statement on Form S-3, the holders of at least 25% of the then outstanding registrable securities may request that we register their registrable securities on Form S-3 for purposes of a public offering for which the reasonably anticipated aggregate offering price to the public, net of selling expenses, is at least $1.0 million. We are not obligated to file a registration statement pursuant to this provision on more than two occasions in any 12-month period.

Piggyback Registration Rights

If, at any time after the closing of this offering, we propose to register for our own account any of our securities under the Securities Act, the holders of registrable securities will be entitled to notice of the registration and, subject to specified exceptions, have the right to require us to use our commercially reasonable efforts to register all or a portion of the registrable securities then held by them in that registration.

In the event that any registration in which the holders of registrable securities participate pursuant to our investor rights agreement is an underwritten public offering, we have agreed to enter into an underwriting agreement in usual and customary form and use our reasonable best efforts to facilitate such offering.

Expenses

Pursuant to the investor rights agreement, we are required to pay all registration expenses, including all registration and filing fees, exchange listing fees, printing expenses, fees and expenses $25,000 of one counsel selected by the selling stockholders to represent the selling stockholders, state Blue Sky fees and expenses, and the expense of any special audits incident to or required by any such registration, but excluding underwriting discounts, selling commissions, stock transfer taxes applicable to the sale any registrable securities and the fees and expenses

of the selling stockholders' own counsel (other than the counsel selected to represent all selling stockholders). If a registration is withdrawn at the request of the stockholders initiating the registration, then the stockholders will bear the expenses of the registration.

The investor rights agreement contains customary cross-indemnification provisions, pursuant to which we are obligated to indemnify the selling stockholders in the event of material misstatements or omissions in the registration statement attributable to us or any violation or alleged violation whether by action or inaction by us under the Securities Act, the Exchange Act, any state securities or Blue Sky law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities or Blue Sky law in connection with such registration statement or the qualification or compliance of the offering, and they are obligated to indemnify us for material misstatements or omissions in the registration statement attributable to them.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock will be Computershare Trust Company, N.A. The transfer agent and registrar's address is 250 Royall Street, Canton, Massachusetts 02021.

Exchange Listing

We have applied to have our common stock listed on the Nasdaq Global Stock Market under the symbol "HLTH."

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock, and a liquid trading market for our common stock may not develop or be sustained after this offering. Future sales of substantial amounts of our common stock in the public market, including shares issued upon exercise of outstanding options, or the anticipation of these sales, could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through sales of equity securities.

Immediately prior to the completion of this offering, we will have outstanding shares of our common stock, based on the shares of our common stock that were outstanding on June 30, 2021 and after giving effect to (i) the issuance of shares of our common stock in this offering, assuming no exercise by the underwriters of their option to purchase additional shares, (ii) the conversion of all outstanding shares of our redeemable convertible preferred stock into an aggregate of 83,526,065 shares of our common stock immediately prior to the completion of this offering, and (iii) the automatic conversion of our outstanding $235.5 million in aggregate principal amount of Convertible Notes into shares of common stock upon the closing of this offering, based on interest accrued through , 2021 and a 20% discount to the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus. Of these shares, all shares sold in this offering will be freely tradable without restriction under the Securities Act of 1933, as amended, or the Securities Act, unless purchased by our "affiliates," as that term is defined in Rule 144 under the Securities Act. The remaining shares of our common stock will be "restricted securities" under Rule 144, and we expect that substantially all of these restricted securities will be subject to the 180-day lock-up period under the lock-up agreements as described below. These restricted securities may be sold in the public market upon release or waiver of any applicable lock-up agreements and only if registered or pursuant to an exemption from registration, such as Rule 144 or 701 under the Securities Act.

Rule 144

In general, under Rule 144 of the Securities Act, beginning 90 days after the date of this prospectus, any person who is not our affiliate and has held their shares for at least six months, including the holding period of any prior owner other than one of our affiliates, may sell those shares without restriction, subject to the availability of current public information about us. In addition, under Rule 144, any person who is not our affiliate and has not been our affiliate at any time during the preceding three months and has held their shares for at least one year, including the holding period of any prior owner other than one of our affiliates, would be entitled to sell an unlimited number of shares immediately upon the closing of this offering without regard to whether current public information about us is available.

Beginning 90 days after the date of this prospectus, a person who is our affiliate or who was our affiliate at any time during the preceding three months and who has beneficially owned restricted securities for at least six months, including the holding period of any prior owner other than one of our affiliates, is entitled to sell a number of shares within any three-month period that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after this offering; and
- the average weekly trading volume in our common stock on the Nasdaq Global Stock Market during the four calendar weeks preceding the date of filing of a Notice of Proposed Sale of Securities Pursuant to Rule 144 with respect to the sale.

Sales under Rule 144 by our affiliates are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

Upon waiver or expiration of the 180-day lock-up period described below, approximately shares of our common stock will be eligible for sale under Rule 144. We cannot estimate the number of shares of our common stock that our existing stockholders will elect to sell under Rule 144.

Rule 701

In general, under Rule 701 of the Securities Act, any of our employees, consultants or advisors, other than our affiliates, who purchased shares from us in connection with a qualified compensatory stock plan or other written agreement is eligible to resell these shares 90 days after the date of this prospectus in reliance on Rule 144, but

without compliance with the various restrictions, including the availability of public information about us, holding period and volume limitations, contained in Rule 144. All Rule 701 shares are subject to the 180-day lock-up period described below and will be eligible for sale in accordance with Rule 701 upon expiration of the restrictions set forth in those agreements.

Lock-up Agreements

We, and each of our executive officers and directors and the holders of substantially all of our outstanding securities have agreed that, without the prior written consent of Goldman, Sachs & Co. LLC and Morgan Stanley & Co. LLC, on behalf of the underwriters, we and they will not, among other things and subject to certain limited exceptions, during the period ending 180 days after the date of this prospectus:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock beneficially owned (as such term is used in Rule 13d-3 of the Exchange Act) or any other securities so owned convertible into or exercisable or exchangeable for common stock, or make any public announcement of an intention to do any of the foregoing; or
- enter into any hedging, swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of our common stock.

These agreements are subject to certain exceptions, as described in the section of this prospectus entitled “Underwriting.”

Registration Rights

Beginning 180 days after this offering, the holders of an aggregate of shares of our common stock will have rights, subject to certain conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or other stockholders. After registration pursuant to these rights, these shares will become freely tradable without restriction under the Securities Act. See “Description of Capital Stock—Registration Rights” for additional information regarding these registration rights.

Stock Options and Form S-8 Registration Statements

Following this the effectiveness of the registration statement of which this prospectus forms a part, we intend to file one or more registration statements on Form S-8 under the Securities Act to register all of the shares of our common stock subject to outstanding awards and reserved for future issuance under the 2014 Plan, the 2021 Plan and the 2021 ESPP, as well as outstanding awards granted prior to the adoption of the 2014 Plan. See “Executive Compensation—Stock Option and Other Compensation Plans” for additional information regarding these plans. Accordingly, shares of our common stock registered under such registration statements will be available for sale in the open market, subject to Rule 144 volume limitations applicable to affiliates, and subject to any vesting restrictions and lock-up agreements applicable to these shares.

MATERIAL U.S. FEDERAL TAX CONSIDERATIONS FOR NON-U.S. HOLDERS OF COMMON STOCK

The following is a discussion of material U.S. federal income and estate tax considerations relating to ownership and disposition of our common stock by a non-U.S. holder. For purposes of this discussion, the term "non-U.S. holder" means a beneficial owner (other than a partnership or other entity or arrangement treated as a pass-through entity) of our common stock that is not, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation, or other entity treated as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust, if a U.S. court is able to exercise primary supervision over the administration of the trust and one or more U.S. persons has authority to control all substantial decisions of the trust or if the trust has a valid election in effect to be treated as a U.S. person under applicable U.S. Treasury Regulations.

This discussion is based on current provisions of the Code, existing and proposed U.S. Treasury Regulations promulgated thereunder, current administrative rulings, and judicial decisions, as in effect as of the date of this prospectus and all of which are subject to change or to differing interpretation, possibly with retroactive effect. Any change or differing interpretation could alter the tax consequences to non-U.S. holders described in this prospectus. We have not requested a ruling from the Internal Revenue Service, or the IRS, with respect to statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS will not challenge one or more of the tax consequences described in this prospectus or that any such challenge would not be sustained by a court.

This discussion addresses only non-U.S. holders that hold shares of our common stock as a capital asset within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all aspects of U.S. federal income and estate taxation that may be relevant to a particular non-U.S. holder in light of that non-U.S. holder's individual circumstances nor does it address the alternative minimum tax, the special tax accounting rules under Section 451(b) of the Code, the Medicare tax on net investment income or any aspects of U.S. state, local, or non-U.S. taxes. This discussion also does not consider any specific facts or circumstances that may apply to a non-U.S. holder and does not address the special tax rules applicable to particular non-U.S. holders, such as:

- insurance companies;
- tax-exempt organizations or governmental organizations;
- financial institutions;
- brokers or dealers in securities;
- pension plans;
- controlled foreign corporations;
- passive foreign investment companies;
- corporations that accumulate earnings to avoid U.S. federal income tax;
- "qualified foreign pension funds" as defined in Section 897(1)(2) of the Code and entities of all of the interests of which are held by qualified foreign pension funds;
- persons that own, or are deemed to own, more than 5% if our capital stock;
- owners that hold our common stock as part of a straddle, hedge, conversion transaction, synthetic security, or other integrated investment; and
- certain U.S. expatriates and former citizens or long-term residents of the United States.

In addition, this discussion does not address the tax treatment of partnerships or persons who hold their common stock through partnerships or other entities or arrangements that are treated as pass-through entities for U.S. federal

income tax purposes. A partner in a partnership or other pass-through entity that will hold our common stock should consult his, her, or its own tax advisor regarding the tax consequences of the purchase, ownership, and disposition of our common stock through a partnership or other pass-through entity, as applicable.

Prospective investors should consult their own tax advisors regarding the U.S. federal, state, local, and non-U.S. income and other tax considerations of acquiring, holding, and disposing of our common stock in light of their particular situations.

Dividends

If we pay distributions on our common stock, those distributions generally will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. If a distribution exceeds our current and accumulated earnings and profits, the excess will be treated as a tax-free return of the non-U.S. holder's investment, up to such holder's tax basis in the common stock. Any remaining excess will be treated as capital gain, subject to the tax treatment described below under the heading "—Gain on Disposition of Common Stock."

Dividends paid to a non-U.S. holder generally will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty between the United States and such holder's country of residence. A non-U.S. holder of our common stock who claims the benefit of an applicable income tax treaty between the United States and such holder's country of residence generally will be required to provide a properly executed IRS Form W-8BEN or W-8BEN-E (or successor form) and satisfy applicable certification and other requirements. A non-U.S. holder that is eligible for a reduced rate of U.S. withholding tax under an income tax treaty may obtain a refund or credit of any excess amounts withheld by timely filing an appropriate claim with the IRS. Non-U.S. holders are urged to consult their own tax advisors regarding their entitlement to benefits under a relevant income tax treaty.

Dividends that are treated as effectively connected with a trade or business conducted by a non-U.S. holder within the United States and, if an applicable income tax treaty so provides, that are attributable to a permanent establishment or a fixed base maintained by the non-U.S. holder within the United States are generally exempt from the 30% withholding tax if the non-U.S. holder delivers a properly executed IRS Form W-8ECI, stating that the dividends are so connected and satisfies applicable certification and disclosure requirements. However, such U.S. effectively connected income is taxed on a net income basis at the same U.S. federal income tax rates applicable to United States persons (as defined in the Code). Any U.S. effectively connected income received by a non-U.S. holder that is a corporation may also, under certain circumstances, be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be specified by an applicable income tax treaty between the United States and such holder's country of residence.

See also the section below entitled "—FATCA" for additional withholding rules that may apply to dividends paid to certain foreign financial institutions or non-financial foreign entities.

Gain on Disposition of Common Stock

Subject to the discussions below under the sections entitled "—Information Reporting and Backup Withholding" and "—FATCA," a non-U.S. holder generally will not be subject to U.S. federal income tax on gain recognized on a disposition of our common stock unless:

- the gain is effectively connected with the non-U.S. holder's conduct of a trade or business in the United States and, if an applicable income tax treaty so provides, the gain is attributable to a permanent establishment or fixed base maintained by the non-U.S. holder in the United States; in these cases, the non-U.S. holder will be taxed on a net income basis at the same U.S. federal income tax rates applicable to United States persons (as defined in the Code), and if the non-U.S. holder is a foreign corporation, an additional branch profits tax at a 30% rate, or such lower rate as may be specified by an applicable income tax treaty, may also apply;
- the non-U.S. holder is a nonresident alien present in the United States for 183 days or more in the taxable year of the disposition and certain other conditions are met, in which case the non-U.S. holder will be subject to a 30% tax (or such lower rate as may be specified by an applicable income tax treaty) on the net gain derived from the disposition, which may be offset by U.S.-source capital losses of the non-U.S. holder provided the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses, if any; or

- we are, or have been at any time during the five-year period preceding such disposition (or the non-U.S. holder's holding period, if shorter), a "U.S. real property holding corporation," unless our common stock is regularly traded on an established securities market and the non-U.S. holder held no more than 5% of our outstanding common stock, directly or indirectly, during the shorter of the five year period ending on the date of the disposition or the period that the non-U.S. holder held our common stock. If we are determined to be a U.S. real property holding corporation and the foregoing exception does not apply, then the non-U.S. holder generally will be taxed on its net gain derived from the disposition generally in the same manner as gain that is effectively connected with the conduct of a trade or business in the United States, at the U.S. federal income tax rates applicable to United States persons (as defined in the Code), except that the branch profits tax generally will not apply. Generally, a corporation is a "U.S. real property holding corporation" if the fair market value of its "U.S. real property interests" equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. Although there can be no assurance, we believe that we are not currently, and we do not anticipate becoming, a "U.S. real property holding corporation" for U.S. federal income tax purposes. No assurance can be provided that our common stock will be regularly traded on an established securities market for purposes of the rule described above.

Information Reporting and Backup Withholding

We must report annually to the IRS and to each non-U.S. holder the gross amount of the distributions on our common stock paid to such holder and the tax withheld, if any, with respect to such distributions. Non-U.S. holders may have to comply with specific certification procedures to establish that the holder is not a U.S. person (as defined in the Code) in order to avoid backup withholding at the applicable rate with respect to dividends on our common stock. Generally, a non-U.S. holder will comply with such procedures if it provides a properly executed IRS Form W-8BEN, W-8BEN-E or W-8ECI (or other applicable Form W-8) or otherwise meets documentary evidence requirements for establishing that it is a non-U.S. holder, or otherwise establishes an exemption. Dividends paid to non-U.S. holders subject to withholding of U.S. federal income tax, as described above under the heading "— Dividends," will generally be exempt from U.S. backup withholding.

Information reporting and backup withholding generally will apply to the proceeds of a disposition of our common stock by a non-U.S. holder effected by or through the U.S. office of any broker, U.S. or foreign, unless the holder certifies its status as a non-U.S. holder and satisfies certain other requirements, or otherwise establishes an exemption. Generally, information reporting and backup withholding will not apply to a payment of disposition proceeds to a non-U.S. holder where the transaction is effected outside the United States through a non-U.S. office of a broker. However, for information reporting purposes, dispositions effected through a non-U.S. office of a broker with substantial U.S. ownership or operations generally will be treated in a manner similar to dispositions effected through a U.S. office of a broker. Non-U.S. holders should consult their own tax advisors regarding the application of the information reporting and backup withholding rules to them.

Copies of information returns may be made available to the tax authorities of the country in which the non-U.S. holder resides or is incorporated under the provisions of a specific treaty or agreement.

Backup withholding is not an additional tax. Rather, any amounts withheld under the backup withholding rules from a payment to a non-U.S. holder can be refunded or credited against the non-U.S. holder's U.S. federal income tax liability, if any, provided that an appropriate claim is timely filed with the IRS.

FATCA

Sections 1471 to 1474 of the Code commonly referred to as the Foreign Account Tax Compliance Act, or FATCA, generally impose a 30% U.S. federal withholding tax on dividends on, and gross proceeds from the sale or other disposition of, our common stock if paid to a foreign entity unless (i) if the foreign entity is a "foreign financial institution," the foreign entity undertakes certain due diligence, reporting, withholding, and certification obligations, (ii) if the foreign entity is not a "foreign financial institution," the foreign entity identifies certain of its U.S. investors, or (iii) the foreign entity is otherwise excepted under FATCA.

Withholding under FATCA generally will apply to payments of dividends on our common stock. While under applicable Treasury Regulations and administrative guidance withholding under FATCA would also apply to payments of gross proceeds from a sale or other disposition of our common stock made after December 31, 2018, under proposed U.S. Treasury Regulations, withholding on payments of gross proceeds is not required. Although such

regulations are not final, the preamble to the proposed regulations specifies that taxpayers, including applicable withholding agents, are permitted to rely on such proposed regulations until final regulations are issued.

If withholding under FATCA is required on any payment related to our common stock, investors not otherwise subject to withholding (or that otherwise would be entitled to a reduced rate of withholding) on such payment may be required to seek a refund or credit from the IRS. An intergovernmental agreement between the United States and an applicable foreign country may modify the requirements described in this section. Non-U.S. holders should consult their own tax advisors regarding the possible implications of FATCA on their investment in our common stock and the entities through which they hold our common stock.

U.S. Federal Estate Tax

Common stock owned or treated as owned by an individual who is a non-U.S. holder (as specially defined for U.S. federal estate tax purposes) at the time of death will be included in the individual's gross estate for U.S. federal estate tax purposes and, therefore, may be subject to U.S. federal estate tax, unless an applicable estate tax or other treaty provides otherwise. Non-U.S. holders are urged to consult their own tax advisors regarding the U.S. federal estate tax consequences of the ownership or disposition of our common stock.

The preceding discussion of material U.S. federal income and estate tax considerations is for prospective investors' information only. It is not tax advice. Prospective investors should consult their own tax advisors regarding the particular U.S. federal, state, local, and non-U.S. tax consequences of purchasing, holding, and disposing of our common stock.

UNDERWRITING

We and the underwriters named below have entered into an underwriting agreement with respect to the shares being offered. Subject to certain conditions, each underwriter has severally agreed to purchase the number of shares indicated in the following table. Goldman Sachs & Co. LLC, Morgan Stanley & Co. LLC and Cowen and Company, LLC are the representatives of the underwriters.

Underwriters	Number of Shares
Goldman Sachs & Co. LLC	
Morgan Stanley & Co. LLC	
Cowen and Company, LLC	
BTIG, LLC	
Total	

The underwriters are committed to take and pay for all of the shares being offered, if any are taken, other than the shares covered by the option described below unless and until this option is exercised.

The underwriters have an option to buy up to an additional shares from us to cover sales by the underwriters of a greater number of shares than the total number set forth in the table above. They may exercise that option for 30 days. If any shares are purchased pursuant to this option, the underwriters will severally purchase shares in approximately the same proportion as set forth in the table above.

The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters by us. Such amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase up to an additional shares from us.

	No Exercise	Full Exercise
Per Share	$	$
Total	$	$

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to $ per share from the initial public offering price. After the initial offering of the shares, the representatives may change the offering price and the other selling terms. The offering of the shares by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

We and our officers, directors, and holders of substantially all of our common stock and securities convertible into or exchangeable for our common stock have agreed or will agree with the underwriters, subject to certain exceptions, during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus (such period, the "restricted period"), except with the prior written consent of Goldman Sachs & Co. LLC and Morgan Stanley & Co. LLC, not to (i) offer, sell, contract to sell, pledge, grant any option to purchase, loan, hedge, make any short sale or otherwise transfer or dispose of, directly or indirectly, or file with or confidentially submit to the SEC a registration statement under the Securities Act relating to, any of our securities that are substantially similar to the shares of common stock in this offering, including but not limited to any options or warrants to purchase shares of common stock or any securities that are convertible into or exchangeable for, or that represent the right to receive, common stock or any such substantially similar securities, (ii) enter into any hedging, swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of common stock or any such other securities, whether any such transaction described in clauses (i) or (ii) above is to be settled by delivery of common stock or such other securities, in cash or otherwise (other than the shares of common stock to be sold in this offering or pursuant to employee stock option plans existing on, or upon the conversion or exchange of convertible or exchangeable securities outstanding as of, the date of this prospectus) or (iii) publicly disclose the intention to do any of the foregoing. The restrictions described in the immediately preceding paragraph do not apply to us subject to certain exceptions.

The restrictions described above do not apply, subject in certain cases to various conditions, to our directors, officers and securityholders with respect to certain transactions, including:

(a) as a bona fide gift or gifts;

(b) to any member of the securityholder's immediate family or to any trust for the direct or indirect benefit of the securityholder or the immediate family of the securityholder;

(c) by will or other testamentary document or by intestacy;

(d) pursuant to a court order or settlement or other domestic order related to the distribution of assets in connection with the dissolution of a marriage or civil union;

(e) to general or limited partners, members, stockholders, other equity holders or trust beneficiaries of the securityholder or to any investment fund or other entity that controls or manages or serves as investment adviser to, or is under common control or management or shares a common investment adviser with, the securityholder;

(f) in connection with any common stock acquired in this offering (other than any issuer directed shares of common stock purchased in this offering by our officer or director) acquired in open market transactions after the completion of this offering;

(g) to us in connection with the "net" or "cashless" exercise or settlement solely to cover the exercise price and applicable withholding tax obligations in connection with the exercise or settlement of such warrants or stock options, restricted stock units or other equity awards expiring during the restricted period, in each case pursuant to a stock incentive plan, other equity award plan or warrant described in this prospectus (and any transfer to us necessary to generate such amount of cash needed for the payment of withholding tax obligations, and/or payment of estimated taxes, due as a result of such vesting, settlement or exercise whether by means of a "net settlement" or otherwise), provided that if the securityholder is required to file a report reporting a reduction in beneficial ownership of shares of common stock during the restricted period, the securityholder shall clearly indicate in the footnotes thereto that the filing relates to the circumstances described in this clause and that the shares of common stock received upon exercise of the stock option or warrant or vesting event are subject to the lock-up agreement, and no public filing, report or announcement shall be voluntarily made;

(h) pursuant to a bona fide third-party tender offer, merger, consolidation, business combination, stock purchase or other similar transaction or series of related transactions approved by our board of directors and made to all holders of our capital stock involving a change in control, provided that in the event that such tender offer, merger, consolidation, business combination, stock purchase or transaction or series of related transactions is not completed, the securityholder's securities shall remain subject to the restrictions set forth in the lock-up agreement;

(i) the conversion of outstanding shares of our preferred stock or other securities described in this prospectus and outstanding as of the date of this prospectus into shares of common stock or derivative instruments, as described in this prospectus, provided that the shares of common stock or any derivative instruments received upon conversion shall be subject to the restrictions set forth in the lock-up agreement;

(j) to us pursuant to any contractual arrangement in effect on the date of the lock-up agreement and disclosed in this prospectus that provides for the repurchase of shares of common stock in connection with the termination of the securityholder's employment with or service to us, provided no public filing, report or announcement reporting a reduction in beneficial ownership of shares of common stock shall be required or shall be voluntarily made during the restricted period within 75 days after the date the securityholder ceases to provide services to us, and after such 75th day, if the securityholder is required to file a report reporting a reduction in beneficial ownership of shares of common stock during the restricted period, the securityholder shall clearly indicate in the footnotes thereto that the filing relates to the circumstances described in this clause and no public filing, report or announcement shall be voluntarily made;

(k) with the prior written consent of Goldman Sachs & Co. LLC and Morgan Stanley & Co. LLC on behalf of the underwriters;

(l) if the securityholder is a corporation, partnership, limited liability company or other business entity, the corporation, partnership, limited liability company or other business entity may effect a transfer to any other corporation, partnership, limited liability company or other business entity that is an affiliate (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the securityholder; provided, however, that in any such case, it shall be a condition to the transfer that the transferee execute an agreement stating that the transferee is receiving and holding such capital stock subject to the provisions of the lock-up agreement and there shall be no further transfer of such capital stock except in accordance with the lock-up agreement, and provided further that any such transfer shall not involve a disposition for value and no public filing under the Exchange Act, or announcement shall be required or shall be made voluntarily;

(m) the securityholder may receive shares of common stock from us in connection with (i) the exercise of options or other rights granted under a stock incentive plan or other equity award plan, limited only to a plan that is described in this prospectus and (ii) the exercise of warrants, which warrants are described in this prospectus; provided that, in each case, any shares of common stock issued upon exercise of such option, warrant or other rights shall continue to be subject to the restrictions set forth herein until the expiration of the restricted period; provided further, that if the securityholder is required to file a report under Section 16 of the Exchange Act reporting such exercise of options or other rights, the securityholder shall include a statement in such report to the effect that any shares of common stock issued upon exercise of such option or other rights remain subject to the restrictions set forth in the lock-up agreement, and provided further that no filing or other public announcement shall be voluntarily made; and

(n) the securityholder may enter into any plan designed to satisfy the requirements of Rule 10b5-1 (a "10b5-1 Plan") under the Exchange Act (other than the entry into such a plan in such a manner as to allow the sale of shares of common stock, in each case, within the restricted period); provided, however that, no sale of shares of common stock may be made under such 10b5-1 Plan during the restricted period; and provided further that no public filing, report or announcement regarding the establishment of such plan shall be required or shall be voluntarily made during the restricted period.

Prior to the offering, there has been no public market for the shares. The initial public offering price has been negotiated among the company and the representatives. Among the factors to be considered in determining the initial public offering price of the shares, in addition to prevailing market conditions, will be the company's historical performance, estimates of the business potential and earnings prospects of the company, an assessment of our management and the consideration of the above factors in relation to market valuation of companies in related businesses.

We have applied to have our common stock listed on the Nasdaq Global Stock Market under the symbol "HLTH."

In connection with the offering, the underwriters may purchase and sell shares of our common stock in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering, and a short position represents the amount of such sales that have not been covered by subsequent purchases. A "covered short position" is a short position that is not greater than the amount of additional shares for which the underwriters' option described above may be exercised. The underwriters may cover any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to cover the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase additional shares pursuant to the option described above. "Naked" short sales are any short sales that create a short position greater than the amount of additional shares for which the option described above may be exercised. The underwriters must cover any such naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Purchases to cover a short position and stabilizing transactions, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of our common stock, and together with the imposition of the penalty bid, may stabilize, maintain or otherwise affect the market price of our common stock. As a result, the price of our common stock may be higher than the price that otherwise might exist in the open market. The underwriters are not required to engage in these activities and may end any of these activities at any time. These transactions may be effected on the Nasdaq Global Stock Market, in the over-the-counter market or otherwise.

We estimate that our share of the total expenses of the offering, excluding underwriting discounts and commissions, will be approximately $. We have agreed to reimburse the underwriters for certain of their expenses in an amount up to $.

We have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act.

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the underwriters and their respective affiliates have in the past provided, and may in the future provide, a variety of these services to us and to persons and entities with relationships with us, for which they have received and will receive customary fees and expenses.

In the ordinary course of their various business activities, the underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of ours (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with us. The underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

Affiliates of Goldman Sachs & Co. LLC purchased 829,077 shares of our Series C-1 redeemable convertible preferred stock in our June 2020 Series C-1 redeemable convertible preferred stock financing. These shares of redeemable convertible preferred stock will automatically convert into 829,077 shares of common stock immediately prior to and in connection with the completion of this offering.

Directed Share Program

At our request, the underwriters have reserved up to 5.0% of the shares offered by this prospectus for sale at the initial public offering price to certain individuals through a directed share program, including our directors, officers and employees. Shares purchased through this program by our directors, officers and employees will be subject to the 180-day lock-up period under the lock-up agreements described under “Shares Eligible for Future Sale—Lock-up Agreements.” The sales will be made at our direction by Morgan Stanley & Co. LLC and its affiliates through a directed share program. The number of shares of our common stock available for sale to the general public in this offering will be reduced to the extent that such persons purchase such reserved shares. Any reserved shares not so purchased will be offered by the underwriters to the general public on the same terms as the other shares of common stock offered by this prospectus. We have agreed to indemnify the underwriters against certain liabilities and expenses, including liabilities under the Securities Act, in connection with the sales of the shares reserved for the directed share program.

European Economic Area

In relation to each Member State of the European Economic Area (each a Relevant State), no shares have been offered or will be offered pursuant to the offering to the public in that Relevant State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation, except that the shares may be offered to the public in that Relevant State at any time:

(a) to any legal entity which is a qualified investor as defined under Article 2 of the Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the Prospectus Regulation), subject to obtaining the prior consent of the representatives for any such offer; or

(c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of the shares shall require us or any of the representatives to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

For the purposes of this provision, the expression an "offer to the public" in relation to the shares in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression "Prospectus Regulation" means Regulation (EU) 2017/1129.

United Kingdom

No shares have been offered or will be offered pursuant to the offering to the public in the United Kingdom prior to the publication of a prospectus in relation to the shares which has been approved by the Financial Conduct Authority, except that the shares may be offered to the public in the United Kingdom at any time:

(a) to any legal entity which is a qualified investor as defined under Article 2 of the UK Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the UK Prospectus Regulation), subject to obtaining the prior consent of the representatives for any such offer; or

(c) in any other circumstances falling within Section 86 of the FSMA.

provided that no such offer of the shares shall require the Issuer or any Manager to publish a prospectus pursuant to Section 85 of the FSMA or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation. For the purposes of this provision, the expression an "offer to the public" in relation to the shares in the United Kingdom means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares and the expression "UK Prospectus Regulation" means Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018.

Canada

The securities may be sold in Canada only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions, and Ongoing Registrant Obligations. Any resale of the securities must be made in accordance with an exemption form, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Hong Kong

The shares may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong) ("Companies (Winding Up and Miscellaneous Provisions) Ordinance") or which do not constitute an invitation to the public within the meaning of the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) ("Securities and Futures Ordinance"), or (ii) to "professional investors" as defined in the Securities and Futures Ordinance and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance, and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" in Hong Kong as defined in the Securities and Futures Ordinance and any rules made thereunder.

Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor (as defined under Section 4A of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA")) under Section 274 of the SFA, (ii) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to conditions set forth in the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor, the securities (as defined in Section 239(1) of the SFA) of that corporation shall not be transferable for 6 months after that corporation has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer in that corporation's securities pursuant to Section 275(1A) of the SFA, (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (6) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore ("Regulation 32")

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is a trust (where the trustee is not an accredited investor (as defined in Section 4A of the SFA)) whose sole purpose is to hold investments and each beneficiary of the trust is an accredited investor, the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferable for 6 months after that trust has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than S$200,000 (or its equivalent in a foreign currency) for each transaction (whether such amount is to be paid for in cash or by exchange of securities or other assets), (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (6) as specified in Regulation 32.

Solely for the purposes of its obligations pursuant to Section 309B of the SFA, we have determined, and hereby notify all relevant persons (as defined in the CMP Regulations 2018), that the shares are "prescribed capital markets products" (as defined in the CMP Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

Japan

The securities have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended), or the FIEA. The securities may not be offered or sold, directly or indirectly, in Japan or to or for the benefit of any resident of Japan (including any person resident in Japan or any corporation or other entity organized under the laws of Japan) or to others for reoffering or resale, directly or indirectly, in Japan or to or for the benefit of any resident of Japan, except pursuant to an exemption from the registration requirements of the FIEA and otherwise in compliance with any relevant laws and regulations of Japan.

Australia

No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission ("ASIC"), in relation to the offering. This offering document does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001 (the "Corporations Act"), and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the shares may only be made to persons (the "Exempt Investors") who are "sophisticated investors" (within the meaning of section 708(8) of the Corporations Act), "professional investors" (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the shares without disclosure to investors under Chapter 6D of the Corporations Act.

The shares applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under the offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring shares must observe such Australian on-sale restrictions.

This offering document contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this offering document is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

Dubai International Financial Centre

This offering document relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This offering document is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth in this prospectus and has no responsibility for the offering document. The securities to which this offering document relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. If you do not understand the contents of this offering document you should consult an authorized financial advisor.

Switzerland

We have not and will not register with the Swiss Financial Market Supervisory Authority ("FINMA") as a foreign collective investment scheme pursuant to Article 119 of the Federal Act on Collective Investment Scheme of 23 June 2006, as amended ("CISA"), and accordingly the securities being offered pursuant to this prospectus have not and will not be approved, and may not be licenseable, with FINMA. Therefore, the securities have not been authorized for distribution by FINMA as a foreign collective investment scheme pursuant to Article 119 CISA and the securities offered hereby may not be offered to the public (as this term is defined in Article 3 CISA) in or from Switzerland. The securities may solely be offered to "qualified investors," as this term is defined in Article 10 CISA, and in the circumstances set out in Article 3 of the Ordinance on Collective Investment Scheme of 22 November 2006, as amended ("CISO"), such that there is no public offer. Investors, however, do not benefit from protection under CISA or CISO or supervision by FINMA. This prospectus and any other materials relating to the securities are

strictly personal and confidential to each offeree and do not constitute an offer to any other person. This prospectus may only be used by those qualified investors to whom it has been handed out in connection with the offer described in this prospectus and may neither directly or indirectly be distributed or made available to any person or entity other than its recipients. It may not be used in connection with any other offer and shall in particular not be copied and/or distributed to the public in Switzerland or from Switzerland. This prospectus does not constitute an issue prospectus as that term is understood pursuant to Article 652a and/or 1156 of the Swiss Federal Code of Obligations. We have not applied for a listing of the securities on the SIX Swiss Exchange or any other regulated securities market in Switzerland, and consequently, the information presented in this prospectus does not necessarily comply with the information standards set out in the listing rules of the SIX Swiss Exchange and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange.

LEGAL MATTERS

The validity of the shares of common stock offered hereby is being passed upon for us by Wilmer Cutler Pickering Hale and Dorr LLP, Palo Alto, California. Cooley LLP, San Diego, California is acting as counsel for the underwriters in connection with this offering.

EXPERTS

The financial statements as of December 31, 2019 and 2020 and for the years then ended included in this prospectus and in the registration statement have been so included in reliance on the report of BDO USA, LLP, an independent registered public accounting firm (the report on the financial statements contains an explanatory paragraph regarding our ability to continue as a going concern) appearing elsewhere herein and in the registration statement, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock we are offering to sell. This prospectus, which constitutes part of the registration statement, does not include all of the information contained in the registration statement and the exhibits, schedules and amendments to the registration statement. For further information with respect to us and our common stock, we refer you to the registration statement and to the exhibits and schedules to the registration statement. Statements contained in this prospectus about the contents of any contract, agreement or other document are not necessarily complete, and, in each instance, we refer you to the copy of the contract, agreement or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference to such contract, agreement or document.

The SEC maintains a website, which is located at http://www.sec.gov, that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. You may access the registration statement of which this prospectus forms a part at the SEC's website. Upon completion of this offering, we will be subject to the information reporting requirements of the Exchange Act, and we will file reports, proxy statements and other information with the SEC. We plan to fulfill our obligations with respect to such requirements by filing periodic reports and other information with the SEC. We intend to furnish our stockholders with annual reports containing financial statements certified by an independent registered public accounting firm. Our website address is www.cuehealth.com.com, and upon completion of the offering, you may access, free of charge, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to those reports, as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC. The information contained on, or that can be accessed through, our website is not a part of this prospectus. We have included our website address in this prospectus solely as an inactive textual reference.

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Report of Independent Registered Public Accounting Firm

Stockholders and Board of Directors
Cue Health Inc.
San Diego, California

Opinion on the Financial Statements

We have audited the accompanying balance sheets of Cue Health Inc. (the "Company") as of December 31, 2019 and 2020, the related statements of operations, redeemable convertible preferred stock and stockholders' deficit, and cash flows for the years then ended, 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 at December 31, 2019 and 2020, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Going Concern Uncertainty

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has incurred recurring losses since inception that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Change in Accounting Principle

As discussed in Notes 2 and 8 of the financial statements, effective January 1, 2020, the Company has changed its method of accounting for leases due to the adoption of Accounting Standards Codification Topic 842, *Leases*.

Basis for Opinion

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

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

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

/s/ BDO USA, LLP

We have served as the Company's auditor since 2019.

San Diego, California

April 19, 2021

Cue Health Inc.
Balance Sheets
(In thousands, except share data)

	December 31,	
	2019	2020
Assets		
Current assets:		
Cash and cash equivalents	$ 14,328	$ 121,578
Restricted cash	—	6,000
Accounts receivable	200	4,168
Inventory	—	36,842
Prepaid expenses	669	13,847
Other current assets	307	1,263
Total current assets	15,504	183,698
Restricted cash, non-current	177	1,677
Property and equipment, net	11,630	103,683
Prepaid rent	—	16,771
Operating lease right-of-use assets	—	8,281
Intangible assets, net	—	2,038
Other non-current assets	50	180
Total assets	$ 27,361	$ 316,328
Liabilities, Redeemable Convertible Preferred Stock and Stockholders' Deficit		
Current liabilities:		
Accounts payable	$ 1,168	$ 23,847
Accrued liabilities	566	8,822
Deferred revenue, current	12	115,747
Deferred rent, current	28	—
Debt, current	2,555	5,434
Operating lease liabilities, current	—	797
Finance lease liabilities, current	422	1,249
Total current liabilities	4,751	155,896
Redeemable convertible preferred stock warrant liabilities	42	1,331
Deferred revenue, net of current portion	—	67,349
Deferred rent, net of current portion	2,729	—
Debt, net of current portion	3,776	—
Operating leases liabilities, net of current portion	—	10,472
Finance lease liabilities, net of current portion	497	1,857
Other non-current liabilities	—	4,500
Total liabilities	11,795	241,405
Commitments and contingencies (Note 16)		
Redeemable Convertible Preferred Stock		
Series A redeemable convertible preferred stock, $0.00001 par value; 8,721,437 shares authorized, 8,350,743 issued and outstanding at December 31, 2019 and 2020; liquidation preference of $7,660 at December 31, 2019 and 2020	7,519	7,519
Series B redeemable convertible preferred stock, $0.00001 par value; 46,213,620 shares authorized, 46,176,715 issued and outstanding at December 31, 2019 and 2020; liquidation preference of $66,240 at December 31, 2019 and 2020	66,186	66,186
Series C-1 redeemable convertible preferred stock; $0.00001 par value; 27,308,229 shares authorized, 27,308,227 issued and outstanding at December 31, 2020 and none authorized, issued and outstanding at December 31, 2019; liquidation preference of $100,000 at December 31, 2020	—	96,436
Series C-2 redeemable convertible preferred stock; $0.00001 par value; 1,690,380 shares authorized, issued and outstanding at December 31, 2020 and none authorized, issued and outstanding at December 31, 2019; liquidation preference of $5,571 at December 31, 2020	—	6,182
Total redeemable convertible preferred stock	73,705	176,323
Stockholders' Deficit		
Common stock, $0.00001 par value; 88,778,540 and 129,030,355 shares authorized, 18,704,118 and 27,995,780 issued and outstanding at December 31, 2019 and 2020, respectively	—	—
Additional paid-in-capital	4,945	9,036
Accumulated deficit	(63,084)	(110,436)

Total stockholders' deficit	(58,139)	(101,400)
Total liabilities, redeemable convertible preferred stock and stockholders' deficit	$ 27,361	$ 316,328

The accompanying notes are an integral part of these financial statements.

Cue Health Inc.
STATEMENTS OF OPERATIONS
(In thousands, except share data)

	Year Ended December 31,	
	2019	2020
Revenue		
Product revenue	$ —	$ 15,391
Grant and other revenue	6,626	7,562
Total revenue	6,626	22,953
Operating costs and expenses:		
Cost of product revenue	—	14,951
Sales and marketing	88	714
Research and development	21,405	28,478
General and administrative	5,900	23,936
Total operating costs and expenses	27,393	68,079
Loss from operations	(20,767)	(45,126)
Interest expense	(152)	(984)
Change in fair value of redeemable convertible preferred stock warrants	4	(1,289)
Other income	309	47
Net loss	$ (20,606)	$ (47,352)
Net loss per share attributable to common stockholders, basic and diluted	$ (1.31)	$ (2.90)
Weighted-average number of shares used in computation of net loss per share attributable to common stockholders, basic and diluted	15,760,246	16,315,730

The accompanying notes are an integral part of these financial statements.

Cue Health Inc.
STATEMENTS OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT
(In thousands, except share data)

	Series A Redeemable Convertible Preferred Stock		Series B Redeemable Convertible Preferred Stock		Series C Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at January 1, 2019	8,350,743	$ 7,519	46,176,715	$ 66,186	—	$ —	18,679,868	$ —	$ 4,597	$ (42,478)	$ (37,881)
Exercise of common stock options	—	—	—	—	—	—	24,250	—	12	—	12
Stock-based compensation	—	—	—	—	—	—	—	—	336	—	336
Net loss	—	—	—	—	—	—	—	—	—	(20,606)	(20,606)
Balance at December 31, 2019	8,350,743	7,519	46,176,715	66,186	—	—	18,704,118	—	4,945	(63,084)	(58,139)
Issuance of Series C-1 redeemable convertible preferred stock, net of issuance costs of $3,564	—	—	—	—	27,308,227	96,436	—	—	—	—	—
Conversion of convertible notes to Series C-2 redeemable convertible preferred stock	—	—	—	—	1,690,380	6,182	—	—	—	—	—
Exercise of common stock options	—	—	—	—	—	—	1,918,499	—	669	—	669
Vesting of early exercised stock options	—	—	—	—	—	—	—	—	259	—	259
Issuance of common stock per restricted stock purchase agreement	—	—	—	—	—	—	7,373,163	—	—	—	—
Stock-based compensation	—	—	—	—	—	—	—	—	3,163	—	3,163
Net loss	—	—	—	—	—	—	—	—	—	(47,352)	(47,352)
Balance at December 31, 2020	8,350,743	$ 7,519	46,176,715	$ 66,186	28,998,607	$ 102,618	27,995,780	$ —	$ 9,036	$ (110,436)	$ (101,400)

The accompanying notes are an integral part of these financial statements.

Cue Health Inc.
STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,	
	2019	2020
Cash flows from operating activities		
Net loss	$ (20,606)	$ (47,352)
Adjustments to reconcile net loss to net cash, cash equivalents and restricted cash used in operations		
Depreciation and amortization	3,653	6,282
Change in fair value of warrant liabilities	(4)	1,289
Stock-based compensation expense	336	3,163
Loss on extinguishment of convertible notes	—	610
Non-cash lease expense	—	568
Amortization of debt discount and issuance costs	6	16
Changes in operating assets and liabilities:		
Accounts receivable	4,291	(3,968)
Inventory	—	(36,842)
Prepaid expenses and other current assets	(415)	(14,207)
Prepaid rent	—	(16,771)
Other non-current assets	—	(130)
Accounts payable	(253)	4,523
Accrued liabilities	263	8,114
Deferred rent	(374)	—
Deferred revenue	—	183,084
Operating leases	—	(337)
Other non-current liabilities	—	4,500
Interest on finance leases	107	113
Net cash, cash equivalents and restricted cash (used in) provided by operating activities	(12,996)	92,655
Cash flows from investing activities		
Purchase of property and equipment	(2,945)	(76,034)
Expenditures for software development	—	(2,114)
Net cash, cash equivalents and restricted cash used in investing activities	(2,945)	(78,148)
Cash flows from financing activities		
Proceeds from issuance of Series C-1 redeemable convertible preferred stock	—	100,000
Proceeds from convertible notes	—	5,563
Payments for issuance costs of Series C redeemable convertible preferred stock	—	(3,564)
Exercise of common stock options	12	1,079
Proceeds from debt	4,084	1,658
Repayment of debt	—	(2,571)
Payments for finance leases	(486)	(1,922)
Net cash, cash equivalents and restricted cash provided by financing activities	3,610	100,243
Net increase (decrease) cash, cash equivalents and restricted cash	(12,331)	114,750
Cash, cash equivalents and restricted cash, beginning balance	26,836	14,505
Cash, cash equivalents and restricted cash, ending balance	$ 14,505	$ 129,255
Reconciliation of cash, cash equivalents, and restricted cash		
Cash and cash equivalents	$ 14,328	$ 121,578
Restricted cash, current	—	6,000
Restricted cash, non-current	177	1,677
Total cash, cash equivalents and restricted cash	$ 14,505	$ 129,255
Supplemental disclosure for cash flow information		
Cash paid for interest	$ 152	$ 340
Supplemental disclosure for non-cash investing and financing matters		
Early exercised stock options liability	$ —	$ 152
Conversion of convertible notes to Series C-2 redeemable convertible preferred stock	$ —	$ 6,182
Right-of-use assets obtained in exchange for lease obligations	$ —	$ 11,269
Equipment obtained under capital lease obligations	$ 346	$ —
Purchase of property and equipment included in accounts payable	$ 110	$ 18,156

The accompanying notes are an integral part of these financial statements.

NOTE 1. BUSINESS AND BASIS OF ACCOUNTING

Organization and Description of Business

Cue Health Inc. (the "Company") was originally formed in the State of California on January 26, 2010, prior to being incorporated in the State of Delaware on December 14, 2017. The Company is a healthcare technology company committed to revolutionizing the healthcare experience by providing individuals with a convenient and connected diagnostic platform that bridges the physical and virtual care continuums. The Company's proprietary platform, the Cue Health Monitoring System, comprised of the Cue Reader and Cue Test Kit, enables lab-quality diagnostics-led care at home, at work or at the point of care. This platform is designed to empower stakeholders across the healthcare ecosystem, including individuals, enterprises, healthcare providers and payors, and public health agencies with paradigm-shifting access to diagnostic and health data to inform care decisions. The Company's headquarters are located in San Diego, California.

Liquidity and Capital Resources

The Company has incurred losses since inception. As of December 31, 2020, the Company has an accumulated deficit of $110.4 million and cash and cash equivalents of $121.6 million. For the year ended December 31, 2020, the Company also had a net loss of $47.4 million and net cash inflow from operations of $92.7 million. As of December 31, 2020, the Company had outstanding debt of $5.4 million, lease liabilities of $14.4 million, and a $9.0 million obligation related to a legal settlement of a contract dispute. As described in Note 18, *Subsequent Events*, in February 2021, the Company obtained a revolving line of credit with a maximum principal amount of $130.0 million. However, the Company may not meet the required debt covenants at times over the next twelve months without additional funding.

Historically, the Company has primarily funded its operations through cash from operating activities, including the U.S. DoD Advance, net proceeds from the sale of the Company's redeemable convertible preferred stock and warrants, and indebtedness. Management believes that the current available cash and cash equivalents may not be sufficient to fund the Company's planned expenditures and meet its obligations for at least twelve months following the financial statement issuance date. As a result, there is substantial doubt about the Company's ability to continue as a going concern for the twelve months following the issuance date of the financial statements for the year ended December 31, 2020. The accompanying financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from the outcome of the uncertainty concerning the Company's ability to continue as a going concern.

The Company's ability to continue as a going concern may depend upon its ability to generate revenue and raise additional funding. Management intends to generate revenue through sales of its COVID-19 test and to raise additional capital through equity offerings and expanding its borrowing capacity. While the Company has historically been successful in obtaining financing, there can be no assurance that such additional financing, if necessary, will be available or, if available, that such financings can be obtained on satisfactory terms. If the Company is unable to generate sufficient revenue or raise capital when needed or on satisfactory terms, the Company's management plans to curtail planned expenditures on certain programs, primarily the expansion of its research and development function. The planned measures are not expected to affect near-term manufacturing capacity.

Basis of Accounting

The Company's financial statements are prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

Use of Estimates

The preparation of the accompanying financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could materially differ from those estimates.

Significant estimates and assumptions made in the accompanying financial statements include, but are not limited to revenue recognition, the fair value of the Company's common and redeemable convertible preferred stock, the fair value of financial instruments measured at fair value, equity based compensation expense, the recoverability

of its long-lived assets and net deferred tax assets (and related valuation allowance). The Company evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors and adjusts those estimates and assumptions when facts and circumstances dictate. Actual results could materially differ from those estimates.

Segment Reporting

Operating segments are identified as components of an enterprise about which discrete financial information is available for evaluation by the chief operating decision-maker in making decisions regarding resource allocation and assessing performance. In addition, the guidance for segment reporting indicates certain quantitative materiality thresholds. The Company views its operations and manages its business in one operating segment which is consistent with how the Chief Executive Officer, who is the chief operating decision maker, reviews the business, makes investment and resource allocation decisions, and assesses operating performance. All revenue to date is from customers located in the United States and all long-lived assets are located in the United States.

COVID-19 Impact

The novel coronavirus ("COVID-19") that was declared a global pandemic by the World Health Organization in March 2020 adversely impacted global commercial activity but served as a catalyst to accelerating the Company's product pipeline. The Company's first commercially available diagnostic test for the Cue Health Monitoring System is the Cue COVID-19 Test for ribonucleic acid of SARS-CoV-2, the virus that causes COVID-19. The Company began selling and recording product revenue for its Cue COVID-19 Test in August 2020 after obtaining an Emergency Use Authorization ("EUA") from the Federal Drug Administration ("FDA") in June 2020. Currently, 100% of the Company's revenue is derived from the Cue COVID-19 Test. Given the unpredictable nature of the COVID-19 pandemic, the development and potential size of the COVID-19 diagnostic testing market is highly uncertain.

In December 2020, the FDA issued EUAs for two COVID-19 vaccines. The widely administered use of an efficacious vaccine or new therapeutic treatment for COVID-19 may reduce the demand for the Cue COVID-19 Test and, as a result, the COVID-19 diagnostic testing market may not develop or grow substantially. Given the rapid development of events surrounding the pandemic, there is uncertainty to the Company's future results and performance.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents.

Restricted Cash

Restricted cash consists primarily of cash that serves as collateral for the Company's standby letters of credit. Any cash that is legally restricted from use is classified as restricted cash. If the purpose of restricted cash relates to acquiring long-term assets, liquidating a long-term liability, or is otherwise unavailable for a period longer than one year from the balance sheet date, the restricted cash is classified as a long-term asset. Otherwise, restricted cash is presented in current assets in the balance sheets.

Accounts Receivable

The Company sells its Cue Health Monitoring System test directly to government entities, healthcare providers, commercial businesses, and through agreements with distributors, and the Company evaluates the creditworthiness of significant customers. The Company did not record an allowance for doubtful accounts for potential credit losses as of December 31, 2019 and 2020.

Concentration of Credit Risk and Other Risk and Uncertainties

Financial instruments, which potentially subject the Company to concentration of credit risk, consist primarily of cash and trade accounts receivable. The Company maintains deposits in federally insured financial institutions in excess of federally insured limits. The Company has not experienced any losses in such accounts and the deposits are held with large financial institutions.

The Company had two customers that represented more than 10% of total product revenue for the year ended December 31, 2020, at 58% and 22%, respectively. For the year ended December 31, 2019, the Company did not have any product revenue. See Note 3, *Revenue Recognition*.

As of December 31, 2020, accounts receivable from three customers with balances due in excess of 10% of total accounts receivable were 31%, 29% and 20%, respectively.

The Company purchases certain components for its products from a single supplier. A change in or loss of these suppliers could cause a delay in filling customer orders and a possible loss of sales, which could adversely affect results of operations.

Inventories

Inventory is valued at lower of cost or net realizable value on a first in, first out basis. Work-in-process and finished goods inventories consist of materials, labor and manufacturing overhead. Inventory owned by the Company that is on hand with contract manufacturers is disclosed as inventory on consignment. Provisions for excess and obsolete inventory are primarily based on the Company's estimates of forecasted sales, usage levels, and expiration dates, as applicable for certain disposable products, and assumptions about obsolescence. Unabsorbed manufacturing costs are treated as expense in the period incurred.

Fair Value Measurements and Financial Instruments

The carrying value of the Company's cash and cash equivalents, accounts receivables and accounts payable approximate fair value due to the short-term nature of these items. Based on the borrowing rates currently available to the Company for debt with similar terms and consideration of default and credit risk, the carrying value of the Company's long-term borrowings approximates its fair value.

Fair value is defined as the exchange price that would be received for an asset or an exit price paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

The fair value hierarchy defines a three-level valuation hierarchy for disclosure of fair value measurements as follows:

Level 1 — Unadjusted quoted prices in active markets for identical assets or liabilities.

Level 2 — Inputs other than quoted prices included within Level I that are observable, unadjusted quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities.

Level 3 — Unobservable inputs that are supported by little or no market activity for the related assets or liabilities.

The categorization of a financial instrument within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

The Company's redeemable convertible preferred stock warrant liabilities are measured at fair value on a recurring basis and are classified as Level 3 liabilities. The Company records subsequent adjustments to reflect the increase or decrease in estimated fair value at each reporting date in current period earnings.

Property and Equipment, Net

Property and equipment, net, which consist of manufacturing equipment, laboratory equipment, computers and software, office equipment and leasehold improvements, are stated at cost less depreciation. Leasehold improvements are amortized on a straight-line basis over the shorter of their useful life or the remaining lease term, including any renewal periods that the Company is reasonably certain to exercise. Repair and maintenance costs that do not improve service potential or extend economic life are expensed as incurred.

The estimated useful lives are as follows:

	Years
Leasehold improvements	Shorter of the estimated useful life or lease term
Machinery and equipment	3-7
Furniture and fixtures	7

Amortization of assets recorded under finance leases (capital leases for 2019) is included in depreciation and amortization expense.

The Company completed a review of the estimated useful lives of its assets upon receiving FDA EUAs of the Company's Cue COVID-19 Test in June 2020. This review, based on expected technological advances and demand expectations, reduced the useful life of laboratory equipment from seven to five years and the useful life of manufacturing equipment from seven to three years. The change in useful lives was accounted for as a change in accounting estimate on a prospective basis effective June 1, 2020. For the year ended December 31, 2020, the change in estimate resulted in an increase in depreciation and amortization expense of $3.2 million, an increase in net loss of $3.2 million and an increase in basic and diluted net loss per share of $0.20.

Intangible Assets

Intangible assets are recorded at cost and amortized on a straight-line basis over their estimated useful lives. Intangible assets consist of capitalized software costs incurred in the development of the Cue Health App (the "App"). The Company determined that costs incurred during the application development stage that are directly related to the actual development of the software application are capitalized, while costs incurred in the preliminary project and post implementation stage are expensed as incurred. Additionally, indirect costs related to the software development during the application development stage are expensed as incurred. As the App is constantly updated to the next version once it has reached technological feasibility, the Company separates costs on a reasonable basis between maintenance and upgrades that extend the functionality and useful life of the App. The maintenance costs are expensed as incurred. The Company has concluded that given the rapid changes in technology, the software has a relatively short useful life of three years and is amortized on a straight-line basis. Amortization expense related to the App is recorded in cost of product revenue.

Reclassifications

Depreciation and amortization expense was previously presented under operating costs and expenses and was reclassified to research and development and general and administrative expenses for the years ended December 31, 2019 and 2020. Loss on extinguishment of debt for the year ended December 31, 2020 was also reclassified into interest expense.

Leases

The Company determines if an arrangement is a lease at inception and if so, determines whether the lease qualifies as an operating or finance lease. Lease balances are included in the balance sheets as right-of-use assets and lease liabilities.

Right-of-use assets represent the right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. Right-of-use assets and liabilities are recognized at lease commencement date based on the present value of lease payments over the lease term. When the Company's leases do not provide an implicit rate, an incremental borrowing rate is used based on the information available at commencement dates in determining the present value of lease payments. The incremental borrowing rate is the rate of interest that the Company would expect to pay to borrow over a similar term, and on a collateralized basis, an amount equal to the lease payments in a similar economic environment. The Company's lease terms may include options to extend or terminate the lease when the Company is reasonably certain that it will exercise such options. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

Deferred Rent (Prior to adoption of Accounting Standards Codification ("ASC") 842)

Rent expense is recorded on a straight-line basis over the term of the lease, which includes the construction build-out period and lease extension periods, if appropriate. The difference between rent payments and straight-line rent expense is recorded as deferred rent and included in accrued liabilities on the balance sheets. Landlord allowances are amortized on a straight-line basis over the lease term as a reduction to rent expense.

Impairment of Long-Lived Assets

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset or an asset group may not be recoverable. If such triggering event is determined to have occurred, the asset's or asset group's carrying value is compared to the future undiscounted cash flows expected to be generated. If the carrying value exceeds the undiscounted cash flows of the asset, then an impairment exists. An impairment loss is measured as the excess of the asset's carrying value over its fair value. There were no impairment indicators and no impairment was recorded for the years ended December 31, 2019 and 2020.

Common Stock Warrants

Common stock warrants are measured at their estimated fair value upon issuance and recorded in additional paid-in capital. Common stock warrants are classified as equity and no subsequent remeasurement is required.

Redeemable Convertible Preferred Stock Warrants

The Company accounts for its redeemable convertible preferred stock warrants as liabilities based upon the characteristics and provisions of each instrument. The redeemable convertible preferred stock warrants classified as liabilities are recorded on the Company's balance sheets at their fair values on the date of issuance and are revalued on each subsequent balance sheet date, with fair value changes recognized as increases or reductions in the statement of operations.

Revenue Recognition

Product Revenue

The Company generates revenue from the sale of its Cue Health Monitoring System to government entities, healthcare providers, commercial customers, and through agreements with distributors. See Note 3, *Revenue Recognition*, for details.

The Company considers purchase orders, which are governed by agreements with customers, to be a contract with a customer. The contract terms with customers range in length, from one-time purchases, six-month commitments or twelve-month commitments. The timing of revenue recognition is based on the satisfaction of performance obligations promised to the customer. Cue Readers, the Cue Enterprise Dashboard and API, and Cue Test Kits, composed of Cue Cartridges and Cue Wands, are considered distinct performance obligations. The Cue Health App is integral to the functionality of the Cue Reader and these components form a single performance obligation. Revenue allocated to Cue Readers and Cue Test Kits is recognized when control of the promised goods has transferred to customers, generally upon shipment, in an amount that reflects the consideration the Company expects to receive in exchange for those goods. Revenue allocated to the Cue Enterprise Dashboard and API is recognized ratably over the term of the service. The Company's contracts with its customers do not provide for open return rights, except within a reasonable time after receipt of goods in the case of defective or non-conforming product. Returns due to defects are estimated to be immaterial.

The transaction price is measured as the amount of consideration the Company expects to receive in exchange for the goods transferred to customers. A contract's transaction price is allocated to each distinct performance obligation on a relative standalone selling price basis. The Company estimates standalone selling prices for groups of customers with similar circumstances and characteristics.

The Company recognize receivables when there is an unconditional right to payment, which represents the amount the Company expects to collect in a transaction and is most often equal to the transaction price in the contract. Payment terms are typically 30 days.

The Company excludes from the measurement of the transaction price all taxes assessed by a governmental authority that are both imposed on and concurrent with a specific revenue-producing transaction and collected by the entity from a customer.

During the year ended December 31, 2020, the Company generated $15.4 million in product revenue, of which $8.9 million was revenue from government entities and $6.5 million from its other customers.

Deferred Revenue

In October 2020, the Company received a $184.6 million upfront payment from the United States government (the "U.S. government") to increase production capacity of its Cue COVID-19 Test. The Company concluded that

the activities related to increasing production do not represent a performance obligation as those activities do not transfer a product or service to the customer. Instead, the upfront payment is an advanced payment for future goods or services because the agreement with the U.S. government included an option to renew the contract which included a material right to obtain products in a future contract at a specified discount, subject to a price floor, from prices offered to commercial customers with similar volume of purchases.

Deferred revenue is recognized upon satisfaction of performance obligations by reference to the total goods or services expected to be provided to the customer, including an estimate of future performance obligations under expected contract renewals, and the corresponding expected consideration.

Grant and Other Revenue

Arrangements under which it receives grants to conduct research and development activities constitute non-exchange transactions. Revenue from such is recognized to the extent of costs incurred in the period during which the related costs are incurred, provided that the conditions under which the grants and contracts were provided have been met and only perfunctory performance obligations are outstanding. Costs are included in research and development expenses. See Note 3, *Revenue Recognition*, for details regarding the Company's grant arrangement with the Biomedical Advanced Research and Development Authority ("BARDA").

The Company may enter into collaboration agreements with third parties to conduct research and development activities. The Company evaluates its collaboration agreements for proper classification in its statements of operations based on the nature of the underlying activity. When the Company has concluded that it has a customer relationship with one of its collaborators, the Company follows the guidance in ASC Topic 606, *Revenue from Contracts with Customers*. See Note 3, *Revenue Recognition*, for details regarding the Company's collaboration agreement with Janssen.

Contract Assets and Liabilities

Contract assets primarily relate to the Company's conditional right to consideration for work completed but not billed at the reporting date. Contract assets at the beginning of and end of the year ended December 31, 2020, as well as changes in the balance, were not material.

Contract liabilities primarily relate to the $184.6 million upfront payment received from the U.S. government in October 2020. During the year ended December 31, 2020, the Company recognized $2.3 million in product revenue from the upfront payment resulting in a balance of $182.3 million. During the year ended December 31, 2020, the Company also received $0.8 million in non-refundable down payments from one customer that was deferred as of December 31, 2020. Contract liabilities are recorded in current and non-current deferred revenue on the balance sheets with a total balance of $183.1 million as of December 31, 2020.

Cost of Product Revenue

Cost of product revenue includes the cost of materials, direct labor, inclusive of salaries and other related costs, including stock-based compensation, depreciation, and manufacturing overhead costs used in the manufacturing of the Cue Test Kits as well as contract manufacturing costs associated with production of the Cue Readers. Cost of product revenue also includes amortization of intangible assets.

Shipping and Handling Costs

The Company elected to account for shipping and handling as activities to fulfill the promise the goods and records them cost of product revenue.

Sales and Marketing Expenses

Sales and marketing expense consist primarily of salaries and other related costs, including stock-based compensation, for personnel in sales and marketing, customer support and business development functions.

Research and Development Expenses

Research and development expenses are expensed as incurred. Research and development expenses are primarily comprised of costs and expenses for salaries and other related costs, including stock-based compensation,

associated with research and development personnel, contract services, laboratory supplies, facilities, depreciation, and outside services. Costs associated with the Company's grant and collaboration agreements as well as costs associated with products produced for research and development purposes are recorded within research and development expenses.

Accrued Research and Development Costs

The Company records accrued expenses for estimated costs of its research and development activities conducted by third-party service providers, which include clinical trial activities, based on the estimated amount of services or supplies provided but not yet invoiced and include these costs in accrued liabilities in the balance sheets and within research and development expense in the statements of operations. Any payments made in advance of services or supplies provided are recorded as prepaid assets, which are expensed as the services or supplies are received.

The Company estimates the amount of work completed through discussions with internal personnel and external service providers as to the progress or stage of completion of the services and the agreed-upon fee to be paid for such services. Significant judgments and estimates are made in determining the accrued balance in each reporting period. As actual costs become known, the Company adjusts its accrued estimates.

General and Administrative Expenses

The Company's general and administrative expense consists primarily of salaries and other related costs, including stock-based compensation, for personnel in its executive, finance, corporate and business development and administrative functions. General and administrative expense also includes professional fees for legal, patent, accounting, information technology, depreciation, auditing, tax and consulting services, travel expenses and facility-related expenses, which include allocated expenses for rent and maintenance of facilities and other operating costs.

Patent Costs

Costs related to filing and pursuing patent applications are expensed as incurred, as recoverability of such expenditures is uncertain. These costs are included in general and administrative expenses.

Fair Value of Common Stock

The fair value of the shares of common stock underlying the Company's stock-based awards was estimated on each grant date by its board of directors. In order to determine the fair value of its common stock underlying option grants, the Company's board of directors considered, among other things, valuations of its common stock prepared by an unrelated third-party valuation firm in accordance with the guidance provided by the American Institute of Certified Public Accountants Practice Guide, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*.

Stock-Based Compensation

The Company estimates the fair value of stock options using the Black-Scholes-Merton ("BSM") option pricing model on the date of grant. The fair value of equity instruments expected to vest are recognized and amortized on a straight-line basis over the requisite service period of the award, which is generally three to four years; however, the Company's equity compensation plans provide for any vesting schedule as the Company's Board of Directors may deem appropriate. The Company recognizes forfeitures as incurred.

The BSM option pricing model incorporates various estimates, including the fair value of the Company's common stock, expected volatility, expected term and risk-free interest rates. The weighted-average expected term of options was calculated using the simplified method. This decision was based on the lack of relevant historical data due to the Company's limited historical experience. In addition, due to the Company's limited historical data, the estimated volatility incorporates the historical volatility over the expected term of the award of comparable companies whose share prices are publicly available. The risk-free interest rate for periods within the contractual term of the option is based on the U.S. Treasury yield in effect at the time of grant. The dividend yield was zero, as the Company has never declared or paid dividends and has no plans to do so in the foreseeable future.

Comprehensive Loss

Comprehensive loss is defined as a change in equity of a business enterprise during a period, resulting from transactions from non-owner sources. There have been no items qualifying as other comprehensive loss and, therefore, the Company's comprehensive loss was the same as its reported net loss.

Income Taxes

The Company accounts for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities are determined on the basis of the differences between the financial statements and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

The Company recognizes net deferred tax assets to the extent that the Company believes these assets are more likely than not to be realized. In making such a determination, management considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax-planning strategies, and results of recent operations. If management determines that the Company would be able to realize its deferred tax assets in the future in excess of their net recorded amount, management would adjust the deferred tax asset valuation allowance, which would reduce the provision for income taxes.

The Company records uncertain tax positions on the basis of a two-step process whereby (1) management determines whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position and (2) for those tax positions that meet the more-likely-than-not recognition threshold, management recognizes the largest amount of tax benefit that is more than 50% likely to be realized upon ultimate settlement with the related tax authority. The Company recognizes interest and penalties related to unrecognized tax benefits within income tax expense. Any accrued interest and penalties are included within the related tax liability.

Correction of an Immaterial Error

Certain stock-based compensation expenses were not recognized by the Company in periods prior to 2019. This prior period error was recognized as a $2.0 million adjustment to the Company's accumulated deficit and additional paid-in-capital as of January 1, 2019.

Recently Adopted Accounting Pronouncements

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update (ASU) No. 2016-02, *Leases* (Topic 842) ("ASU 2016-02"), which requires a lessee to recognize most leases on the balance sheet as lease liabilities with corresponding right-of-use assets. On January 1, 2020, the Company adopted Topic 842, utilizing the modified retrospective transition method. The Company will continue to report financial information for fiscal years prior to 2020 under the previous lease accounting standards and, as such, prior comparative periods have not been recast. In addition, the Company elected the package of practical expedients permitted under the transition guidance in Topic 842. As a result of this election, the Company was not required to reassess (i) whether any expired or existing contracts are or contain leases, (ii) the classification of any expired or existing leases, and (iii) initial direct costs for any existing leases. The Company elected to account for lease and non-lease components as a single lease component. This election primarily relates to the Company's real estate leases.

Additionally, the Company elected certain practical expedients on an ongoing basis, including the practical expedient for short-term leases pursuant to which a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize a lease liability and right-of-use for leases with a term of 12 months or less and that do not include an option to purchase the underlying asset that the lessee is reasonably certain to exercise. The Company has applied this accounting policy to all asset classes in its portfolio and recognizes the lease payments for such short-term leases in income from continuing operations on a straight-line basis over the lease term. The Company recorded right-of-use assets and operating lease liabilities of $8.4 million upon adoption of Topic 842 as of January 1, 2020.

See Note 8, *Leases*, for more information on the impact of the adoption of ASU 2016-02 and related disclosures.

In November 2016, the FASB issued ASU No. 2016-18, *Statement of Cash Flows* (Topic 230) Restricted Cash, which requires that a statement of cash flows explain the change during the period in the total of cash, cash equivalents and restricted cash. Therefore, amounts described as restricted cash should be included with cash and cash equivalents when reconciling the beginning of period and end of period amounts shown on the statement of cash flows. The standard is effective for all entities for fiscal years beginning after December 15, 2018. The Company adopted this guidance on January 1, 2019.

In August 2018, the FASB ASU No. 2018-13, *Fair Value Measurement* (Topic 820), which eliminates, adds and modifies certain disclosure requirements for fair value measurements. The modified standard eliminates the requirement to disclose changes in unrealized gains and losses included in earnings for recurring Level 3 fair value measurements and requires that changes in unrealized gains and losses be included in other comprehensive income for recurring Level 3 fair value measurements of instruments. The standard also requires the disclosure of the range and weighted average used to develop significant unobservable inputs and how weighted average is calculate for recurring and nonrecurring Level 3 fair value measurements. The amendment is effective for fiscal years beginning after December 15, 2019 and interim periods within that fiscal year with early adoption permitted. The Company adopted ASU 2018-13 on January 1, 2019. The adoption of this standard did not have a material impact on the Company's financial statements. For the new disclosures regarding the Company's level 3 fair value measurements, see Note 12, *Fair Value Measurements*.

Recent Accounting Pronouncements

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments—Credit Losses* (Topic 326) – Measurement of Credit Losses on Financial Instruments. The standard provides guidance for estimating credit losses on certain types of financial instruments, including trade receivables, by introducing an approach based on expected losses. The expected loss approach will require entities to incorporate considerations of historical information, current information and reasonable and supportable forecasts. ASU 2017-13 also amends the accounting for credit losses on available-for-sale debt securities and purchased financial assets with credit deterioration. The FASB has issued several amendments to the standard. In November 2019, the FASB amended the standard with the issuance of ASU 2019-10, Financial Instruments – Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842): Effective Dates. The amendment revised the effective date of ASU 2016-13 to fiscal years beginning after December 15, 2022. The Company is currently evaluating the impact of ASU 2016-13 on its financial statements.

In December 2019, the FASB issued ASU No. 2019-12, Income Taxes (Topic 740), *Simplifying the Accounting for Income Taxes* ("ASU 2019-12"), which simplifies the accounting for income taxes. ASU 2019-12 is effective for fiscal years beginning after December 15, 2020 for public companies and for fiscal years beginning after December 15, 2021 for all other entities and early adoption is permitted. The Company has not yet evaluated the impact the adoption of ASU 2019-12 will have on the Company's financial statements.

In August 2020, the FASB issued ASU No. 2020-06, *Debt — Debt with Conversion and Other Options* (Subtopic 470-20) and *Derivatives and Hedging — Contracts in Entity's Own Equity* (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity ("ASU 2020-06"). The ASU simplifies the accounting for convertible instruments by removing certain models in Subtopic 470-20 and revises the guidance in Subtopic 815-40 to simplify the accounting for contracts in an entity's own equity. ASU 2020-06 is effective for reporting periods beginning after December 15, 2023 with early adoption permitted for reporting periods beginning after December 15, 2020. The amendment is to be adopted through either a modified retrospective or fully retrospective method of transition. The Company is currently evaluating the impact of ASU 2020-06 on its financial statements and its adoption method.

NOTE 3. REVENUE RECOGNITION

Department of Defense Contract (Product Revenue)

In October 2020, the Company entered into a $480.9 million agreement (as amended in March 2021, the "U.S. DoD Agreement") with the U.S. government for the purchase of its Cue COVID-19 Test to meet the unprecedented demand for rapid and accurate molecular diagnostic testing. The U.S. DoD Agreement provides $184.6 million to facilitate the scaling of the Company's manufacturing capacity, which was received upon signing the contract ("U.S. DoD Advance"). The U.S. DoD Agreement does not provide for the funds to be utilized in any specific manner beyond furthering the purposes of the agreement. We are not required to segregate, nor are we required to obtain the approval of the U.S. government to use, funds advanced to us under the agreement. The remaining $296.3 million of the agreement is for the sale of Cue Readers, Cue COVID-19 Test Kits and Cue Control Swab Packs. The U.S. DoD Agreement also provides that, as soon as possible after the commencement of the initial U.S. DoD Agreement, we and the U.S. government are expected to negotiate in good faith to enter into a follow-on supply agreement based on federal acquisition regulations (a FAR-based contract). The existing agreement provides the U.S. DoD with the right to purchase no more than 45% of our quarterly production for the duration of the follow-on contract at a

specified discount, subject to a price floor as part of this follow-on contract. The U.S. government is also entitled to certain administrative reporting but does not receive the right to any intellectual property or know-how.

To satisfy the terms of the arrangement, the Company must provide the U.S. government the contractual units and demonstrate its ability to manufacture an average of approximately 100,000 Cue Cartridges per day over a consecutive 7-day period by October 2021. Subject to limited exceptions, the U.S. government is entitled to be the exclusive purchaser of our entire production through the completion of the project. Pursuant to the U.S. DoD Agreement, we are permitted to honor certain contractual obligations that existed prior to the effective date of the U.S. DoD Agreement and may use a reasonable number of tests for internal workforce testing as well as for marketing, demonstration and evaluation of our products and business development. Furthermore, we are able to seek waivers from the U.S. government to sell certain of our products to additional customers. The agreement term ends upon final payment under the agreement and is anticipated to be completed end in October 2021. The U.S. government may terminate the agreement for convenience, but the Company is entitled to all payments received, including the U.S. DoD Advance as well as a good faith negotiation for work performed through the termination date, subject to the U.S. government retaining the right to place priority orders for up to a year following termination for other diagnostic tests manufactured using the manufacturing equipment purchased with U.S. government funds under the agreement. The U.S. government also has certain termination for cause remedies if the Company were to exit or abandon its COVID-19 business.

The U.S. DoD Agreement is within the scope of ASC Topic 606, *Revenue from Contracts with Customers*. The delivery of the Cue COVID-19 Test products are separate performance obligations since they are capable of being distinct and are distinct within the U.S. DoD Agreement. The promise of a future specified discount, subject to a pricing floor, represents a separate performance obligation as it qualifies as a material right. Activities related to production scaling pursuant to the U.S. DoD Advance, the right to up to 45% capacity in a future contract, and administrative reporting do not represent the transfer of good or services to the U.S. government, so they are not separate performance obligations.

The transaction price is fixed and does not include variable consideration.

At contract inception, consistent with a similar class of customer, the Company determined stand-alone selling price and noted all products were sold at a discount, so the transaction price was allocated on a relative standalone selling price basis to all products. The Company elected to account for the material right per the practical alternative approach in which the transaction price is allocated to the optional goods and the corresponding consideration it expects to receive (hypothetical contract) since the same Cue COVID-19 Test products sold in the U.S. DoD Agremeent would be included in any follow-on contract. The U.S. DoD Advance was recorded in deferred revenue and will be recognized upon satisfaction of performance obligations. Significant judgment is applied in determining how deferred revenue will be recognized, including estimating future quantities, delivery schedules, pricing and contract duration from the U.S. government, which can have a significant impact to revenue recognition.

A performance obligation is satisfied once the control of a product is transferred to the customer or the service is provided to the customer, meaning the customer has the ability to use and obtain the benefit of the goods or service. The U.S. government does not control the product prior to shipment because it does not have the ability to use and obtain the benefit of the products and the contractual restrictions do not limit the alternative future use of the products. Based on an analysis of the various indicators of control, revenue is recognized point-in-time upon shipment.

Deferred revenue related to the U.S. DoD Advance as of December 31, 2020, was $182.3 million. Of this amount, $114.9 million is classified as current as of December 31, 2020, based on amounts expected to be realized within the next year.

BARDA Contract

During 2018, the Company entered into a cost reimbursement contract with BARDA that was effective through January 2021 for a total contract amount of $14.0 million (the “BARDA Contract”). The objective of the BARDA Contract is to accelerate the development, validation, regulatory authorization and commercialization of the Company’s products. The BARDA Contract requires the Company provide reporting deliverables that include monthly technical and annual reports and a final report, but BARDA is not entitled to any know-how or intellectual property.

In March 2020, BARDA exercised an option in the BARDA Contract for a second phase to accelerate development, validation and FDA clearance of the Company's Cue COVID-19 Test for an additional contract value of $13.7 million. The period of performance related to the second phase extends to January 2023.

In May 2020, the original BARDA Contract was amended to increase the total value from $14.0 million to $21.8 million and to extend the contract term to January 2022.

The Company recognizes revenue from its BARDA Contract in the period during which the related costs are incurred, provided that the conditions under which the grants and contracts were provided have been met and only perfunctory performance obligations are outstanding. Costs are included in research and development expenses.

Janssen Contract

In August 2019, the Company entered into a collaboration agreement with Janssen Pharmaceuticals, Inc. ("Janssen") to research the feasibility of the Company's diagnostic product with a total contract value of $0.6 million ("Janssen Contract"). Janssen is entitled to the underlying research data. The Company owns all resulting intellectual rights. Revenue from the Janssen Contract was recorded over time on an input method as costs were incurred. Outstanding accounts receivable from Janssen was $0.2 million at December 31, 2019. There was no activity related to this agreement during the year ended December 31, 2020. Costs are included in research and development expenses.

NOTE 4. INVENTORIES

As of December 31, 2019, and 2020, the Company's inventories consisted of the following:

	December 31,	
	2019	2020
Raw materials	$ —	$ 29,948
Work-in-process	—	4,957
Finished goods	—	1,645
Inventory on consignment	—	1,081
Reserve	—	(789)
Total inventories	$ —	$ 36,842

Inventory on consignment represents inventory owned by the Company that is on hand with contract manufacturers. During the year ended December 31, 2020, the Company recorded charges of $0.8 million related to excess and obsolete inventory in cost of sales as a result of an ongoing assessment of inventory on hand for each product and the continuous improvement and innovation of its products. During the year ended December 31, 2020, $2.1 million of capitalized depreciation and amortization costs were expensed to cost of product revenue as inventory was sold. As of December 31, 2020, inventory included $0.6 million of capitalized depreciation and amortization costs.

NOTE 5. PREPAID EXPENSES

As of December 31, 2019, and 2020, the Company's prepaid expenses consisted of the following:

	December 31,	
	2019	2020
Prepaid expense	$ 669	$ 5,152
Prepaid inventory	—	8,695
Total prepaid expenses	$ 669	$ 13,847

NOTE 6. PROPERTY AND EQUIPMENT, NET

As of December 31, 2019, and 2020, the Company's property and equipment, net consisted of the following:

	December 31,	
	2019	2020
Construction in progress	$ 614	$ 83,353
Machinery and equipment	13,683	26,972
Leasehold improvements	4,847	2,897
Furniture and fixtures	388	683
Property and equipment	19,532	113,905
Accumulated depreciation	(7,902)	(10,222)
Total property and equipment, net	$ 11,630	$ 103,683

Depreciation expense related to property and equipment was $3.7 million and $6.2 million for the years ended December 31, 2019 and 2020, respectively. During the year ended December 31, 2020, $2.7 million of depreciation and amortization expense was capitalized into inventory during the manufacturing process. The carrying value of assets under finance leases (capital leases for 2019) within machinery and equipment as of December 31, 2019 and 2020 was $1.4 million and $4.8 million, respectively.

During 2020, the Company revised the useful life of certain property and equipment. Refer to the Property and Equipment section of Note 2 for further information regarding the useful life change in accounting estimate and the Company's current useful lives of its property and equipment.

NOTE 7. INTANGIBLE ASSETS

As of December 31, 2019, and 2020, the Company's intangible assets consisted of the following:

	December 31,	
	2019	2020
Developed software	$ —	$ 2,114
Accumulated amortization	—	(76)
Total intangible	$ —	$ 2,038

Amortization expense related to intangible assets for the year ended December 31, 2020 was $0.1 million. Estimated amortization expense for each of the years ending December 31 is as follows:

2021	$ 705
2022	705
2023	628
Total amortization expense	$ 2,038

NOTE 8. LEASES

The Company leases real estate and manufacturing and laboratory equipment which are used in the Company's manufacturing, research and development, and administrative activities. The Company identifies a contract that contains a lease as one which conveys a right, either explicitly or implicitly, to control the use of an identified asset in exchange for consideration. These arrangements are classified as finance leases and operating leases. Finance leases consist of laboratory and manufacturing equipment with remaining terms ranging from 1 year to 3 years. The Company's operating leases relate to the Company's manufacturing facilities and office space and have remaining terms from 7 year to 9 years. Certain leases have renewal options that allow us to extend the term of the lease term. An option to renew or terminate the current lease term of a lease arrangement is included in the lease term if the Company is reasonably certain to exercise that option.

The Company does not recognize right-of-use assets and lease liabilities for short-term leases, which have terms of 12 months or less, on its balance sheet. For the long-term lease arrangements that are recognized on the Company's balance sheet, right-of-use assets and lease liabilities are initially measured and recognized at the lease

commencement date based on the present value of lease payments due over the lease term. As the implicit interest rates of the Company's lease arrangements are generally not readily determinable, the Company applies its incremental borrowing rate to calculate the lease liability at the lease commencement date. The incremental borrowing rate is the rate of interest that the Company would have to pay to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment.

In June 2020, the Company entered into a lease agreement for a building to be used as a manufacturing facility. As the construction of improvements to bring the facility to its intended use was ongoing as of December 31, 2020, the lease had not commenced as of that date. The lease has a term of ten years and future minimum rent payments are approximately $24.9 million.

In addition to rent, the lease requires the Company to pay additional amounts for taxes, insurance, maintenance and other operating expenses. The base rent includes an allowance of $125 per square foot to cover some portion of the construction of the tenant improvements that began in July 2020.

In October 2020, the Company leased a second building, also to be used as a manufacturing facility. The lease has an initial term of five years and the company is reasonably certain to exercise a renewal option to extend the lease term for an additional five years. The future minimum rent commitment is $24.0 million. In addition to rent, the lease requires the Company to pay additional amounts for taxes, insurance, maintenance and other operating expenses. The Company will also receive a tenant reimbursement allowance of $1.6 million to cover some portion of the construction of the tenant improvements that began in October 2020. As the construction of improvements to bring the facility to its intended use was ongoing as of December 31, 2020, the lease had not commenced as of that date.

The Company made payments of $16.8 million for landlord-owned improvements related to the two leases above. The payments have been capitalized in prepaid rent and will be reflected in right-of-use assets upon commencement of the leases.

The right-of-use assets and lease liabilities recognized on the Company's balance sheet as of December 31, 2020 were as follows:

		December 31, 2020	
	Balance Sheet Location	**Operating Leases**	**Finance Leases**
Assets			
Right-of-use assets operating leases	*Operating lease right-of-use assets*	$ 8,281	
Right-of-use assets finance leases	*Property and equipment, net*		$ 4,837
Liabilities			
Operating lease liabilities (current)	*Operating lease liabilities, current*	797	
Finance lease liabilities (current)	*Finance lease liabilities, current*		1,249
Operating lease liabilities (non-current)	*Operating leases liabilities, net of current portion*	10,472	
Finance lease liabilities (non-current)	*Finance lease liabilities, net of current portion*		1,857

The components of lease expense for the year ended December 31, 2020 were as follows:

	Year Ended December 31, 2020
Operating lease cost	$ 1,552
Finance lease cost:	
Amortization of right-of-use assets	570
Interest on lease liabilities	113
Total lease cost	$ 2,235

As of December 31, 2020, the maturities of the Company's operating and finance lease liabilities were as shown below:

	Operating Leases	Finance Leases
2021	$ 1,736	$ 1,399
2022	1,785	1,169
2023	1,836	781
2024	1,889	—
2025	1,941	—
Thereafter	6,944	—
Total lease payments	16,131	3,349
Less: Imputed interest	(4,862)	(243)
Total	$ 11,269	$ 3,106

The supplemental cash flow information related to leases for the twelve months ended December 31, 2020 were as follows:

	Year Ended December 31, 2020
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows from operating leases	$ 1,287
Operating cash flows from finance leases	$ 113
Financing cash flows from finance leases	$ 1,922
Right-of-use assets obtained in exchange for lease liabilities:	
Operating leases	$ 8,443
Finance leases	$ 2,826

The following table presents the weighted-average remaining lease term and discount rate information related to the Company's operating and finance leases as of December 31, 2020:

	December 31, 2020	
	Operating Leases	Finance Leases
Weighted-average remaining lease term	8.4 years	2.5 years
Weighted-average discount rate	8.7%	6.5%

Disclosures related to periods prior to adoption of Topic 842

The Company's future minimum rental commitments on non-cancelable leases as of December 31, 2019, under Topic 840, were as follows:

	Operating Leases	Capital Leases
2020	$ 1,127	$ 509
2021	1,675	372
2022	1,725	142
2023	1,777	9
2024	1,830	—
Thereafter	8,551	—
Total future minimum lease payments	$ 16,685	$ 1,032

Rent expense for the year ended December 31, 2019 was $0.9 million.

Carroll Canyon Lease

In December 2018, the Company entered into a lease agreement for office and laboratory space in San Diego. The Lease has a term ten years and seven months and there are no renewal options. The future minimum rent commitment is $10.8 million. In addition to rent, the Lease requires the Company to pay additional amounts for taxes, insurance, maintenance and other operating expenses. The Company also received tenant reimbursement allowance of $4.4 million to cover hard costs such as flooring, electrical, plumbing and HVAC, as well as other tenant improvements.

The Company is not the legal owner of the leased space. However, in accordance with ASC Topic 840, *Leases*, because of the Company's expected level of direct financial and operational involvement in the substantial tenant improvements being constructed, the Company was deemed to be the owner of the leased space for accounting purposes once it obtained control of the space at the start of construction in April 2019. As a result, the Company recorded the estimated value of the building on its balance sheets, along with construction costs incurred with a corresponding capital lease obligation for the duration of the construction period. Land lease rents and interest were immaterial. No rental payments were made prior to substantial completion of construction in October 2019. Upon substantial completion, the Company concluded it qualified for sale-leaseback accounting since the Company did not have continuing involvement in the form of purchase options, collateral guarantees, nonrecourse financing, among other matters, so the assets and liabilities were derecognized. During the year ended December 31, 2019, the Company recorded $0.9 million in tenant improvements funded by the landlord with a corresponding deferred rent liability.

In December 2019, the Company entered into a lease for a different facility with the same landlord and negotiated an option to terminate its existing office lease upon three months from the commencement of the new lease. No gain was recorded upon termination in January 2020 and the deferred rent upon termination continued to be deferred over the team of the lease.

NOTE 9. DEBT

In May 2015, the Company entered into a Loan and Security Agreement (the "Loan Agreement") with Comerica Bank ("Comerica"). The Loan Agreement provided for growth capital advances up to $2.5 million. The interest rate per the Loan Agreement was prime plus 1%. Issuance costs and third-party legal costs incurred were immaterial and were recorded as discounts to the carrying value of the loan.

The Company issued Comerica two series of warrants comprised of one warrant to purchase 20,441 shares of Series A redeemable convertible preferred stock at an exercise price of $0.91728 per share with an issuance date of May 28, 2015, and the second warrant to purchase 20,441 shares of Series A redeemable convertible preferred stock at an exercise price of $0.91728 per share with an issuance date of June 5, 2015. These warrants were immediately exercisable and will expire if unexercised ten years after issuance. The total value of these warrants upon issuance was $18,406. The fair value of the warrants upon issuance was determined using BSM option pricing model and was recorded as a discount to debt and an offsetting amount recognized as a liability. The resulting debt discount is being amortized to interest expense using the effective interest method over the term of the loan.

In September 2016, the Company entered into the First Amendment to the Loan Agreement so that the growth capital advances outstanding as of August 31, 2017 would be payable in twenty-four equal monthly installments of principal, plus all accrued interest, beginning on September 1, 2017 until the August 1, 2019 maturity date. In connection with the First Amendment, the Company issued Comerica warrants to purchase 7,631 shares of Series A redeemable convertible preferred stock at an exercise price of $0.91728 per share. These warrants were immediately exercisable and will expire if unexercised ten years after issuance. The value of these warrants upon issuance was $4,727. The fair value of the warrants upon issuance was determined using BSM option pricing model and was recorded as a discount to debt and an offsetting amount recognized as a liability. The resulting debt discount is being amortized to interest expense using the effective interest method over the term of the loan. Third-party legal costs incurred were de minimis and were expensed.

On November 27, 2018, the Company entered into the Second Amendment to replace the growth capital advances with a revolving line which provided a credit extension of up to $4.0 million maturing on June 30, 2020 and the Growth Capital A Line which provided a credit extension of up to $6.0 million with a maturity date of September 30, 2022 if the Company provides evidence satisfactory to Comerica that the option period under (and as detailed in) the BARDA Contract has been exercised. The BARDA Contract extension was exercised in March 2020 (see Note 3, *Revenue Recognition*). In connection with the Second Amendment, the Company issued warrants to

purchase 31,369 shares of Series B redeemable convertible preferred stock at an exercise price of $1.4345. These warrants were immediately exercisable and will expire if unexercised ten years after their issuance. The value of these warrants upon issuance was $22,513. The fair value of the warrants upon issuance was determined using BSM option pricing model and was recorded as a discount to debt and an offsetting amount recognized as a liability. The resulting debt discount is being amortized to interest expense using the effective interest method over the term of the loan. The interest rate per the Second Amendment was amended from prime plus 1% to prime plus 0.25%. Third-party legal costs incurred were de minimis and were expensed.

Financial covenants associated with the Second Amendment include certain borrowing base restrictions as defined in the agreement, a requirement to maintain a minimum cash balance of not less than $2.0 million, and certain reporting requirements that include an unqualified (with no going concern uncertainty) audit opinion 180 days after year-end. The Company was out of compliance with certain affirmative covenants such as issuance of financial statements within 180 days for the 2019 financial statements.

On September 25, 2019, the Company entered into the Third Amendment and Waiver to the Loan Agreement which waived previous breaches of debt covenants and extended the maturity date of the revolving line to June 30, 2021. On May 9, 2020, the Company entered into an amendment to waive the requirement to provide audited financial statements with no going concern qualification for 2019, as well as other reporting covenants through June 30, 2020. An additional waiver was obtained on July 17, 2020 to waive the 180-day reporting requirement through August 31, 2020. Subsequent to August 31, 2020, the Company obtained permission from Comerica to provide unaudited financial statements. As noted in Note 1. *Business and Basis of Accounting*, management concluded there is substantial doubt about the Company's ability to continue as a going concern for the twelve months following the issuance date of the financial statements for the year ended December 31, 2020. The Company was not in compliance with certain affirmative covenants related to this Loan Agreement as a result of a going concern uncertainty paragraph in the audit opinion so the outstanding balance of $5.4 million is included in current liabilities as of December 31, 2020.

As of December 31, 2019, and 2020, the Company had an outstanding debt balance of $6.3 million and $5.4 million and the interest rate was 5.00% and 3.50%, respectively.

NOTE 10. WARRANTS TO PURCHASE COMMON STOCK OR REDEEMABLE CONVERTIBLE PREFERRED STOCK

Common Stock Warrants

As of December 31, 2020, the Company had an outstanding warrant to purchase 75,744 shares of common stock at a purchase price of $0.40 per share. The warrant was issued on August 22, 2017 and expires on August 22, 2027. The warrant will automatically convert upon a change in control of the Company or a liquidation event. All shares subject to the warrant have vested as of December 31, 2020.

Redeemable Convertible Preferred Stock Warrants

Outstanding warrants to purchase redeemable convertible preferred shares as of December 31, 2020 were as follows:

	Shares	Exercise Price	Issuance Date	Expiration Date
Series A redeemable convertible preferred stock warrants	20,441	$0.91728	May 28, 2015	May 28, 2025
Series A redeemable convertible preferred stock warrants	20,441	0.91728	May 28, 2015	May 28, 2025
Series A redeemable convertible preferred stock warrants	7,631	0.91728	September 6, 2018	September 6, 2028
Series B redeemable convertible preferred stock warrants	31,369	1.4345	November 27, 2018	November 27, 2028

The redeemable convertible preferred stock warrants are classified as liabilities, with changes in fair value recorded through earnings, as the underlying redeemable convertible preferred shares can be redeemed by the holders of these shares upon the occurrence of certain events that are outside of the control of the Company. The Company

estimated the fair value of the redeemable convertible preferred stock warrants using an option pricing model. The significant inputs to this valuation methodology included the rights, preferences and privileges of each class of Company's shares (see Note 12, *Fair Value Measurements*), and the Company's estimated equity value and volatility assumptions on the valuation date, which are based on management's analysis of comparable publicly traded peer companies.

NOTE 11. STOCKHOLDERS' EQUITY

Equity Offerings

In May 2020, the Company entered into a Convertible Note Purchase Agreement for a maximum of $12.0 million in convertible notes accruing interest at 3% per annum and maturing October 2021. The Company received proceeds of $5.6 million through the issuance date of these financial statements. The convertible notes are exercisable at a 10% (within 30 days) or 15% discount (after 45 days) upon a financing transaction in excess of $30.0 million.

In June 2020, the Company raised $105.6 million in net cash proceeds through issuance of shares of its Series C redeemable convertible preferred stock. The issuance included 27,308,227 shares of Series C-1 redeemable convertible preferred stock, par value $0.00001 per share, at $3.6619. The convertible notes entered in May 2020 were converted into 1,690,380 shares Series C-2 redeemable convertible preferred stock, par value $0.00001 per share, at $3.2957 per share at a 10% discount upon closing of the Series C redeemable convertible preferred stock issuance generating a loss on extinguishment of $0.6 million recorded in interest expense in the statements of operations.

Shares of Series A redeemable convertible preferred stock, Series B redeemable convertible preferred stock, and Series C redeemable convertible preferred stock are collectively referred to as "Preferred Shares". Significant rights, preferences and privileges of the Company's Preferred Shares are as follows:

Dividends

Preferred Shares accrue dividends accruing at a rate per annum of 8% per share based on the Preferred Shares original issue price, calculated daily, whether or not declared, however, such accrued dividends shall be non-cumulative and payable only if and when declared by the Board of Directors on Preferred Shares on a pari passu basis. If not declared by December 31 of each year any accrued dividends will be extinguished and begin to accrue anew beginning on January 1 of the following year. Additionally, the holders of Preferred Shares shall participate, on a pro rata basis, in any dividends paid on common stock or on a non-cash distribution on an as-converted basis. As of December 31, 2019, and 2020, the Board of Directors has not declared any dividends.

Liquidation

Preferred shares shall be entitled to receive, on a pari passu basis with each other and prior and in preference to any distribution of any of the assets or surplus funds of the Company to the holders on any common stock by reason of their ownership thereof, an amount equal to the greater of (i) a per share amount equal to the Series A redeemable convertible preferred stock original issue price per share of $0.91728, Series B redeemable convertible preferred stock original issue price per share of $1.4345, Series C-1 redeemable convertible preferred stock original issue price per share of $3.6619, and Series C-2 redeemable convertible preferred stock original issue price per share of $3.2957, as applicable, plus any declared but unpaid dividends, or (ii) the per share amount that would have been payable had all Preferred Shares been converted into common stock at the then effective conversion price, as applicable, immediately prior to such liquidation event.

Liquidation Event

A Liquidation Event shall include, unless the holders of at least two-thirds of the outstanding shares of Series A, B and C redeemable convertible preferred stock, voting together as a single class on as converted to Common Stock basis (the "Required Preferred Holders"), elect otherwise by written notice to the Company:

a) a merger or consolidation in which (i) the Company is a constituent party or (ii) a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation, except in either case, in respect of any such merger or consolidation involving the Company or a subsidiary in which the shares of capital stock of the Company outstanding immediately

prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets or intellectual property of the Company and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company; or

c) the closing of the transfer (whether by merger, amalgamation, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter of the Company's securities), of the Company's securities if, after such closing, such person or group of affiliated persons would hold a majority, by voting power, of the share capital or capital stock of the Company.

Conversion

The Preferred Shares are convertible into common stock at the option of the holder at any time by dividing their original issue price by the conversion price in effect at the time of conversion. The conversion price of Preferred Shares is subject to adjustments for recapitalization (i.e. stock dividends, stock splits, reorganization, reclassification, combination of shares), or upon the issuance of shares at a price less than the then current conversion price.

Preferred Shares are automatically convertible into common stock at its then effective conversion price (discussed above) (i) upon the completion of a firm underwritten public offering of the Company's common stock with net proceeds (after underwriter's discounts and commissions) of at least $50.0 million and at a price per share not less the three times the Series C original issue price, or (ii) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of the Required Preferred Holders, all outstanding Preferred Shares shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price.

Voting Rights

The holders of the Preferred Shares are entitled to vote together with the Common Stock as a single class on an as-converted basis upon any matter submitted to the stockholders for a vote, with each holder of outstanding shares of the series of Preferred Shares entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of the applicable series of Preferred Shares held by holder are convertible.

So long as 6,988,161 Preferred Shares remain outstanding, holders of Preferred Shares are entitled, voting together as a separate class, to elect three directors.

So long as at least 1,449,915 shares of Series C redeemable convertible preferred stock remain outstanding, the holders of the Series C redeemable convertible preferred stock are entitled, voting together as a separate class, to elect one director.

The holders of Common Stock, voting together as a separate class, are entitled to elect one director, however, at such time that the Corporation's Chief Executive Officer ceases to serve as the Chief Executive Officer, the holders of the Common Stock are entitled to elect two directors, one of whom shall be the Chief Executive Officer of the Corporation.

Redemption

Per the terms of the Company's Amended and Restated Certificate of Incorporation, in the event of a Deemed Liquidation Event the Company will redeem the redeemable convertible preferred shares at a price per share equal to the applicable Liquidation Amount. If the available proceeds are not sufficient to redeem all outstanding Preferred Shares, the Company shall redeem a pro rata portion of Preferred Shares to the fullest extent of the available proceeds. Remaining available proceeds, if any, will then be distributed to the holders of common stock.

Common Stock Reserved for Future Issuance

Common stock reserved for future issuance consisted of the following as of December 31, 2020:

Redeemable convertible preferred stock	83,526,065
Warrants to purchase redeemable convertible preferred stock	79,882
Common stock option grants issued and outstanding	8,344,752
Common stock reserved for future option grants	2,950,871
Common stock warrants	75,744
Total common shares reserved for future issuance	94,977,314

NOTE 12. FAIR VALUE MEASUREMENTS

The following table sets forth the Company's financial instruments that were measured at fair value on a recurring basis within the fair value hierarchy:

December 31, 2019	Recurring Fair Value Measurements			
	Level 1	Level 2	Level 3	Total
Redeemable convertible preferred stock warrant liabilities	$ —	$ —	$ 42	$ 42

December 31, 2020	Recurring Fair Value Measurements			
	Level 1	Level 2	Level 3	Total
Redeemable convertible preferred stock warrant liabilities	$ —	$ —	$ 1,331	$ 1,331

The following table includes a rollforward of redeemable convertible preferred stock warrant liabilities measured on a recurring basis and classified within Level 3 fair value hierarchy:

	Amount
Balance, January 1, 2019	$ 46
Issuance	—
Remeasurement	(4)
Balance, December 31, 2019	42
Issuance	—
Remeasurement	1,289
Balance, December 31, 2020	$ 1,331

The estimated fair value of redeemable convertible preferred stock warrants was determined using BSM option pricing model with the following assumptions at December 31, 2019 and 2020:

Series A redeemable convertible preferred stock warrants

	December 31,	
	2019	2020
Expected volatility	41.8%	59.9%
Expected term (years)	5.92	4.92
Expected dividend yield	0.00%	0.00%
Risk-free interest rate	1.72%	0.41%
Fair value per share	$ 0.55	$ 16.83

Series B redeemable convertible preferred stock warrants

	December 31,	
	2019	2020
Expected volatility	37.2%	46.2%
Expected term (years)	8.91	7.91
Expected dividend yield	0.00%	0.00%
Risk-free interest rate	1.88%	0.65%
Fair value per share	$ 0.68	$ 16.41

NOTE 13. STOCK-BASED COMPENSATION

Stock Incentive Plans

In August 2014, the Company adopted the 2014 Equity Incentive Plan ("2014 Plan") under which employees, non-employee directors and consultants of the Company may be granted either incentive stock options or non-qualified stock options to purchase shares of the Company's common stock. A total of 11,520,590 and 20,399,691 shares of common stock were reserved for issuance under the 2014 Plan December 31, 2019 and 2020 respectively. In addition, "returning shares" that may become available from time to time are added back to the plan. "Returning shares" are shares that are subject to outstanding awards granted under the 2014 Plan that expire or terminate prior to exercise or settlement, are forfeited because of the failure to vest, are repurchased, or are withheld to satisfy tax withholding or purchase price obligations in connection with such awards. The Plan allows for the early exercise of all stock options granted if authorized by the board of directors at the time of grant. As of December 31, 2020, 2,950,871 shares remain available for future grant under the 2014 Plan.

Stock Options

Options granted under the 2014 Plan have terms of ten years from the date of grant unless earlier terminated and generally vest over a three or four-year period.

The exercise price of all options granted during the year ended December 31, 2019 and 2020 was equal to the market value of the Company's common stock on the date of grant.

In December 2020, the vesting of 3,637,477 shares of common stock was accelerated and resulted in additional compensation expense of $1.7 million for the year ended December 31, 2020.

A summary of stock option activity and related information for the years ended December 31, 2019 and 2020 was as follows:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at January 1, 2019	8,227,345	$0.38	
Granted	375,000	0.48	
Exercised	(24,250)	0.48	
Forfeited	(215,750)	0.48	
Expired	(117,594)	0.37	
Outstanding at December 31, 2019	8,244,751	0.39	6.84
Granted	2,233,042	1.41	
Exercised	(1,918,499)	0.56	
Forfeited	(78,043)	0.96	
Expired	(136,499)	0.39	
Outstanding at December 31, 2020	8,344,752	$0.61	6.44
Exercisable at December 31, 2020	6,350,005	$0.43	5.55
Vested and expected to vest at December 31, 2020	8,176,627	$0.60	6.36

The aggregate intrinsic value of options exercised was $0.8 million and $96.0 million, for the years ended December 31, 2019 and 2020 respectively. As of December 31, 2019, and 2020, the total intrinsic value of options outstanding was $0.9 million and $129.5 million, respectively.

Compensation Expense

The estimated fair value of each stock option award granted to employees was determined on the date of grant using the BSM option pricing model with the following assumptions for stock option grants for the years ended December 31, 2019 and 2020:

	2019	2020
Expected volatility	28.4%	39.6%
Expected term (years)	6.08	7.04
Expected dividend yield	0%	0%
Risk-free interest rate	1.8%	0.4%
Grant date fair value	$ 0.15	$ 0.57

The Company recognized $0.2 million and $0.7 million of stock-based compensation for stock options granted to employees and nonemployees during the years ended December 31, 2019 and 2020, respectively, that was included in general and administrative expenses.

As of December 31, 2020, there was $0.8 million of unamortized compensation cost related to unvested stock option awards, which is expected to be recognized over a remaining weighted-average vesting period of 3.23 years, on a straight-line basis.

Restricted Stock Purchase Agreements with Executives

In September 2018, the Company issued a total of 2,924,130 shares of common stock pursuant to Restricted Stock Purchase Agreements with its Chief Executive Officer and Chief Product Officer in exchange for Nonrecourse Notes totaling $1.4 million to finance 100% of the cost of the shares. Due to the Nonrecourse Notes being collateralized by the stock purchased and other stock held by the purchaser, these transactions are accounted for as substantive grants of common stock options since the employee does not assume the risk of ownership. These shares are legally issued and outstanding and included on the balance sheet, but they are not treated as outstanding common stock for accounting purposes as they are deemed to be common stock options. Principal and interest payments received are recorded as a deposit liability until the Nonrecourse Notes are repaid at which time the deposit liability is transferred to additional paid-in capital.

The Nonrecourse Notes bear interest, payable annually on July 1 of each year, computed at a rate equal to 3.06% per annum. Accrued interest is also nonrecourse and is payable in arrears on each anniversary of the closing date and does not compound. The Nonrecourse Notes may be prepaid in full or in part at any time without premium or penalty and are due in September 2028. The shares are subject to repurchase by the Company at the lower of the original purchase price of $0.48 per share or fair market value upon termination from service. Vesting commenced on January 1, 2018 and the shares vest ratably monthly over four years. Compensation expense is recognized over the requisite service period.

In July 2020, the Company issued a total of 7,373,163 shares of common stock pursuant to Restricted Stock Purchase Agreements with its Chief Executive Officer and Chief Product Officer in exchange for Promissory Notes totaling $10.4 million to finance 100% of the cost of the shares, representing a per-share purchase price of $1.41. The Promissory Notes provided for the loan to the executives by the Company with the principal amounts equal to the purchase price of the common stock and bear an interest of 1.17% payable at any time without a premium or penalty. In connection with the Promissory Notes, the executive entered into Pledge Agreements whereby the shares purchased were pledged as collateral for the Promissory Notes. The Promissory Notes provide that 50% of the balance is recourse and 50% is nonrecourse.

Upon the executives' termination of service, the Pledge Agreements provide the Company the right to repurchase unvested shares are at the lower of the original purchase price of $1.41 per share or fair market value. The repurchase right lapses 1/48th per month over the four-year period, which represents and in-substance vesting of the shares from the vesting commencement date.

As the Pledge Agreements relate to the entire number of share purchased and no specific percentage of the underlying shares is aligned to the respective recourse and nonrecourse portions of the Promissory Notes and the

recourse provisions are not substantive as the Company generally does not intend to pursue collection on the recourse portion of the Promissory Notes, the Promissory Notes are considered nonrecourse in their entirety and the transaction is accounted for as stock option awards. Compensation expense will be recognized on a straight-line basis over the vesting term.

In December 2020, the Company cancelled and forgave $0.2 million of the outstanding Nonrecourse Notes related to 480,000 shares purchased by its Chief Product Officer. The forgiveness was deemed to be a modification, given the shares were significantly in-the-money, the Company determined that the principal and interest forgiven is materially consistent with the change in fair value. The unrecognized grant date fair value and the incremental fair value from the modification resulting from the forgiveness of the Nonrecourse Notes related to vested shares was recognized in stock-based compensation expense during the year ended December 31, 2020. The forgiveness of the Nonrecourse Notes were deemed to be exercises of stock options. The unvested portion of the shares will be recognized as stock-based compensation expense over the remaining vesting period. This modification resulted in $0.2 million in additional compensation expense for the year ended December 31, 2020.

Concurrently, the Company accelerated vesting of 360,516 shares of common stock subject to the 2018 restricted stock purchase agreements and 3,276,961 shares of common stock subject to the 2020 restricted stock purchase agreements that resulted in additional compensation expense of $1.7 million for the year ended December 31, 2020.

Additionally, the Company normal vesting of 741,033 shares of common stock subject to the 2018 restricted stock purchase agreements and 921,645 shares of common stock subject to the 2020 restricted stock purchase agreements that resulted in additional compensation expense of $0.8 million for the year ended December 31, 2020.

The Company estimated the fair value of these restricted shares issued for Nonrecourse Notes at the grant date using the following assumptions in the BSM option pricing model:

Risk-free interest rate	1.1%
Expected term (years)	5.86 years
Exercise price	$1.25
Expected dividend yield	0.0%
Expected volatility	37.6%
Grant date fair value	$0.40

The Company recognized $0.1 million and $2.5 million of stock-based compensation expense related to the restricted shares financed through Nonrecourse Notes discussed above for the years ended December 31, 2019 and 2020, which is included in general and administrative expense.

A summary of the Company's option activity related to common stock through restricted stock purchase agreements in exchange for Nonrecourse Notes during 2019 and 2020 was as follows:

	Number of Shares
Outstanding, January 1, 2019	2,924,130
Granted	—
Outstanding, December 31, 2019	2,924,130
Granted	7,373,163
Forgiveness of Nonrecourse Notes on vested shares of common stock	(425,000)
Outstanding, December 31, 2020	9,872,293
Vested, December 31, 2020	6,762,220

The total stock-based compensation expense was:

	2019	2020
Sales and marketing	$ —	$ 1
Research and development	45	98
General and administrative	291	3,064
Total stock-based compensation expense	$ 336	$ 3,163

Total unrecognized compensation expense as of December 31, 2019 and 2020 was $0.2 million and $1.7 million, respectively.

Early Exercise Liability

The unvested shares of the early-exercised options are held in escrow until the stock option becomes fully vested or until the employee's termination, whichever occurs first. The right to repurchase these shares lapses over the four-year vesting period. As of December 31, 2020, the early exercise liability was approximately $0.2 million and is included in accrued liabilities in the balance sheets. There were no early exercised options prior to 2020. For accounting purposes, the early exercise of options is not considered to be a substantive exercise until the underlying awards vest.

The following table summarizes the activity of the unvested common stock issued pursuant to an early exercise of stock option awards during the year ended December 31, 2020:

	Number of Shares
Unvested at beginning of year	—
Early exercised stock options during period	855,000
Vested or cancelled	(538,334)
Unvested at end of year	316,666

NOTE 14. LOSS PER SHARE

Basic net loss per share is computed by dividing net loss attributable to common stockholders by the weighted-average common shares outstanding during the period. Diluted net loss per share attributable to common stockholders is computed based on the weighted-average common shares outstanding plus the effect of dilutive potential common shares outstanding during the period calculated using the treasury stock method and the if-converted method. Dilutive potential common shares include stock options, non-vested shares, redeemable convertible preferred shares, restricted stock and similar equity instruments granted by the Company. Potential common share equivalents have been excluded where their inclusion would be anti-dilutive.

Basic and diluted net loss attributable to common holders per share is presented in conformity with the two-class method required for participating securities as the redeemable convertible preferred stock, common stock subject to restricted stock purchase agreements, early exercised options, and restricted shares are considered participating securities. The Company's participating securities do not have a contractual obligation to share in the Company's losses. As such, the net loss was attributed entirely to common stockholders. Accordingly, for the years ended December 31, 2019 and 2020, there is no difference in the number of shares used to calculate basic and diluted shares outstanding. For the year ended December 31, 2019, outstanding common stock for accounting purposes excludes 2,924,130 shares subject to restricted stock purchase agreements. For the year ended December 31, 2020, outstanding common stock for accounting purposes excludes 9,872,293 shares subject to restricted stock purchase agreements and 316,666 unvested early exercised stock options.

The table below presents the computation of basic and diluted earnings per share:

	2019	2020
Basic:		
Net loss attributable to common stockholders	$ (20,606)	$ (47,352)
Weighted-average common shares outstanding, basic and diluted	15,760,246	16,315,730
Net loss attributable to common stockholders per share, basic and diluted	$ (1.31)	$ (2.90)

Potentially dilutive securities not included in the calculation of diluted net loss per share because to do so would be anti-dilutive are as follows (in common stock equivalent shares):

	As of December 31,	
	2019	2020
Redeemable convertible preferred stock	54,527,458	83,526,065
Stock options	8,244,751	8,344,752
Early exercised options	—	316,666
Common stock subject to restricted stock purchase agreements	2,924,130	9,872,293
Common stock warrants	75,744	75,744
Redeemable convertible preferred stock warrants	79,882	79,882
Total	65,851,965	102,215,402

NOTE 15. INCOME TAXES

The Company recorded no federal or state income tax expense or benefit for the years ended December 31, 2019 and 2020 primarily as a result of the Company maintaining a full valuation allowance against its loss from operations for tax purposes. The net losses for the years ended December 31, 2019 and 2020 were generated solely in the United States.

The effective tax rate of the (benefit) provision for income taxes differs from the U.S. federal statutory rate as follows:

	Years Ended December 31,	
	2019	2020
Expected tax at the federal statutory rate	(21.0)%	(21.0)%
State income tax, net of federal benefit	(7.0)%	(7.6)%
Permanent items	0.9%	1.3%
Change in valuation allowance	30.9%	30.8%
Tax Credits	(4.8)%	(3.3)%
Uncertain tax position reserves	1.0%	0.7%
Stock-based compensation	—	(0.9)%
Provision for income taxes	—	—

The Company recorded a valuation allowance to reflect the estimated amount of certain U.S. federal and state deferred tax assets that, more likely than not, will not be realized. In making such a determination, the Company evaluates a variety of factors including the projected future taxable income, scheduled reversals of deferred tax liabilities, prudent tax planning strategies, and recent financial operations. The evaluation of this evidence requires significant judgement about the forecasts of future taxable income, based on the plans and estimates used to manage the underlying business. The net change in total valuation allowance for the years ended December 31, 2019 and 2020 was an increase of $5.9 million and an increase of $14.6 million, respectively. The 2019 and 2020 valuation allowance increases were both driven primarily by U.S. federal and state NOL carryforwards that are not expected on a more likely than not basis to be realized.

The significant components of deferred income taxes were as follows:

	As of December 31,	
	2019	2020
Deferred tax assets:		
Net operating losses	$ 15,755	$ 29,217
Research and development credits	2,541	3,791
Operating lease liability	—	3,234
Share-based compensation	231	350
Accruals	45	2,963
Other	772	226

	As of December 31,	
	2019	2020
Total deferred tax assets	19,344	39,781
Deferred tax liabilities:		
Operating right-of-use asset	—	(2,376)
Depreciation and amortization	(41)	(3,511)
Total deferred tax liabilities	(41)	(5,887)
Gross deferred tax assets	19,303	33,894
Less: Valuation allowance	(19,303)	(33,894)
Net deferred income taxes	$ —	$ —

At December 31, 2020, the Company has United States federal and state net operating loss ("NOL") carryforwards of $108.7 million and $90.8, respectively. The federal NOL carryforwards generated in pre-2018 tax years of $26.2 million will begin to expire in 2031 while federal NOLs generated after 2017 of $82.5 million will carry forward indefinitely. The state NOL carryforwards of $90.8 million will begin to expire in 2031 unless previously utilized. At December 31, 2020, the Company also had federal and California research tax credit carryforwards of $2.9 million and $2.3 million, respectively. The federal research tax credit carryforwards begin to expire in 2032, if not utilized, while the California research tax credit carries forward indefinitely.

The above NOL carryforward and the research tax credit carryforwards are subject to an annual limitation under Section 382 and 383 of the Internal Revenue Code ("IRC") of 1986, and similar state provisions due to ownership change limitations that have occurred which will limit the amount of NOL and tax credit carryforwards that can be utilized to offset future taxable income and tax, respectively. In general, an ownership change, as defined by Section 382 and 383, results from transactions increasing ownership of certain stockholders or public groups in the stock of the corporation by more than 50 percentage points over a three-year period. The Company has completed a Section 382/383 analysis through December 31, 2020 and determined an ownership change, as defined under Section 382, occurred in 2014 and 2018. The resulting limitations have restricted the use of the Company's NOL and tax credit carryforwards. As of December 31, 2020, the Company has $30.1 million of federal net operating losses and $29.8 million of state NOLs subject to limitations related to the utilization under Section 382 of the Internal Revenue Code. As of December 31, 2020, the Company has $1.2 million of federal tax credit carryforwards and $1.2 million of state tax credit carryforwards subject to limitations related to the utilization under Section 383 of the Internal Revenue Code. Due to the existence of the valuation allowance, limitations created by future ownership changes, if any, related to the Company's operations in the United States will not impact the Company's effective tax rate.

The Company recognizes the benefit of tax positions taken or expected to be taken in its tax returns in the financial statements when it is more likely than not that the position will be sustained upon examination by authorities. Recognized tax positions are measured at the largest amount of benefit that is greater than 50% likely of being realized upon settlement.

A reconciliation of the beginning and ending balance to total unrecognized tax position is as follows:

	Years Ended December 31,	
	2019	2020
Beginning balance	$ 489	$ 705
Increases related to current year tax positions	216	340
Ending Balance	$ 705	$ 1,045

As of December 31, 2020, the Company has approximately $1.0 million of unrecognized tax benefits, none of which would currently affect the Company's effective tax rate if recognized due to the Company's deferred tax assets being fully offset by a valuation allowance. As of December 31, 2019, and December 31, 2020, the Company recorded no accrued interest and penalties related to unrecognized tax benefits. The Company does not expect any significant changes in its tax positions that would warrant recognition of a liability for unrecognized income tax benefits during the next 12 months.

The Company's United States federal and state income tax returns are subject to tax examination by U.S. federal and state tax authorities for tax years within the statute of limitations. All tax carryforwards are subject to adjustment until the statute closes on the year the carryforwards are eventually utilized. The statute remains open on tax carryforwards generated and unutilized as of December 31, 2020 for the 2011 and subsequent tax years.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act, H.R. 748 (CARES Act) was enacted and signed into law in the United States. The CARES Act includes modifications to the Internal Revenue Code and provides for relief to U.S. corporations through programs such as the employee retention credit, payroll tax deferral and modifications to certain income tax provisions such as temporary five-year net operating loss carryback provisions and a modification of interest deduction limitations. The CARES Act did not have a significant impact on the Company's financial statements for year ended December 31, 2020.

On June 29, 2020, Assembly Bill 85 ("AB 85") was signed into law as part of the California 2020 Budget Act and temporarily suspends the use of California net operating losses and imposes a cap on the amount of business incentive tax credits that companies can utilize against their taxable income for tax years 2020, 2021, and 2022. The Company evaluated the provisions of AB 85 and determined there was no impact on the provision for income taxes for the current period given the full valuation allowance against the California net operating loss and tax credit carryforwards. The Company will continue to evaluate the impact, if any, AB 85 may have on its financial statements and disclosures.

The Consolidated Appropriations Act, 2021, ("CAA") was signed into law on December 27, 2020. The CAA includes, among other provisions, tax and direct spending relief for businesses and individuals affected by the coronavirus pandemic; and extends dozens of expiring tax deductions, credits, and incentives. The Company evaluated the impact of the CAA and determined that it did not have a material impact to the income tax provision for the tax year ended December 31, 2020.

NOTE 16. COMMITMENTS AND CONTINGENCIES

Product Liability

The Company's business exposes it to liability risks from its potential medical diagnostic products. Product liability claims could result in the payment of significant amounts of money and divert management's attention from running the business. The Company may not be able to maintain insurance on acceptable terms, or the insurance may not provide adequate protection in the case of a product liability claim. To the extent that product liability insurance, if available, does not cover potential claims, the Company would be required to self-insure the risks associated with such claims. The Company believes it carries reasonably adequate insurance for product liability.

Standby Letters of Credit

The Company entered into letters of credit (LOCs) for a total of $7.7 million with Comerica Bank as collateral required by one of the Company's vendors and in lieu of three of its lease agreements. The LOCs are automatically extended for a period of one year from unless the Company provides a notice to terminate the agreements ranging from 30 to 90 days prior to the expiration date. The Company was required to reserve a cash balance of $0.2 million and $7.7 million at December 31, 2019 and December 31, 2020, respectively, as collateral for the LOCs, which are presented as restricted cash on the balance sheets.

NOTE 17. RETIREMENT PLAN

The Company maintains a defined contribution employee retirement plan which allows eligible employees, including named executive officers, to contribute pre-tax and Roth contributions to the plan, as allowed by law. The Company currently does not match employee contributions.

NOTE 18. SUBSEQUENT EVENTS

The Company considers events or transactions that occur after the balance sheet date but prior to the issuance of the financial statements to provide additional evidence for certain estimates or to identify matters that may require additional disclosure. The Company has completed an evaluation of all subsequent events through April 19, 2021, the date on which the financial statements were issued, during which time nothing has occurred outside the normal course of business operations that would require disclosure other than the events disclosed below.

Settlement of Contingency

In March 2021, the Company reached a settlement pursuant to a consulting agreement for services rendered during the year ended December 31, 2020, related to the advancement of the Company's diagnostic platform and identification of funding opportunities. The Company agreed to pay $9.0 million, payable in four equal installments over eighteen months, starting on April 1, 2021. This amount is included in the statements of operations in general and administrative expense for the year ended December 31, 2020. As of December 31, 2020, $4.5 million of this amount was included in accrued liabilities and $4.5 million was included in other non-current liabilities in the accompanying balance sheet.

Revolving Line of Credit

In February 2021, the Company entered a Loan and Security Agreement (the "Revolving Credit Agreement") with East West Bank, Comerica Bank, and Silicon Valley Bank (collectively, "Lenders") with East West Bank serving as the collateral and administrative agent for the Lenders ("Agent"). The Revolving Credit Agreement provides for a revolving credit facility with an aggregate maximum principal amount of $130.0 million and a letter of credit subfacility of $20.0 million.

Amounts under the Loan Agreement may be borrowed and repaid at any time without penalty or premium prior to the revolving maturity date of February 5, 2023, at which time all of the outstanding advances with all unpaid interest and fees will immediately be due and payable. The advances bear interest, on the outstanding daily balance thereof, at a rate equal to 0.75% above the prime rate but in no event shall the interest rate be less than 4.0%.

The Revolving Credit Agreement includes customary representations, warranties and negative and affirmative covenants of the company, as well as customary events of default. Subject to certain qualifications and exceptions, the agreement will, among other things, limit the ability to: incur or guaranty additional indebtedness; create or permit liens on the Company's assets; pay dividends or distributions; make certain investments; make certain fundamental changes, assets dispositions and acquisitions; and engage in certain transactions with shareholders and affiliates. In addition, the Revolving Credit Agreement requires the Company to maintain a minimum asset coverage ratio of 1.25 to 1.00, minimum remaining months liquidity of at least six months, and minimum liquidity of at least $80.0 million. The obligations under the Revolving Credit Agreement are secured by substantially all of the Company's assets.

Leases

In January 2021, the Company entered into a lease agreement for approximately 8,010 square feet in an industrial building in San Diego, California. The initial lease term is three years. The future minimum rent commitment is approximately $1.0 million.

Cue Health Inc.

CONDENSED BALANCE SHEETS
(Unaudited)
(In thousands, except share data)

	December 31, 2020	June 30, 2021
Assets		
Current assets:		
Cash and cash equivalents	$121,578	$246,326
Restricted cash	6,000	6,000
Accounts receivable	4,168	40,277
Inventory	36,842	63,263
Prepaid expenses	13,847	35,784
Other current assets	1,263	827
Total current assets	183,698	392,477
Restricted cash, non-current	1,677	—
Property and equipment, net	103,683	160,182
Prepaid rent	16,771	1,648
Operating lease right-of-use assets	8,281	69,511
Intangible assets, net	2,038	2,728
Other non-current assets	180	4,766
Total assets	$316,328	$631,312
Liabilities, Redeemable Convertible Preferred Stock and Stockholders' Deficit		
Current liabilities:		
Accounts payable	$ 23,847	$ 25,824
Accrued liabilities and other current liabilities	8,822	34,424
Deferred revenue, current	115,747	93,745
Debt, current	5,434	—
Operating lease liabilities, current	797	3,170
Finance lease liabilities, current	1,249	1,349
Total current liabilities	155,896	158,512
Redeemable convertible preferred stock warrant liabilities	1,331	1,521
Deferred revenue, net of current portion	67,349	46,748
Convertible notes	—	258,734
Operating leases liabilities, net of current portion	10,472	46,274
Finance lease liabilities, net of current portion	1,857	1,694
Other non-current liabilities	4,500	2,838
Total liabilities	241,405	516,321
Commitments and contingencies (Note 16)		
Redeemable Convertible Preferred Stock		
Series A redeemable convertible preferred stock, $0.00001 par value; 8,721,437 shares authorized, 8,350,743 issued and outstanding at December 31, 2020 and June 30, 2021; liquidation preference of $7,660 at December 31, 2020 and June 30, 2021	7,519	7,519
Series B redeemable convertible preferred stock, $0.00001 par value; 46,213,620 shares authorized, 46,176,715 issued and outstanding at December 31, 2020 and June 30, 2021; liquidation preference of $66,240 at December 31, 2020 and June 30, 2021	66,186	66,186

The accompanying notes are an integral part of these condensed financial statements.

	December 31, 2020	June 30, 2021
Series C-1 redeemable convertible preferred stock, $0.00001 par value; 27,308,229 shares authorized, 27,308,227 issued and outstanding at December 31, 2020 and June 30, 2021, respectively; liquidation preference of $100,000 at December 31, 2020 and June 30, 2021	96,436	96,436
Series C-2 redeemable convertible preferred stock, $0.00001 par value; 1,690,380 shares authorized, issued and outstanding at December 31, 2020 and June 30, 2021; liquidation preference of $5,571 at December 31, 2020 and June 30, 2021	6,182	6,182
Total redeemable convertible preferred stock	176,323	176,323
Stockholders' Deficit		
Common stock, $0.00001 par value; 129,030,355 shares authorized, 27,995,780 and 29,128,604 issued and outstanding at December 31, 2020 and June 30, 2021, respectively	—	—
Additional paid-in-capital	9,036	16,264
Accumulated deficit	(110,436)	(77,596)
Total stockholders' deficit	(101,400)	(61,332)
Total liabilities, redeemable convertible preferred stock and stockholders' deficit	$ 316,328	$631,312

The accompanying notes are an integral part of these condensed financial statements.

Cue Health Inc.

CONDENSED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands, except share data)

	Six Months Ended June 30,	
	2020	**2021**
Revenue		
Product revenue	$ —	$ 201,922
Grant and other revenue	4,960	—
Total revenue	4,960	201,922
Operating costs and expenses:		
Cost of product revenue	—	85,177
Sales and marketing	45	1,959
Research and development	19,680	12,071
General and administrative	3,764	23,252
Total operating costs and expenses	23,489	122,459
Income (loss) from operations	(18,529)	79,463
Interest expense	(788)	(9,964)
Change in fair value of redeemable convertible preferred stock warrants	(20)	(190)
Change in fair value of convertible notes	—	(23,254)
Other income (expense), net	59	61
Net income (loss) before income taxes	(19,278)	46,116
Income tax expense	—	(13,276)
Net income (loss)	$ (19,278)	$ 32,840
Basic net income (loss) per share attributable to common stockholders	$ (1.21)	$ 0.23
Weighted-average number of shares used in computation of basic net income (loss) per share attributable to common stockholders	15,909,439	18,617,247
Diluted net income (loss) per share attributable to common stockholders	$ (1.21)	$ 0.22
Weighted-average number of shares used in computation of diluted net income (loss) per share attributable to common stockholders	15,909,439	26,036,337

The accompanying notes are an integral part of these condensed financial statements.

Cue Health Inc.

CONDENSED STATEMENTS OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT
(Unaudited)
(In thousands, except share data)

	Series A Redeemable Convertible Preferred Stock		Series B Redeemable Convertible Preferred Stock		Series C Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at December 31, 2019	8,350,743	$7,519	46,176,715	$66,186	—	$ —	18,704,118	$—	$4,945	$(63,084)	$(58,139)
Issuance of Series C-1 preferred stock	—	—	—	—	27,308,227	96,963	—	—	—	—	—
Conversion of convertible notes to Series C-2 preferred stock	—	—	—	—	1,690,380	6,182	—	—	—	—	—
Exercise of common stock options	—	—	—	—	—	—	1,520,000	—	—	—	—
Vesting of early exercised stock options	—	—	—	—	—	—	—	—	729	—	729
Stock-based compensation	—	—	—	—	—	—	—	—	97	—	97
Net loss	—	—	—	—	—	—	—	—	—	(19,278)	(19,278)
Balance at June 30, 2020	8,350,743	$7,519	46,176,715	$66,186	28,998,607	$103,145	20,224,118	$—	$5,771	$(82,362)	$(76,591)

	Series A Redeemable Convertible Preferred Stock		Series B Redeemable Convertible Preferred Stock		Series C Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at December 31, 2020	8,350,743	$7,519	46,176,715	$66,186	28,998,607	$102,618	27,995,780	$—	$ 9,036	$(110,436)	$(101,400)
Exercise of common stock options	—	—	—	—	—	—	1,048,706	—	258	—	258
Stock-based compensation expense from issuance of a fully vested warrant to vendor	—	—	—	—	—	—	—	—	1,239	—	1,239
Exercise of common stock warrant	—	—	—	—	—	—	84,118	—	77	—	77
Vesting of early exercised stock options	—	—	—	—	—	—	—	—	63	—	63
Stock-based compensation	—	—	—	—	—	—	—	—	5,591	—	5,591
Net income	—	—	—	—	—	—	—	—	—	32,840	32,840
Balance at June 30, 2021	8,350,743	$7,519	46,176,715	$66,186	28,998,607	$102,618	29,128,604	$—	$16,264	$ (77,596)	$ (61,332)

The accompanying notes are an integral part of these condensed financial statements.

Cue Health Inc.

CONDENSED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

	Six Months Ended June 30,	
	2020	**2021**
Cash flows from operating activities		
Net income (loss)	$ (19,278)	$ 32,840
Adjustments to reconcile net income (loss) to net cash, cash equivalents and restricted cash used in operations		
Depreciation and amortization	3,399	14,500
Inventory reserve	—	353
Change in fair value of redeemable convertible preferred stock warrant liabilities	20	190
Change in fair value of convertible notes	—	23,254
Stock-based compensation expense	97	5,591
Loss on extinguishment of debt	610	1,998
Non-cash lease expense	277	1,822
Amortization of debt issuance costs	16	130
Convertible notes issuance costs	—	6,000
Deferred income taxes	—	588
Interest on finance leases	39	100
Stock-based compensation expense from issuance of fully vested warrant to vendor	—	1,239
Changes in operating assets and liabilities:		
Accounts receivable	(2,579)	(36,109)
Inventory	(664)	(26,774)
Prepaid expenses and other current assets	(4,684)	(22,818)
Other non-current assets	—	(676)
Accounts payable, accrued liabilities and other current liabilities	1,741	11,473
Deferred revenue	—	(42,602)
Operating lease liabilities	51	(8,911)
Net cash, cash equivalents and restricted cash used in operating activities	(20,955)	(37,812)
Cash flows from investing activities		
Purchase of property and equipment	(1,326)	(56,545)
Expenditures for software development	—	(2,351)
Net cash, cash equivalents and restricted cash used in investing activities	(1,326)	(58,896)
Cash flows from financing activities		
Proceeds for Series C-1 redeemable convertible preferred stock	100,000	—
Proceeds from convertible notes	5,563	235,480
Payments for issuance costs of Series C redeemable convertible preferred stock	(3,037)	—
Payments of issuance costs of convertible notes	—	(6,000)
Proceeds from exercise of common stock options	729	258
Proceeds from exercise of common stock warrant	—	77
Proceeds from debt	—	82,250
Debt issuance and prepayment costs	—	(2,128)
Repayment of debt	(1,286)	(87,684)
Payments for deferred initial public offering costs	—	(1,610)
Payments for finance leases	(246)	(864)
Net cash, cash equivalents and restricted cash provided by financing activities	101,723	219,779

The accompanying notes are an integral part of these condensed financial statements.

	Six Months Ended June 30,	
	2020	2021
Net increase in cash, cash equivalents and restricted cash	79,442	123,071
Cash, cash equivalents and restricted cash, beginning balance	14,505	129,255
Cash, cash equivalents and restricted cash, ending balance	$93,947	$252,326
Reconciliation of cash, cash equivalents, and restricted cash		
Cash and cash equivalents	$92,270	$246,326
Restricted cash, current	—	6,000
Restricted cash, non-current	1,677	—
Total cash, cash equivalents and restricted cash	$93,947	$252,326
Supplemental disclosure for cash flow information		
Cash paid for interest	$ 72	$ 760
Supplemental disclosure for non-cash investing and financing matters		
Early exercised stock options liability	$ —	$ 63
Right-of-use assets obtained in exchange for lease obligations	$ 8,849	$ 38,717
Prepaid rent reclassified to right-of-use assets	$ —	$ 15,966
Purchase of property and equipment included in accounts payable	$ 393	$ 11,618
Deferred initial public offering costs included in accounts payable and accrued liabilities and other current liabilities	$ —	$ 2,301

The accompanying notes are an integral part of these condensed financial statements.

Cue Health Inc.

NOTES TO CONDENSED FINANCIAL STATEMENTS
(Unaudited)
(In thousands, except share data)

NOTE 1. BUSINESS AND BASIS OF ACCOUNTING

Organization and Description of Business

Cue Health Inc. (the "Company") was originally formed in the State of California on January 26, 2010, prior to being incorporated in the State of Delaware on December 14, 2017. The Company is a healthcare technology company committed to revolutionizing the healthcare experience by providing individuals with a convenient and connected diagnostic platform that bridges the physical and virtual care continuum. The Company's proprietary platform, the Cue Health Monitoring System, comprised of the Cue Reader and Cue Test Kit, enables lab-quality diagnostics-led care at home, at work or at the point of care. This platform is designed to empower stakeholders across the healthcare ecosystem, including individuals, enterprises, healthcare providers and payors, and public health agencies with paradigm-shifting access to diagnostic and health data to inform care decisions. The Company's headquarters are located in San Diego, California.

Liquidity and Capital Resources

As of June 30, 2021, the Company has cash, cash equivalents and restricted cash of $252.3 million. Management believes that the current available cash and cash equivalents will be sufficient to fund the Company's planned expenditures and meet its obligations for at least twelve months following the financial statement issuance date.

Basis of Presentation

The accompanying unaudited interim condensed financial statements should be read in conjunction with the audited annual financial statements and notes thereto for the year ended December 31, 2020. The unaudited interim condensed balance sheet as of December 31, 2020 included herein was derived from the audited financial statements as of that date. The results of operations for the six months ended June 30, 2021 and cash flows for the six months ended June 30, 2021 are not necessarily indicative of the results for the fiscal year ending December 31, 2021 or any future interim period. The Company's financial statements are prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"), applicable rules and regulations of the U.S. Securities and Exchange Commission ("SEC") for interim reporting and, in the opinion of management, include all adjustments necessary for the fair presentation of the Company's financial position for the periods presented. All such adjustments are of a normal, recurring nature. Certain disclosures have been condensed or omitted from the interim condensed financial statements. The preparation of the accompanying financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, income and expenses as well as the related disclosure of contingent assets and liabilities.

Use of Estimates

The preparation of the accompanying financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could materially differ from those estimates.

Significant estimates and assumptions made in the accompanying financial statements include, but are not limited to revenue recognition, the fair value of the Company's common and redeemable convertible preferred stock warrants, the fair value of including the fair value of convertible notes, equity-based compensation expense, product warranty reserve, the recoverability of its long-lived assets and net deferred tax assets (and related valuation allowance). The Company evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors and adjusts those estimates and assumptions when facts and circumstances dictate. Actual results could materially differ from those estimates.

COVID-19 Impact

The novel coronavirus ("COVID-19") that was declared a global pandemic by the World Health Organization in March 2020 adversely impacted global commercial activity but served as a catalyst to accelerating the Company's product pipeline. The Company's first commercially available diagnostic test for the Cue Health Monitoring System

is the Cue COVID-19 test for ribonucleic acid of SARS-CoV-2, the virus that causes COVID-19. The Company began selling and recording product revenue for its Cue COVID-19 test in August 2020 after obtaining an Emergency Use Authorization ("EUA") from the Federal Drug Administration ("FDA") in June 2020. Currently, 100% of the Company's revenue is derived from the Cue COVID-19 test. Given the unpredictable nature of the COVID-19 pandemic, the development and potential size of the COVID-19 diagnostic testing market is highly uncertain.

The FDA issued emergency use authorizations for two COVID-19 vaccines and in February 2021, the FDA issued a third EUA for a COVID-19 vaccine. The widely administered use of an efficacious vaccine or new therapeutic treatment for COVID-19 may reduce the demand for the Cue COVID-19 test and, as a result, the COVID-19 diagnostic testing market may not develop or grow substantially. Given the rapid development of events surrounding the pandemic, there is uncertainty to the Company's future results and performance.

NOTE 2. SIGNIFICANT ACCOUNTING POLICIES AND RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

Significant Accounting Policies

During the six months ended June 30, 2021, there have been no changes to our significant accounting policies as described in our audited annual financial statements for the year ended December 31, 2020, except as noted below.

Fair Value Measurements and Financial Instruments

The carrying value of the Company's cash and cash equivalents, accounts receivables and accounts payable approximate fair value due to the short-term nature of these items. Based on the borrowing rates currently available to the Company for debt with similar terms and consideration of default and credit risk, the carrying value of the Company's long-term borrowings approximates its fair value.

Fair value is defined as the exchange price that would be received for an asset or an exit price paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

The fair value hierarchy defines a three-level valuation hierarchy for disclosure of fair value measurements as follows:

Level 1 — Unadjusted quoted prices in active markets for identical assets or liabilities.

Level 2 — Inputs other than quoted prices included within Level I that are observable, unadjusted quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities.

Level 3 — Unobservable inputs that are supported by little or no market activity for the related assets or liabilities.

The categorization of a financial instrument within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

The Company's redeemable convertible preferred stock warrant liabilities and convertible notes are measured at fair value on a recurring basis and are classified as Level 3 liabilities. The Company records subsequent adjustments to reflect the increase or decrease in estimated fair value at each reporting date in current period earnings.

Convertible Notes

The Company elected to account for convertible notes issued in May 2021 using the fair value option. Such instruments are recognized at estimated fair value, with changes in estimated fair value recorded as a component of earnings in the statements of operations unless the change is a result of a change in credit risk, in which case such change in estimated fair value is recorded within other comprehensive income. Direct issuance costs are expensed as incurred and are included in interest expense in the statements of operations.

Increases or decreases in the fair value of the convertible notes can result from updates to assumptions such as the expected timing or probability of a qualified financing event, or changes in discount rates. Judgment is used in determining these assumptions as of the initial valuation date and at each subsequent reporting period. Updates to assumptions could have a significant impact on the Company's results of operations in any given period.

Revenue Recognition

Department of Defense Contract Waiver

Per the terms of the U.S. DoD Agreement entered into in October 2020, the Company was required to deliver to the U.S government all of its manufacturing output of Cue COVID-19 Cartridges, subject to certain exceptions for existing contracts and for future contracts the Company is able to obtain waivers for from the U.S. government.

In April 2021, the Company was granted a waiver by the U.S. government to distribute up to 50% of the entire production of the Cue COVID-19 Test to commercial customers, measured monthly in arrears on a calendar-month basis. The waiver became effective in May 2021 and is applicable to the Company's production of Cue COVID-19 Tests during April 2021.

The waiver will remain in effect for the duration of the U.S. DoD Agreement; however, the U.S. government may modify the waiver to reasonably accommodate changes in U.S. government requirements. To modify the waiver, the U.S. government must submit a written notice to the Company specifying the increase or decrease in the percentage of the Cue COVID-19 Test production that may be distributed to commercial customers and the effective date of the modification.

New Revenue Contracts

In the second quarter of 2021, the Company entered into a purchase agreement to provide a customer with Cue Health Readers and in excess of 1,000,000 Cue Test Kits between the effective date of the agreement and December 2021 based on a pre-defined monthly delivery schedule. In the third quarter of 2021, the customer increased its order of Cue Health Readers and Cue COVID-19 Test Kits. The customer may change the quantities ordered and may terminate the order and/or agreement with a 45 days' notice.

In May 2021, the Company entered into a purchase agreement to provide a customer a one-time order of 1,000 Cue Health Readers and 300,000 Cue COVID-19 Test Kits on a monthly basis during the 12-month period following the agreement execution date. In August 2021, the Company and customer amended the purchase agreement to reduce the number of Cue COVID-19 Test Kits to 10,000 test kits on a monthly basis until the agreement expiration date. The agreement may be terminated for cause by either party with a 30 days' notice.

Deferred Offering Costs

The Company capitalizes certain legal, professional accounting and other third-party fees that are directly associated with in-process equity financings as deferred offering costs until such financings are consummated. After consummation of the financing, these costs are recorded as a reduction of the proceeds received from the equity financing. If a planned equity financing is abandoned, the deferred offering costs are expensed immediately as a charge to operating expenses in the condensed statements of operations. There were $0 and $3.9 million of deferred offering costs recorded in the Company's balance sheets in other non-current assets as of December 31, 2020, and June 30, 2021, respectively.

Product Warranty Reserve

The Company provides its customers with the right to receive a replacement of defective or nonconforming Cue Readers for a period of up to twelve months from the date of shipment. Although no explicit warranty is provided for Cue Cartridges, the Company may replace Cue Cartridges that result in invalid test results. Provisions for estimated expenses related to product warranty are made at the time products are sold. These estimates are determined using historical information that include test failure rates, replacement frequency, and the overall replacement cost.

(In thousands, except share data)

The Company evaluates the reserve on a quarterly basis and makes adjustments when appropriate. Changes to test failure rates and overall replacement rates could have a material impact on our estimated liability. The product warranty reserve is recorded within accrued liabilities and other current liabilities on the balance sheets and in cost of product revenue in the statements of operations.

The following table provides a reconciliation of the change in estimated warranty liabilities:

	Amount
Balance, December 31, 2020	$ —
Provision for warranties	4,611
Settlements	(101)
Change in warranty estimates	—
Balance, June 30, 2021	$4,510

Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued ASU No. 2019-12, Income Taxes (Topic 740), Simplifying the Accounting for Income Taxes ("ASU 2019-12"), which simplifies the accounting for income taxes. ASU 2019-12 is effective for fiscal years beginning after December 15, 2020 for public companies and for fiscal years beginning after December 15, 2021 for all other entities and early adoption is permitted. The Company adopted ASU 2019-12 on January 1, 2021 on a prospective basis. The adoption did not have an impact on the Company's financial statements.

NOTE 3. REVENUE

Product Revenue

The Company generates revenue from the sale of its Cue Health Monitoring System to public sector entities, healthcare providers, commercial customers, and through agreements with distributors. The Cue Health Monitoring System is comprised of the Cue Reader and the Cue Test Kit composed of the Cue Cartridge and Cue Wand. The Cue Health App is integral to the functionality of the Cue Reader and these components form a single performance obligation. Customers also have the option to use the Cue Enterprise Dashboard which provides allows customers to view historical test results within their organization.

The Company considers purchase orders, which are governed by agreements with customers, to be a contract with a customer. The contract terms with customers range in length, from one-time purchases, six-month commitments or twelve-month commitments. The timing of revenue recognition is based on the satisfaction of performance obligations promised to the customer. Revenue allocated to Cue Readers and Cue Test Kits is recognized when control of the promised goods has transferred to customers, generally upon shipment, in an amount that reflects the consideration the Company expects to receive in exchange for those goods. Revenue for the for the Cue Enterprise Dashboard is recognized ratably over the term of the service but has not been material to date.

For the six months ended June 30, 2021, product revenue primarily relates to a $480.9 million agreement ("U.S. DoD Contract") the Company entered into with the U.S. government for the purchase of its Cue COVID-19 Test. The U.S. DoD Agreement provided $184.6 million to facilitate the scaling of the Company's manufacturing capacity, which was received upon signing the contract ("U.S. DoD Advance"). The remainder of the agreement is for the sale of the Company's products. There was no product revenue generated during the six months ended June 30, 2020.

During the six months June 30, 2021, the Company entered into two agreements with commercial customers to deliver Cue Test Kits on a pre-defined monthly delivery schedule over the course of up to twelve months.

Cue Health Inc.

NOTES TO CONDENSED FINANCIAL STATEMENTS
(Unaudited)
(In thousands, except share data)

Disaggregation of the product revenue by type of customer for the six months ended June 30, 2020, and 2021, respectively:

	Six Months Ended June 30,	
	2020	2021
Public sector entities	$—	$167,120
Other customers	—	34,802
Total product revenue	$—	$201,922

Product revenue from public sector entities primarily relates to the U.S. DoD Contract.

The following table sets forth the Company's product gross profit and product gross profit margin for the six months ended June 30, 2020 and 2021:

	Six Months Ended June 30,	
	2020	2021
Product revenue	$—	$201,922
Cost of product revenue	—	85,177
Product gross profit	$—	$116,745
Product gross profit margin	0%	58%

Contract Assets and Liabilities

Contract assets primarily relate to the Company's conditional right to consideration for work completed but not billed at the reporting date. The contract assets balance as of December 31, 2020 and June 30, 2021, as well as changes in the balance during the period, were not material.

Contract liabilities primarily relate to the U.S. DoD Advance and were recorded in current and non-current deferred revenue on the balance sheets. The activity related to contract liabilities for the six months ended June 30, 2021 is as follows:

	Amount
Balance, December 31, 2020	$183,096
Recognition of U.S. DoD Advance	(42,208)
Recognition of non-refundable customer deposits	(395)
Balance, June 30, 2021	$140,493

Grant and Other Revenue

Grant and other revenue relate to a cost reimbursement agreement with the Biomedical Advanced Research and Development Authority ("BARDA") and a collaboration agreement with Janssen Pharmaceuticals, Inc. ("Janssen"). During the six months ended June 30, 2020, all of the revenue recognized related to the agreement with BARDA. There was no activity related to this revenue category during the six months ended June 30, 2021.

Cue Health Inc.

NOTES TO CONDENSED FINANCIAL STATEMENTS
(Unaudited)
(In thousands, except share data)

NOTE 4. INVENTORIES

As of December 31, 2020, and June 30, 2021, the Company's inventories consisted of the following:

	December 31, 2020	June 30, 2021
Raw materials	$29,948	$36,715
Work-in-process	4,957	12,312
Finished goods	1,645	14,600
Inventory on consignment	1,081	1,106
Reserve	(789)	(1,470)
Total inventories	$36,842	$63,263

Inventory on consignment represents inventory owned by the Company that is on hand with contract manufacturers. The inventory reserve relates excess and obsolete inventory as a result of ongoing assessments of inventory on hand and the continuous improvement and innovation of its products. During the six months ended June 30, 2021, $10.5 million of capitalized depreciation and amortization costs were expensed to cost of product revenue as inventory was sold. As of June 30, 2021, $2.9 million of capitalized depreciation and amortization costs were part of the inventory balance.

NOTE 5. PREPAID EXPENSES

As of December 31, 2020, and June 30, 2021, the Company's prepaid expenses consisted of the following:

	December 31, 2020	June 30, 2021
Prepaid expenses	$ 5,152	$13,834
Prepaid inventory	8,695	21,950
Total prepaid expenses	$13,847	$35,784

NOTE 6. PROPERTY AND EQUIPMENT, NET

As of December 31, 2020, and June 30, 2021, the Company's property and equipment, net consisted of the following:

	December 31, 2020	June 30, 2021
Construction in progress	$ 83,353	$ 38,467
Machinery and equipment	26,972	129,083
Leasehold improvements	2,897	15,872
Furniture and fixtures	683	750
Property and equipment	113,905	184,172
Accumulated depreciation and amortization	(10,222)	(23,990)
Total property and equipment, net	$103,683	$160,182

Depreciation and amortization expense related to property and equipment was $12.8 million for the six months ended June 30, 2021. During the six months ended June 30, 2021 $11.9 million of depreciation and amortization expense was capitalized into inventory during the manufacturing process. The carrying value of assets under finance leases within property and equipment as of December 31, 2020 and June 30, 2021 was $4.8 million and $5.5 million, respectively.

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NOTE 7. INTANGIBLE ASSETS

As of December 31, 2020, and June 30, 2021, the Company's intangible assets consisted of the following:

	December 31, 2020	June 30, 2021
Capitalized software	$2,114	$ 4,465
Accumulated amortization	(76)	(1,737)
Total intangible assets	$2,038	$ 2,728

Amortization expense related to intangible assets for the six months ended June 30, 2020 was not material and was $1.7 million for the six months ended June 30, 2021. Estimated amortization expense for each of the years ending December 31 is as follows:

2021 (excluding the six months ended June 30, 2021)	$ 509
2022	1,018
2023	970
2024	231
Total amortization expense	$2,728

During the six months ended June 30, 2021, the Company identified certain immaterial amounts that should not have been capitalized as intangible assets. These amounts were recorded as incremental amortization expense during the six months ended June 30, 2021.

NOTE 8. LEASES

In June 2020, the company entered into an agreement to lease a 63,700 square-foot building to be used as manufacturing facility in San Diego, California ("Waples Lease"). The Waples lease has an initial term of ten years with a renewal option to extend the lease which the company is not reasonably certain to exercise. The Waples Lease commenced in May 2021 when the Company was granted a temporary certificate of occupancy to install the manufacturing equipment. The Company paid $12.5 million for landlord-owned improvements sitting as a prepaid rent until the commencement date when those were reclassified into the right-of-use asset. The Company recognized a total operating lease right-of use asset of approximately $32.4 million and operating lease liabilities of $19.9 million related to the Waples Lease as of commencement date.

In October 2020, the Company entered into an agreement to lease a 197,000 square-foot building to be used as a manufacturing facility in Vista, California ("Vista Lease"). The Vista Lease has an initial term of five years and the company is reasonably certain to exercise a renewal option to extend the lease term for an additional five years. The Vista Lease commenced in January 2021 when the Company was permitted to install its tenant improvements and manufacturing equipment. The Company recognized an operating lease right-of use asset of approximately $20.5 million and operating lease liabilities of $17.1 million related to the Vista Lease as of commencement date.

Subsequent to the commencement dates of the Waples and Vista leases, the Company made cash payments of $9.1 million related to the ongoing construction of landlord-owned assets. This is presented in operating lease liabilities in the statements of cash flows.

In January 2021, the Company entered into a lease agreement for approximately 8,010 square feet in an industrial building in San Diego, California. The initial lease term is three years without any renewal option. The lease commenced in February 2021 when the Company was permitted to install the tenant improvements. This lease was classified as operating lease and recognized in the right of use asset and liability during the period.

The Company made payments of $1.6 million related to deposits for equipment leases that had not commenced as of June 30, 2021. The payments have been capitalized in prepaid rent and will be reflected in right-of-use assets upon commencement of the leases.

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The right-of-use assets and lease liabilities recognized on the Company's balance sheet as of June 30, 2021 were as follows:

		June 30, 2021	
	Balance Sheet Location	Operating Leases	Finance Leases
Assets			
Right-of-use assets operating leases	*Operating lease right-of-use assets*	$69,511	
Right-of-use assets finance leases	*Property and equipment, net*		$5,456
Liabilities			
Operating lease liabilities (current)	*Operating lease liabilities, current*	3,170	
Finance lease liabilities (current)	*Finance lease liabilities, current*		1,349
Operating lease liabilities (non-current)	*Operating lease liabilities, net of current portion*	46,274	
Finance lease liabilities (non-current)	*Finance lease liabilities, net of current portion*		1,694

The components of lease expense for the six months ended June 30, 2020 and 2021 were as follows:

	Six Months Ended June 30,	
	2020	2021
Operating lease cost	$766	$2,967
Finance lease cost:		
Amortization of right-of-use assets	144	706
Interest on lease liabilities	39	100
Total lease cost	$949	$3,773

NOTE 9. CONVERTIBLE NOTES

In May 2021, the Company issued and sold convertible promissory notes ("Convertible Notes") with a principal amount of $235.5 million and incurred $6.0 million of debt issuance costs that have been recorded in interest expense in the statements of operations. The Convertible Notes accrue interest at a simple rate of 3.0% per annum during the first 12-month period and will accrue at a simple rate of 9.0% per annum thereafter.

The Convertible Notes are only convertible upon a qualified conversion event or a corporate transaction.

The Convertible Notes will be converted into shares of the Company's common stock at the then effective conversion price in the case of a qualified going public transaction: (a) an IPO resulting in at least $50 million in proceeds, (b) a SPAC combination, or (c) a direct listing. If the Company closes an equity financing with gross proceeds of not less than $50.0 million, then the Convertible Notes, unless previously converted into shares of our common stock, will automatically convert into shares of the same class and series of capital stock of the Company issued to investors in such equity financing. The conversion price with respect to a qualified conversion event, which would be a qualified going public transaction or an equity financing, will incorporate the applicable discount: (i) a 20.0% discount if the qualified conversion event is consummated on or prior to September 30, 2021, and (ii) a 25.0% discount if the qualified conversion event is consummated after September 30, 2021.

In the event of certain corporate transactions prior to the conversion of the Convertible Notes or the repayment of the Convertible Notes, each purchaser, in its discretion, shall have the right either (a) to convert, effective immediately prior to the closing of the corporate transaction, all, but not less than all, of the outstanding principal amount of a Convertible Note and all accrued and unpaid interest on such May 2021 Note immediately prior to the closing of a corporate transaction into shares of common stock at the then effective conversion price, or (b) be paid an amount equal to the sum of 1.75 times the outstanding principal amount of a Convertible Notes and all accrued and unpaid interest of such Convertible Notes immediately prior to the closing of a corporate transaction.

The Convertible Notes include customary events of default. In the event of any default under the Convertible Notes, the interest rate then in effect shall be increased by 3.0%, and then by an additional 3.0% each year thereafter, so long as such event of default continues. Unless earlier converted immediately prior to the qualified conversion event, the Convertible Notes and any unpaid accrued interest will become due in May 2023.

The Company elected to account for the Convertible Notes at estimated fair value pursuant to the fair value option and records the change in estimated fair value in the statement of operations. As of June 30, 2021, the fair value of the of the Convertible Notes was $258.7 million, and the Company recorded a loss of $23.3 million related to the change in estimated fair value of the Convertible Notes in its statement of operations for the six months ended June 30, 2021.

NOTE 10. DEBT

On February 5, 2021, the Company entered into a Loan and Security Agreement, or the Revolving Credit Agreement, with the lenders from time to time party thereto and East West Bank, as Administrative Agent and Collateral Agent for the lenders. In connection with entering into the Revolving Credit Agreement, the Company repaid outstanding amounts of $5.4 million and terminated the prior Loan and Security Agreement with Comerica Bank, or the 2015 Credit Agreement, that was initially entered into in May 2015. The 2015 Credit Agreement, as amended, provided for a revolving line with a credit extension of up to $4.0 million and a Growth Capital A Line with a credit extension of up to $6.0 million.

The Revolving Credit Agreement provides for a revolving credit facility with an aggregate maximum principal amount of $130.0 million and a letter of credit subfacility of $20.0 million. Availability under the Revolving Credit Agreement is subject to a minimum asset coverage test of 1.25 to 1.00, measured as the ratio of the sum of cash on hand maintained in the deposit accounts with the collateral agent and 50% of eligible accounts of the company to the aggregate amount of the outstanding obligations under the Revolving Credit Agreement.

Amounts under the Revolving Credit Agreement may be borrowed and repaid at any time without penalty or premium prior to the revolving maturity date of February 5, 2023, at which time all of the outstanding advances with all unpaid interest and fees will immediately be due and payable. The advances bear interest, on the outstanding daily balance thereof, at a rate equal to 0.75% above the prime rate but in no event shall the interest rate be less than 4.0%. The Company is required to pay a fee for unused amounts under the Revolving Credit Agreement in an amount equal to 0.25% of the unused portion of the revolving commitment. In the event that the Company terminates or permanently reduces the revolving commitment, in whole or in part, at any time before the revolving maturity date, the Company will be required to pay a fee equal to 1.00% of the amount by which the revolving commitment is permanently reduced, or the amount of the outstanding revolving commitment if terminated in full.

The Revolving Credit Agreement includes customary representations, warranties and negative and affirmative covenants of the Company, as well as customary events of default. Subject to certain qualifications and exceptions, the agreement will, among other things, limit the ability to: incur or guaranty additional indebtedness; create or permit liens on its assets; pay dividends or distributions; make certain investments; make certain fundamental changes, assets dispositions and acquisitions; and engage in certain transactions with shareholders and affiliates. In addition, the Revolving Credit Agreement requires the Company to maintain a minimum asset coverage ratio of 1.25 to 1.00, minimum remaining months liquidity of at least six months, and minimum liquidity of at least $80.0 million which is required to be held in deposit at East West Bank. The obligations under the Revolving Credit Agreement are secured by substantially all of the Company’s assets.

In May 2021, the Company repaid $63.2 million of debt outstanding under the Revolving Credit Agreement with a portion of the net proceeds from the issuance and sale of the Convertible Notes. In June 2021, the Company terminated the Revolving Credit Agreement and was required to pay a fee of $1.3 million, equal to 1.00% of the amount of the outstanding revolving commitment. The Company also wrote-off issuance costs of $0.7 million for a total loss on extinguishment of debt of $2.0 million. These amounts were recorded in interest expense in the

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statements of operations during the six months ended June 30, 2021. Upon agreement with East West Bank and the other lenders to the Revolving Credit Agreement, the Company kept in place its outstanding letter of credit in the amount of $6.0 million, which has been cash collateralized. All other obligations under the Revolving Credit Agreement have otherwise been terminated.

NOTE 11. WARRANTS

Common Stock Warrants

As of June 30, 2021, the Company had an outstanding warrant to purchase 75,744 shares of common stock at a purchase price of $0.40 per share. The warrant was issued on August 22, 2017 and expires on August 22, 2027. The warrant will automatically convert upon a change in control of the Company or a liquidation event. All shares subject to the warrant have vested as of June 30, 2021.

In May 2021, the Company issued a warrant to purchase 84,118 shares of common stock at a purchase price of $0.92 per share. The warrant was exercised in June 2021. The Company recorded an expense of $1.2 million in research and development expenses.

Redeemable Convertible Preferred Stock Warrants

Outstanding warrants to purchase redeemable convertible preferred shares as of June 30, 2021 was as follows:

	Shares	Exercise Price	Issuance Date	Expiration Date
Series A redeemable convertible preferred stock warrants	20,441	$0.91728	May 28, 2015	May 28, 2025
Series A redeemable convertible preferred stock warrants	20,441	0.91728	May 28, 2015	May 28, 2025
Series A redeemable convertible preferred stock warrants	7,631	0.91728	September 6, 2018	September 6, 2028
Series B redeemable convertible preferred stock warrants	31,369	1.4345	November 27, 2018	November 27, 2028

The redeemable convertible preferred stock warrants are classified as liabilities, with changes in fair value recorded through earnings, as the underlying redeemable convertible preferred shares can be redeemed by the holders of these shares upon the occurrence of certain events that are outside of the control of the Company. The Company estimated the fair value of the redeemable convertible preferred stock warrants using an option pricing model. The significant inputs to this valuation methodology included the rights, preferences and privileges of each class of Company's shares (see Note 12, *Fair Value Measurements*), and the Company's estimated equity value and volatility assumptions on the valuation date, which are based on management's analysis of comparable publicly traded peer companies.

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NOTE 12. FAIR VALUE MEASUREMENTS

The following table sets forth the Company's financial instruments that were measured at fair value on a recurring basis within the fair value hierarchy as of December 31, 2020 and June 30, 2021:

December 31, 2020	Recurring Fair Value Measurements			
	Level 1	Level 2	Level 3	Total
Redeemable convertible preferred stock warrant liabilities	$—	$—	$1,331	$1,331

June 30, 2021	Recurring Fair Value Measurements			
	Level 1	Level 2	Level 3	Total
Redeemable convertible preferred stock warrant liabilities	$—	$—	$ 1,521	$ 1,521
Convertible Notes	$—	$—	$258,734	$258,734

There were no transfers between Level 1, Level 2 and Level 3 categories of the fair value hierarchy during the six months ended June 30, 2020 and 2021.

In May 2021, the Company issued and sold Convertible Notes with a principal amount of $235.5 million (See Note 9, *Convertible Notes*). The Company elected the fair value option to account for the Convertible Notes and recognized their estimated fair value, with changes in estimated fair value recorded as a component of earnings in the statements of operations. The fair value of the notes was determined based on significant inputs not observable in the market, which represent a Level 3 measurement within the fair value hierarchy.

The Convertible Notes were valued using a scenario-based analysis. Three primary scenarios were considered and assigned a probability weighted to arrive at the estimated fair value. The first scenario considered the value impact of conversion at the 20.0% discount to the issue price if the Company had a qualified conversion event of (a) an IPO, (b) a SPAC combination, (c) or a direct listing, or (d) an equity financing with gross proceeds of not less than $50.0 million, before or on September 30, 2021. The second scenario considered the value impact of conversion at the 25.0% discount to the issue price if the Company had a qualified conversion event of (a) an IPO, (b) a SPAC combination, (c) or a direct listing, or (d) an equity financing with gross proceeds of not less than $50.0 million, after September 30, 2021. The third scenario assumed that a qualified conversion event did not occur, and the Convertible Notes and any unpaid accrued interest are repaid in May 2023.

The following table summarizes the significant unobservable inputs used in the fair value measurement of the Convertible Notes as of June 30, 2021:

	Conversion Event	Delayed Conversion Event	Repayment at Maturity
Expected event date	September 30, 2021	December 30, 2021	May 6, 2023
Term (years)	0.25	0.50	1.85
Discount rate	44.1%	44.1%	44.1%
Probability	90%	5%	5%

The Company recorded a loss of $23.3 million related to changes in the estimated fair value of the Convertible Notes in the statements of operations for the six months ended June 30, 2021. No material change to the credit risk of the Convertible Notes has occurred since the notes have been outstanding. As such, there was no impact on comprehensive income for the six months ended June 30, 2021.

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The following table provides a rollforward of the fair value of the Company's convertible notes and redeemable convertible preferred stock warrant liabilities measured on a recurring basis and classified within Level 3 fair value hierarchy:

	Redeemable Convertible Preferred Stock Warrants	Convertible Notes
Balance, December 31, 2020	$1,331	$ —
Issuance	—	235,480
Remeasurement	190	23,254
Balance, June 30, 2021	$1,521	$258,734

The estimated fair value of redeemable convertible preferred stock warrants was determined using BSM option pricing model with the following assumptions at December 31, 2020 and June 30, 2021:

Series A redeemable convertible preferred stock warrants

	December 31, 2020	June 30, 2021
Expected volatility	59.9%	70.5%
Expected term (years)	4.92	4.43
Expected dividend yield	0.00%	0.0%
Risk-free interest rate	0.41%	0.75%
Fair value per share	$16.83	$19.07

Series B redeemable convertible preferred stock warrants

	December 31, 2020	June 30, 2021
Expected volatility	46.2%	41.2%
Expected term (years)	7.91	7.41
Expected dividend yield	0.00%	0.00%
Risk-free interest rate	0.65%	1.21%
Fair value per share	$16.41	$18.99

NOTE 13. STOCK-BASED COMPENSATION

Stock Incentive Plans

In August 2014, the Company adopted the 2014 Equity Incentive Plan ("2014 Plan") under which employees, non-employee directors and consultants of the Company may be granted either incentive stock options or non-qualified stock options to purchase shares of the Company's common stock. In January 2021, the Company increased the number of shares of common stock available for issuance under the 2014 Plan from 20,399,691 to 22,399,691.

As of December 31, 2020, and June 30, 2021, shares available for future grant under the 2014 Plan were 2,950,871 and 1,138,635, respectively.

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Stock-Based Compensation

Stock-based compensation expense related to awards issued under the Company's incentive compensation plans for the six months ended June 30, 2020 and 2021, was as follows:

	Six Months Ended June 30,	
	2020	2021
Cost of revenue	$—	$ 343
Sales and marketing	—	26
Research and development	13	1,444
General and administrative	84	3,778
Total stock-based compensation expense	$97	$5,591

During the six months ended June 30, 2021, $0.1 million of stock-based compensation expense was capitalized to inventory during the manufacturing process.

Stock Options

A summary of stock option activity and related information for six months ended June 30, 2021 was as follows:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)
Outstanding at January 1, 2021	8,344,752	$ 0.61	6.48
Granted	2,975,821	15.56	
Exercised	(1,048,706)	0.26	
Forfeited	(219,878)	9.47	
Expired	(107,792)	0.37	
Outstanding at June 30, 2021	9,944,197	$ 4.93	7.26
Exercisable at June 30, 2021	5,568,512	$ 0.69	5.62
Vested and expected to vest at June 30, 2021	9,507,169	$ 4.68	7.16

The estimated fair value of each stock option award granted to employees was determined on the date of grant using the BSM option pricing model with the following assumptions for stock option grants for six months ended June 30, 2020 and 2021:

	2020	2021
Expected volatility	39.6%	40.9%
Expected term (years)	7.04	7.71
Expected dividend yield	0.0%	0.0%
Risk-free interest rate	0.41%	0.83%
Grant date fair value	$0.57	$6.93

As of June 30, 2020, there was $0.8 million of unamortized compensation cost related to unvested stock option awards. As of June 30, 2021, there was $14.0 million of unamortized compensation cost related to unvested stock option awards, which is expected to be recognized over a remaining weighted-average vesting period of 3.41 years, on a straight-line basis.

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Restricted Stock Units

In February and March 2021, the Company issued a total of 1,049,043 restricted stock units (RSUs) with the right to receive common stock shares upon vesting schedule per agreements with its Chief Financial Officer and General Counsel. Vesting commenced on the first anniversary of the grant date over four years. Compensation expense is recognized over the requisite service period.

As of June 30, 2021, there was $12.0 million of unamortized compensation cost related to unvested stock option awards, which is expected to be recognized over a remaining weighted-average vesting period of 3.69 years, on a straight-line basis.

Restricted Stock Purchase Agreements with Executives

In 2018 and 2020, the Company issued shares of common stock pursuant to Restricted Stock Purchase Agreements with its Chief Executive Officer and Chief Product Officer in exchange for Nonrecourse Notes totaling $1.4 million to finance 100% of the cost of the shares. Due to the Nonrecourse Notes being collateralized by the stock purchased and other stock held by the purchaser, these transactions are accounted for as substantive grants of common stock options since the employee does not assume the risk of ownership These shares are legally issued and outstanding and included on the balance sheet, but they are not treated as outstanding common stock for accounting purposes as they are deemed to be common stock options. Principal and interest payments received are recorded as a deposit liability until the Nonrecourse Notes are repaid at which time the deposit liability is transferred to additional paid-in capital.

A summary of the Company's option activity related to common stock through Nonrecourse Notes for the six months ended June 30, 2021 was as follows:

	Number of shares
Outstanding, December 31, 2020	9,872,293
Granted	—
Outstanding, June 30, 2021	9,872,293
Vested at June 30, 2021	8,044,384

The Company recognized the vesting of 360,516 shares of common stock subject to the 2018 restricted stock purchase agreements and 921,646 shares of common stock subject to the 2020 restricted stock purchase agreements that resulted in additional compensation expense $0.5 million for six months ended June 30, 2021. Total unrecognized compensation expense as of June 30, 2021 was $1.1 million.

Early Exercise Liability

The unvested shares of the early-exercised options are held in escrow until the stock option becomes fully vested or until the employee's termination, whichever occurs first. The right to repurchase these shares lapses over the four-year vesting period. As of June 30, 2021, the early exercise liability was approximately $0.1 million and is included in accrued liabilities in the balance sheets. There were no early exercised options prior to 2020. For accounting purposes, the early exercise of options is not considered to be a substantive exercise until the underlying awards vest.

The following table summarizes the activity of the unvested common stock issued pursuant to an early exercise of stock option awards during the six months ended June 30, 2021:

	Number of Shares
Unvested at January 1, 2021	316,666
Early exercised stock options during period	—
Vested or cancelled	(189,998)
Unvested at June 30, 2021	126,668

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NOTE 14. INCOME (LOSS) PER SHARE

Basic net income (loss) per share is computed by dividing net income (loss) attributable to common stockholders by the weighted-average common shares outstanding during the period. Diluted net income (loss) per share attributable to common stockholders is computed based on the weighted-average common shares outstanding plus the effect of dilutive potential common shares outstanding during the period calculated using the treasury stock method and the if-converted method. Dilutive potential common shares include stock options, non-vested shares, redeemable convertible preferred shares, restricted stock and similar equity instruments granted by the Company. Potential common shares issuable in connection with the Company's Convertible Notes are accounted for under the contingent share method and were excluded from diluted income (loss) per share since they are only exercisable upon a contingent event that did not occur as of June 30, 2021. Potential common share equivalents have been excluded where their inclusion would be anti-dilutive.

Basic and diluted net income (loss) attributable to common holders per share is presented in conformity with the two-class method required for participating securities as the redeemable convertible preferred stock, common stock subject to restricted stock purchase agreements, early exercised options, and restricted shares are participating securities. Under the two-class method, distributed and undistributed income allocated to participating securities are excluded from net income (loss) attributable to common stockholders for purposes of calculating basic and diluted income (loss) per share. The Company's participating securities do not have a contractual obligation to share in the Company's losses, so the net loss for the six months ended June 30, 2020 was attributed entirely to common stockholders and there is no difference in the number of shares used to calculate basic and diluted shares outstanding. For the six months ended June 30, 2020, outstanding common stock for accounting purposes excludes 2,924,130 shares subject to restricted stock purchase agreements. For the six months ended June 30, 2021, outstanding common stock for accounting purposes excludes 9,872,293 shares subject to restricted stock purchase agreements and 126,668 unvested early exercised stock options.

The following table reconciles net income and the weighted-average shares used in computing basic and diluted earnings per share:

	Six Months Ended June 30,	
	2020	2021
Numerator:		
Net income (loss)	$ (19,278)	$ 32,840
Minus: Income allocated to participating securities	—	28,565
Net income (loss) attributable to common stockholders – basic	$ (19,278)	$ 4,275
Plus: Income allocated to non-participating securities	—	1,332
Net income (loss) attributable to common stockholders - diluted	$ (19,278)	$ 5,607
Denominator:		
Basic weighted-average common shares outstanding	15,909,439	18,617,247
Dilutive potential common stock issuable:		
Common stock warrants	—	89,551
Preferred stock warrants	—	74,149
Stock options	—	7,255,390
Diluted weighted-average shares outstanding	15,909,439	26,036,337
Net income (loss) attributable to common stockholders per share		
Basic	$ (1.21)	$ 0.23
Diluted	$ (1.21)	$ 0.22

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In periods of net losses, potentially dilutive securities are not included in the calculation of diluted net income (loss) per share because to do so would be anti-dilutive.

Outstanding anti-dilutive securities not included in the diluted net income (loss) per share attributable to common stockholders were as follows (in common stock equivalent shares):

	Six Months Ended June 30,	
	2020	2021
Redeemable convertible preferred stock	54,527,458	—
Stock options	8,244,751	2,838,421
Common stock subject to restricted stock purchase agreements	2,924,130	—
Common stock warrants	75,744	—
Redeemable convertible preferred stock warrants	79,882	—
Total	65,851,965	2,838,421

Potential shares issuable related to the Convertible Notes are excluded in the table above since the number of shares that will be issuable is dependent on a future event.

NOTE 15. INCOME TAXES

The Company's effective income tax rate for the six months ended June 30, 2021 was 29% compared to 0% in the corresponding period in the prior year. Income taxes for the six months ended June 30, 2021 include state income taxes in jurisdictions for which the Company does not have available tax attributes. The Company remains under a full valuation allowance with the exception of deferred tax liabilities arising for accelerated depreciation deductions for United States federal tax purposes. The effective tax rate for the six months ended June 30, 2020 differed from the statutory tax rate primarily due to the Company maintaining a full valuation allowance against its loss from operations for tax purposes.

The Company recorded a valuation allowance against all of its United States federal and state deferred tax assets as of December 31, 2020. At each interim period, the Company evaluates both the positive and negative evidence, which includes, projected future taxable income, scheduled reversals of deferred tax liabilities, prudent tax planning strategies, and recent financial operations, as to whether changes to the valuation assessment are needed.

As of June 30, 2021, the Company recorded $0.6 million of deferred tax liability to reflect the expected reversal of deferred tax liabilities in excess of deferred tax assets in certain future tax years. The Company continues to maintain a full valuation allowance on the remaining net deferred tax asset until there is sufficient evidence to support the reversal of all or an additional portion of the allowance.

On March 11, 2021, the American Rescue Plan Act H.R. 1319 (ARPA) was enacted and signed into law in the United States. ARPA is a follow up to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The bill includes provisions on taxes, health care, unemployment benefits, direct payments, state and local funding, and other issues. ARPA did not have a significant impact on the Company's financial statements for the six months ended June 30, 2021.

In April 2021, the Company was awarded a California Competes Tax Credit (CCTC) totaling $20.0 million for a five-year agreement. The CCTC is a competitive income tax credit available to businesses across various industries that want to locate or expand in California. The CCTC can offset California corporate income tax liability and is non-refundable.

The credit is allocated in equal increments of $4.0 million over five years covering tax years 2021-2025, for a total of $20.0 million as documented in the CCTC Agreement. The credit is earned on an annual basis and certain milestones are required to be achieved. If the credit earned in a given year exceeds the Company's California corporate income tax liability, the balance can be carried over for up to six years if necessary, until exhausted.

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NOTE 16. COMMITMENTS AND CONTINGENCIES

Product Liability

The Company's business exposes it to liability risks from its potential medical diagnostic products. Product liability claims could result in the payment of significant amounts of money and divert management's attention from running the business. The Company may not be able to maintain insurance on acceptable terms, or the insurance may not provide adequate protection in the case of a product liability claim. To the extent that product liability insurance, if available, does not cover potential claims, the Company would be required to self-insure the risks associated with such claims. The Company believes it carries reasonably adequate insurance for product liability.

Standby Letters of Credit

As of December 31, 2020, the Company was party to certain letters of credit ("LOC"), primarily related to a LOC with Comerica Bank as collateral required by one of the Company's vendors. During the three months ended March 31, 2021, the Company entered into a Revolving Credit Agreement with a capacity of $130.0 million and all but one of the LOCs were no longer required by the counterparties. One LOC, totaling $6.0 million, was re-issued under the Revolving Credit Agreement.

In May 2021, the Company repaid the debt outstanding under the Revolving Credit Agreement and terminated the agreement in June 2021. Upon agreement with East West Bank and the other lenders to the Revolving Credit Agreement, the Company kept in place its outstanding LOC in the amount of $6.0 million, which has been cash collateralized.

NOTE 17. SUBSEQUENT EVENTS

The Company considers events or transactions that occur after the balance sheet date but prior to the issuance of the financial statements to provide additional evidence for certain estimates or to identify matters that may require additional disclosure. The Company has completed an evaluation of all subsequent events through September 1, 2021, the date on which the financial statements were issued, during which time nothing has occurred outside the normal course of business operations other than the events disclosed below.

Standby Letter of Credit

In July 2021, the Company increased its cash-collateralized outstanding letter of credit from $6.0 million to $12.0 million.

Forgiveness of Promissory Notes

In September 2021, the Company's board of directors canceled and forgave $8.3 million in principal and accrued interest under promissory notes between the Company and its Chief Executive Officer, comprised of $1.3 million under the promissory note issued in September 2018 and $7.0 million under the promissory note issued in July 2020. This action of the board of directors released 4,888,260 shares of common stock that had been pledged as collateral in connection with the September 2018 promissory note and 4,915,442 shares of common stock pledged as collateral in connection with the September 2020 promissory note.

In September 2021, the Company's board of directors canceled and forgave $3.5 million in principal and accrued interest under a promissory note issued in July 2020 between the Company and its Chief Product Officer and released 2,457,721 shares of common stock that had been pledged as collateral in connection with the promissory note.

The incremental compensation expense to be recognized by the Company is expected to be in line with the principal and interest balances being forgiven.

We seek to usher in a new era in healthcare.

* Depicts certain of our future planned care offerings which are subject to completion of development and may require regulatory authorization, clearance, or approval before they can be commercialized. Currently, our COVID-19 Test Kit is our first and only commercially available Test Kit, which has been authorized under two FDA EUAs for point-of-care and over-the-counter at-home use. Our COVID-19 test has also received regulatory approval from the Central Drugs Standard Control Organisation, India's national regulatory body for pharmaceuticals and medical devices, for professional point-of-care use in India, the CE mark in the European Union and Interim Order authorization from Health Canada.

Shares

Common Stock

Prospectus

Joint Book-Running Managers

Goldman Sachs & Co. LLC **Morgan Stanley** **Cowen**

Lead Manager

BTIG

, 2021

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the expenses to be incurred in connection with the offering described in this registration statement, other than underwriting discounts and commissions, all of which will be paid by the registrant. All amounts are estimates except the Securities and Exchange Commission, or SEC, registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee and the Nasdaq initial listing fee.

	Amount
SEC registration fee	$ 10,910
FINRA filing fee	15,500
Nasdaq initial listing fee	*
Accountants' fees and expenses	*
Legal fees and expenses	*
Transfer agent's fees and expenses	*
Printing and engraving expenses	*
Miscellaneous	*
Total expenses	$ *

* To be filed by amendment.

Item 14. Indemnification of Directors and Officers.

Section 102 of the Delaware General Corporation Law, or the DGCL, permits a corporation to eliminate the personal liability of its directors or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his or her duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our amended and restated certificate of incorporation that will be effective immediately prior to the completion of this offering provides that no director shall be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent that the DGCL prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the DGCL provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he or she is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which the Court of Chancery or such other court shall deem proper.

Our amended and restated certificate of incorporation that will be effective immediately prior to the completion of this offering provides that we will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of us), by reason of the fact that he or she is or was, or has agreed to become, our director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to as an Indemnitee), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys'

fees), liabilities, losses, judgments, fines (including excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974) and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding and any appeal therefrom if such Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, and, with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful.

Our amended and restated certificate of incorporation that will be effective immediately prior to the completion of this offering also provides that we will indemnify any Indemnitee who was or is a party or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of us to procure a judgment in our favor by reason of the fact that the Indemnitee is or was, or has agreed to become, our director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, and any appeal therefrom, if the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to us, unless and only to the extent, that the Court of Chancery of Delaware or the court in which such action or suit was brought determines that, despite such adjudication but in view of all of the circumstances, he or she is entitled to indemnification of such expenses (including attorney's fees). Notwithstanding the foregoing, to the extent that any Indemnitee has been successful, on the merits or otherwise, he or she will be indemnified by us against all expenses (including attorneys' fees) actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If we do not assume the defense, expenses must be advanced to an Indemnitee under certain circumstances.

In addition, we have entered into indemnification agreements with all of our executive officers and directors. In general, these agreements provide that we will indemnify the executive officer or director to the fullest extent permitted by law for claims arising in his or her capacity as an executive officer or director of our company or in connection with his or her service at our request for another corporation or entity. The indemnification agreements also provide for procedures that will apply in the event that an executive officer or director makes a claim for indemnification and establish certain presumptions that are favorable to the executive officer or director.

We maintain a general liability insurance policy that covers certain liabilities of our directors and officers arising out of claims based on acts or omissions in their capacities as directors or officers.

The underwriting agreement we will enter into in connection with the offering of common stock being registered hereby provides that the underwriters will indemnify, under certain conditions, our directors and officers (as well as certain other persons) against certain liabilities arising in connection with such offering.

Insofar as the foregoing provisions permit indemnification of directors, executive officers or persons controlling us for liability arising under the Securities Act of 1933, as amended, or the Securities Act, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 15. Recent Sales of Unregistered Securities.

Set forth below is information regarding shares of our common stock, shares of our redeemable convertible preferred stock and stock options and restricted stock units granted by us within the past three years that were not registered under the Securities Act. Also included is the consideration, if any, received by us for such shares and options and information relating to the section of the Securities Act, or rule of the SEC, under which exemption from registration was claimed.

(a) Issuances of Preferred Stock.

On March 23, 2018, we issued and sold 3,485,535 shares of our Series B redeemable convertible preferred stock to 1 investor for cash at a per share price of $1.4345 for an aggregate purchase price of $5.0 million.

On April 12, 2018, we issued and sold 10,456,605 shares of our Series B redeemable convertible preferred stock to 1 investor for cash at a per share price of $1.4345 for an aggregate purchase price of $15.0 million.

On April 25, 2018, we issued and sold 3,903,797 shares of our Series B redeemable convertible preferred stock to 9 investors for cash at a per share price of $1.4345 for an aggregate purchase price of $6.0 million.

On May 11, 2018, we issued and sold 3,590,101 shares of our Series B redeemable convertible preferred stock to 2 investors for cash at a per share price of $1.4345 for an aggregate purchase price of $5.2 million.

On June 1, 2020, we issued and sold 26,497,815 shares of our Series C-1 redeemable convertible preferred stock to 18 investors for cash at a price per share of $3.6619 for an aggregate purchase price of $97.0 million.

On June 1, 2020, we issued and sold 1,690,380 shares of our Series C-2 redeemable convertible preferred stock to 5 investors at a price per share of $3.2957 in exchange for cancellation of the aggregate and interest of $5.6 million under outstanding convertible promissory notes.

On June 5, 2020, we issued and sold 109,232 shares of our Series C-1 redeemable convertible preferred stock to 2 investors for cash at a price per share of $3.6619 for an aggregate purchase price of $0.4 million.

On June 12, 2020, we issued and sold 701,180 shares of our Series C-1 redeemable convertible preferred stock to 2 investors for cash at a price per share of $3.6619 for an aggregate purchase price of $2.6 million.

No underwriters were involved in the foregoing issuances of securities. The securities described in this section (a) of Item 15 were issued to investors in reliance upon the exemption from the registration requirements of the Securities Act, as set forth in Section 4(a)(2) under the Securities Act and, in certain cases, Regulation D thereunder, relative to transactions by an issuer not involving any public offering. All purchasers received written disclosures that the securities had not been registered under the Securities Act and that any resale must be made pursuant to a registration statement or an available exemption from such registration.

(b) Issuances of Preferred Stock Warrants.

On November 27, 2018, the Company entered into the Second Amendment to replace the growth capital advances with a revolving line which provided a credit extension of up to $4.0 million maturing on June 30, 2020 and the Growth Capital A Line which provided a credit extension of up to $6.0 million with a maturity date of September 30, 2022 if the Company provides evidence satisfactory to Comerica that the option period under (and as detailed in) our contract with BARDA has been exercised. The extension under our contract with BARDA was exercised in March 2020 (see Note 3). In connection with the Second Amendment, the Company issued 31,369 Series B Preferred stock warrants at an exercise price of $1.4345. These warrants were immediately exercisable and will expire if unexercised ten years after their issuance

No underwriters were involved in the foregoing issuances of securities. The securities described in this section (b) of Item 15 were issued to investors in reliance upon the exemption from the registration requirements of the Securities Act, as set forth in Section 4(a)(2) under the Securities Act and, in certain cases, Regulation D thereunder, relative to transactions by an issuer not involving any public offering. All purchasers received written disclosures that the securities had not been registered under the Securities Act and that any resale must be made pursuant to a registration statement or an available exemption from such registration.

(c) Issuances of Convertible Notes.

Between May 1, 2020 and May 19, 2020, we issued and sold convertible notes in the aggregate amount of $5.6 million. These notes were subsequently converted into an aggregate of 1,690,380 shares of our Series C-2 redeemable convertible preferred stock on June 1, 2020.

Between May 7 and May 12, 2021, we issued and sold Convertible Notes in an aggregate principal amount of $235.5 million. The Convertible Notes will automatically convert into shares of our common stock upon the closing of this offering.

No underwriters were involved in the foregoing issuances of securities. The securities described in this section (c) of Item 15 were issued to investors in reliance upon the exemption from the registration requirements of the Securities Act, as set forth in Section 4(a)(2) under the Securities Act and, in certain cases, Regulation D thereunder, relative to transactions by an issuer not involving any public offering. All purchasers received written disclosures that the securities had not been registered under the Securities Act and that any resale must be made pursuant to a registration statement or an available exemption from such registration.

(d) Issuances of Common Stock.

Between September 6, 2018 and July 24, 2020, we issued an aggregate of 10,297,293 shares of restricted common stock, for cash with purchase prices ranging from $0.48 to $1.41 per share, or for services rendered, to our employees, directors, advisors and consultants pursuant to our 2014 Equity Incentive Plan.

No underwriters were involved in the foregoing issuances of securities. The issuances of shares of common stock described in this section (d) of Item 15 were issued pursuant to written compensatory plans or arrangements with our employees, directors, advisors and consultants, in reliance on the exemption provided by Rule 701 promulgated under the Securities Act or pursuant to Section 4(a)(2) under the Securities Act. All recipients either received adequate information about our company or had access, through employment or other relationships, to such information.

(e) Stock Option Grants and Option Exercises

Between August 8, 2018 and February 26, 2021, we granted options to purchase an aggregate of 9,692,737 shares of common stock, with exercise prices ranging from $0.48 to $15.61 per share, to our employees, directors and consultants pursuant to our 2014 Equity Incentive Plan.

Between May 18, 2018 and March 11, 2021, we issued 1,921,256 shares of common stock upon the exercise of stock options granted under our 2014 Equity Incentive Plan for aggregate consideration of $1.1 million.

Between August 9, 2020 and May 7, 2021, we issued 1,043,000 shares of common stock upon exercise of stock options granted prior to, and separate and apart from, our 2014 Equity Incentive Plan for aggregate consideration of $0.3 million.

The stock options and the shares of common stock issuable upon the exercise of stock options described in this section (e) of Item 15 were issued pursuant to written compensatory plans or arrangements with our employees, directors and consultants, in reliance on the exemption provided by Rule 701 promulgated under the Securities Act or pursuant to Section 4(a)(2) under the Securities Act. All recipients either received adequate information about our company or had access, through employment or other relationships, to such information.

(f) Restricted Stock Units

Between February 1, 2021 and March 1, 2021, we issued 1,049,043 restricted stock units pursuant to our 2014 Equity Incentive Plan.

The restricted stock units described in this section (f) of Item 15 were issued pursuant to written compensatory plans or arrangements with our employees, directors and consultants, in reliance on the exemption provided by Rule 701 promulgated under the Securities Act or pursuant to Section 4(a)(2) under the Securities Act. All recipients either received adequate information about our company or had access, through employment or other relationships, to such information.

(g) Warrant Exercises

On June 30, 2021, we issued 84,118 shares of common stock pursuant to the exercise of an outstanding warrant at an exercise price of $0.92 per share.

Item 16. Exhibits and Financial Statement Schedules.

(a) **Exhibits**

Exhibit Number	Description of Exhibit
1.1*	Form of Underwriting Agreement
3.1	Amended and Restated Certificate of Incorporation of the Registrant
3.2	Bylaws of the Registrant
3.4*	Form of Restated Certificate of Incorporation of the Registrant (to be effective immediately prior to the completion of this offering)
3.5*	Form of Amended and Restated Bylaws of the Registrant (to be effective immediately prior to the completion of this offering)
4.1	Specimen Stock Certificate evidencing the shares of common stock

Exhibit Number	Description of Exhibit
4.2	Amended and Restated Investors' Rights Agreement, dated June 1, 2020 by and among the Registrant and the investors party thereto
4.3	Common Stock Warrant
5.1*	Opinion of Wilmer Cutler Pickering Hale and Dorr LLP
10.1	Form of Stock Option Award Agreement
10.2	2014 Equity Incentive Plan
10.3	Form of Stock Option Agreement under 2014 Equity Incentive Plan
10.4	Form of Restricted Stock Agreement under 2014 Equity Incentive Plan
10.5*	2021 Stock Incentive Plan
10.6*	Form of Stock Option Agreement under the 2021 Stock Incentive Plan
10.7*	Form of Restricted Stock Agreement under the 2021 Stock Incentive Plan
10.8*	Form of Restricted Stock Unit Agreement under the 2021 Stock Incentive Plan
10.9*	2021 Employee Stock Purchase Plan
10.10	Summary of Non-Employee Director Compensation Program
10.11†	Award/Contract No. W911NF2190001, dated October 13, 2020, by and between the Registrant and the US Army, as amended through April 19, 2021
10.12†	Loan and Security Agreement, dated February 5, 2021, by and between the Registrant and East West Bank, Comerica Bank and Silicon Valley Bank
10.13	Standard Industrial/Commercial Multi-tenant Lease, dated January 20, 2021, by and between the Registrant and Nancy Ridge Technology Center, L.P.
10.14	Lease, dated December 4, 2018, by and between the Registrant and BMR-MODA Sorrento LP
10.15	Lease Agreement, dated January 16, 2017, by and between the Registrant and ARE-SD Region No. 25, LLC
10.16	Standard Form Industrial Net Lease, dated October 9, 2020, by and between the Registrant and Westcore CG Commerce, LLC
10.17	Lease Agreement, dated June 4, 2020, by and between the Registrant and ARE-SD Region No. 67, LLC
10.18	Employment Agreement, dated January 20, 2021, by and between the Registrant and Erica Palsis
10.19	Employment Agreement, dated February 23, 2021, by and between the Registrant and John Gallagher
10.20	Form of Indemnification Agreement between the Registrant and each of its Executive Officers and Directors
10.21	Employment Agreement, dated July 8, 2021, by and between the Registrant and Ayub Khattak
10.22	Employment Agreement, dated July 8, 2021, by and between the Registrant and Clint Sever
10.23	Employment Agreement, dated July 8, 2021, by and between the Registrant and Chris Achar
10.24*	Form of Restricted Stock Unit Agreement, by and between the Registrant and Ayub Khattak
10.25*	Form of Restricted Stock Unit Agreement, by and between the Registrant and Clint Sever
23.1	Consent of BDO USA, LLP, independent registered public accounting firm
23.2*	Consent of Wilmer Cutler Pickering Hale and Dorr LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on signature page)
99.1	Consent of Joanne Bradford
99.2	Consent of Carole Faig
99.3	Consent of Maria Martinez

* To be filed by amendment.

† Portions of this exhibit have been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K.

(b) ***Financial Statement Schedules***

No financial statement schedules are provided because the information called for is not required or is shown either in the financial statements or the related notes.

Item 17. Undertakings.

(a) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or

otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(b) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, California, on this 1st day of September, 2021.

CUE HEALTH INC.

By: /s/ Ayub Khattak

Ayub Khattak
Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

We, the undersigned officers and directors of Cue Health Inc., hereby severally constitute and appoint Ayub Khattak, John Gallagher and Erica Palsis, and each of them singly (with full power to each of them to act alone), our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for him or her and in his or her name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and any other registration statement for the same offering that is effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as full to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their, his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
/s/ Ayub Khattak Ayub Khattak	Chief Executive Officer, Director, Chairman of the Board (Principal Executive Officer)	September 1, 2021
/s/ John Gallagher John Gallagher	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	September 1, 2021
/s/ Chris Achar Chris Achar	Director	September 1, 2021
/s/ Xiangmin Cui Xiangmin Cui	Director	September 1, 2021
/s/ Robin Farias-Eisner Robin Farias-Eisner	Director	September 1, 2021
/s/ Rohan Oza Rohan Oza	Director	September 1, 2021
/s/ Scott Stanford Scott Stanford	Director	September 1, 2021

Exhibit 3.1

RESTATED CERTIFICATE OF INCORPORATION
OF
CUE HEALTH INC.

Cue Health Inc., a Delaware corporation, does hereby certify that:

Cue Health Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation") and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), certifies that:

1. The name of the Corporation is Cue Health Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on December 14, 2017.

2. The Board of Directors of this Corporation duly adopted resolutions proposing to restate the Certificate of Incorporation of this Corporation, declaring said restatement to be advisable and in the best interests of this Corporation and its stockholders, and authorizing the appropriate officers of this Corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows.

RESOLVED, that the Certificate of Incorporation of this Corporation be restated in its entirety to read as set forth on Exhibit A attached hereto and incorporated herein by this reference.

In accordance with Section 245 of the General Corporation Law, Exhibit A referred to in the resolution above is attached hereto as Exhibit A and is hereby incorporated herein by this reference.

This Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of this Corporation in accordance with Section 228 of the General Corporation Law.

This Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this Corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

3. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the General Corporation Law.

4. That this Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this Corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, Cue Health Inc. has caused this Restated Certificate of Incorporation to be signed by a duly authorized officer of the Corporation, on June 1, 2020.

By: /s/ Ayub Khattak

Ayub Khattak, President and Chief Executive Officer

Exhibit A

ARTICLE I

The name of this Corporation is Cue Health Inc. (the "Corporation").

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, City of Wilmington, County of New Castle, Delaware 19808-1674. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

A. Authorized Stock. This Corporation is authorized to issue two classes of shares of stock to be designated respectively, "Common Stock" and "Preferred Stock." The total number of shares which this Corporation shall have authority to issue is Two Hundred Twelve Million Six Hundred Thirty-Six Thousand Three Hundred Four (212,636,304) shares. One Hundred Twenty- Nine Million Thirty Thousand Three Hundred Fifty-Five (129,030,355) shares, $0.00001 par value per share shall be Common Stock and Eighty-Three Million Six Hundred Five Thousand Nine Hundred Forty-Nine (83,605,949) shares, $0.00001 par value per share, shall be Preferred Stock. All rights, preferences and privileges of the Common Stock and Preferred Stock have been adjusted to reflect the recapitalization (that is, all numeric references and other provisions included in this Restated Certificate of Incorporation have already given effect to, and no further adjustment shall be made on account of, the recapitalization).

B. Common Stock.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting Rights. The holders of the Common Stock are entitled to one (1) vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or pursuant to the General Corporation Law. There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

C. Preferred Stock. The Preferred Stock authorized by this Restated Certificate of Incorporation may be issued from time to time in one or more series. Eight Million Three Hundred Ninety-Nine Thousand Two Hundred Fifty-Six (8,399,256) shares of Preferred Stock shall be designated as "Series A Preferred Stock." Forty-Six Million Two Hundred Eight Thousand Eighty-Four (46,208,084) shares of Preferred Stock shall be designated as "Series B Preferred Stock." Twenty-Seven Million Three Hundred Eight Thousand Two Hundred Twenty- Nine (27,308,229) shares of Preferred Stock shall be designated as "Series C-1 Preferred Stock." One Million Six Hundred Ninety Thousand Three Hundred Eighty (1,690,380) shares of Preferred Stock shall be designated as "Series C-2 Preferred Stock" (sometimes referred to together with the Series C-1 Preferred Stock as the "Series C Preferred Stock"). The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock are as set forth below in this Article IV.C. Unless otherwise indicated, references to "Sections" or "Subsections" in this Part C of this Article IV refer to sections and subsections of Part C of this Article IV, and the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall be collectively referred to as the "Preferred Series".

1. Dividends.

1.1 Cash Dividends.

(a) From and after the date of the issuance of any shares of Series A Preferred Stock, dividends at the rate per annum of eight percent (8%) per share based on the Series A Original Issue Price (as defined below) of such share shall accrue on such shares of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock) (the "Series A Dividends"). From and after the date of the issuance of any shares of Series B Preferred Stock, dividends at the rate per annum of eight percent (8%) per share based on the Series B Original Issue Price (as defined below) of such share shall accrue on such shares of Series B Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock) (the "Series B Dividends"). From and after the date of the issuance of any shares of Series C Preferred Stock, dividends at the rate per annum of eight percent (8%) per share based on the applicable Series C Original Issue Price (as defined below) of such share shall accrue on such shares of Series C Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock) (the "Series C Dividends"). The Series A Dividends, Series B Dividends and Series C Dividends payable pursuant to this Section 1.1(a) are hereinafter individually and collectively referred to as the "Dividends." The Dividends shall accrue from day to day, whether or not declared, however, such accrued Dividends shall be non-cumulative and payable only if and when declared by the Board of Directors out of any funds legally available therefore, provided that any Dividends so declared shall be declared and paid on both the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock on a pari passu basis. If not declared by December 31 of the current calendar year, any accrued Dividends will be extinguished and begin to accrue anew beginning on January 1 of the following calendar year. Such Dividends shall be fully paid prior to the payment of any declared dividend or distribution to the Common Stock. Any partial payment shall be made ratably among the holders of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock in proportion to the payment each such holder would receive if the full amount of such dividends were paid. Additionally, the holders of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall participate, on a pro rata basis, in any dividends paid on the Common Stock, on an as converted basis. The "Series A Original Issue Price" shall mean $0.91728 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock). The "Series B Original Issue Price" shall mean $1.4345 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock). The "Series C Original Issue Price" shall mean $3.6619 in the case of the Series C-1 Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C-1 Preferred Stock), and $3.2957 in the case of the Series C-2 Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C-2 Preferred Stock).

1.2 Non-cash Dividends. If the Corporation declares a distribution (other than a distribution described in Section 2) payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights to purchase any such securities or evidences of indebtedness, then in each such case the holders of the Preferred Series shall be entitled to a proportionate share of any such distribution as though the holders of the Preferred Series were the holders of the number of shares of Common Stock of the Corporation into which their respective shares of the applicable Preferred Series are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

1.3 Limitations. So long as any shares of a Preferred Series are outstanding, the Corporation shall not pay or declare any dividend (whether in cash or property) or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock until all dividends as set forth in Section 1.1 above on the Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock shall have been paid or declared and set apart, except for acquisitions of Common Stock by the Corporation pursuant to agreements that permit the Corporation to repurchase such shares upon termination of services to the Corporation, provided that such shares are repurchased at no more than cost.

2. Liquidation Preference.

2.1 Relative Preferences. In the event of a Liquidation Event, the holders of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall be entitled to receive, on a pari passu basis with each other and prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, an amount equal to the greater of (i) a per share amount equal to the Series A Original Issue Price (for shares of Series A Preferred Stock), the Series B Original Issue Price (for shares of Series B Preferred Stock) or the applicable Series C Original Issue Price (for shares of Series C Preferred Stock), as applicable, plus any declared but unpaid Dividends, or (ii) the per share amount that would have been payable had all shares of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock been converted into Common Stock at the then effective Series A Conversion Price (for shares of Series A Preferred Stock), Series B Conversion Price (for shares of Series B Preferred Stock) or applicable Series C Conversion Price (for shares of Series C Preferred Stock), as applicable, immediately prior to such Liquidation Event (collectively, the "Liquidation Preference"). If the assets of the Corporation are insufficient to pay the full Liquidation Preference payable to the Preferred Series, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock based on the total Liquidation Preference due each such holder under this Section 2.1.

2.2 Distribution. After, and subject to, payment in full to the holders of the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock of the Liquidation Preference, the entire remaining assets of the Corporation legally available for distribution to stockholders shall be distributed among the holders of Common Stock pro rata on the basis of the number of shares of Common Stock outstanding for holders of Common Stock.

2.3 Consolidation or Merger. For purposes of this Section 2, each of the following events shall be considered a "Liquidation Event" unless the holders of no less than two-thirds (66.67%) of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, voting together as a single class on as converted to Common Stock basis (the "Required Preferred Holders"), elect otherwise by written notice sent to the Corporation:

(a) a merger or consolidation in which

(i) the Corporation is a constituent party or

(ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except in either case, in respect of any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets or intellectual property of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation; or

(c) the closing of the transfer (whether by merger, amalgamation, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter of the Corporation's securities), of the Corporation's securities if, after such closing, such person or group of affiliated persons would hold a majority, by voting power, of the share capital or capital stock of the Corporation.

2.4 Effecting a Liquidation Event.

(a) The Corporation shall not have the power to effect a Liquidation Event referred to in Subsection 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1 and 2.2.

(b) In the event of a Liquidation Event referred to in Section 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Liquidation Event, then (i) the Corporation shall send a written notice to each holder of shares of a Preferred Series no later than the ninetieth (90th) day after the Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Preferred Series; and (iii) if the holders of a majority of the then outstanding shares of Preferred Series, on an as-converted basis, so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the "Available Proceeds"), on the one hundred fiftieth (150th) day after such Liquidation Event, to redeem all outstanding shares of Preferred Series at a price per share equal to the Liquidation Preference applicable to such shares. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Series, the Corporation shall ratably redeem each holder's shares of Preferred Series to the fullest extent of such Available Proceeds, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. Prior to the distribution or redemption provided for in this Section 2.4(b), the Corporation shall not expend or dissipate the consideration received for such Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event.

2.5 Valuation. Whenever the distribution provided for in this Section 2 is payable in securities or property other than cash, the value of the distribution shall be the fair market value of the securities or other property as determined in good faith by the Board of Directors.

2.6 Escrow/Earnout. In the event of a Liquidation Event, if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies, the definitive agreement shall provide that (x) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Liquidation Event and (y) any additional consideration that becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction.

3. Optional Conversion. The holders of the Preferred Series shall have optional conversion rights as follows ("Conversion Rights"):

3.1 Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the issuance of such share, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) the Series A Original Issue Price by (ii) the then applicable Series A Conversion Price (as defined below). The price per share at which shares of Common Stock shall be deliverable upon conversion of the Series A Preferred Stock ("Series A Conversion Price") shall initially be equal to the Series A Original Issue Price. The initial Series A Conversion Price shall be subject to adjustment as hereinafter provided. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the issuance of such share, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) the Series B Original Issue Price by (ii) the then applicable Series B Conversion Price (as defined below). The price per share at which shares of Common Stock shall be deliverable upon conversion of the Series B Preferred Stock ("Series B Conversion Price"). The initial Series B Conversion Price shall be subject to adjustment as hereinafter provided. Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the issuance of such share, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) the applicable Series C Original Issue Price by (ii) the then applicable Series C Conversion Price (as defined below). The price per share at which shares of Common Stock shall be deliverable upon conversion of the Series C Preferred Stock ("Series C Conversion Price", and generally with the Series A Conversion Price and the Series B Conversion Price, the "Conversion Price(s)") shall initially be equal to the applicable Series C Original Issue Price. The initial Series C Conversion Price shall be subject to adjustment as hereinafter provided.

3.2 Termination of Conversion Rights. In the event of liquidation, dissolution or winding up of the Corporation or a Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of the Preferred Series.

3.3 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Series. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as applicable, the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

3.4 Mechanics of Conversion.

(a) Notice of Conversion. In order for a holder of a Preferred Series to voluntarily convert shares of such Preferred Series into shares of Common Stock, such holder shall (a) provide written notice to the Corporation's transfer agent at the office of the transfer agent for the Preferred Series (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that such holder elects to convert all or any number of such holder's shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as applicable, and, if applicable, any event on which such conversion is contingent (which may include, without limitation, the effectiveness of a Liquidation Event) and (b), if such holder's shares are certificated, surrender the certificate or certificates for such shares of the Preferred Series (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Series (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state such holder's name or the names of the nominees in which such holder wishes the shares of Common Stock to be issued. If required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to such holder of the applicable Preferred Series, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as applicable, represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Section 3.3 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion, and (iii) pay all declared but unpaid dividends on the shares of the Preferred Series converted.

(b) Reservation of Shares. The Corporation shall at all times when any of the Preferred Series shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Series, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Series; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Series, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate of Incorporation (as may be further amended or restated).

(c) Effect of Conversion. All shares of a Preferred Series which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Section 3.3 and to receive payment of any dividends declared but unpaid thereon. Any shares of the Preferred Series so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of the applicable Preferred Series accordingly.

(d) No Further Adjustment. Upon any such conversion, no adjustment to the Series A Conversion Price, Series B Conversion Price or the applicable Series C Conversion Price shall be made for any declared but unpaid dividends on the Preferred Series surrendered for conversion or on the Common Stock delivered upon conversion.

(e) Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of the Preferred Series pursuant to this Section 3. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of the Preferred Series so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4. Mandatory Conversion.

4.1 Trigger Events. Upon the earlier of: (i) the closing of the sale of shares of Common Stock to the public at a price per share not less than three (3) times the Series C-1 Original Issue Price (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $50,000,000 of aggregate proceeds, net of the underwriting discount and commissions, to the Corporation (a "Qualified Public Offering"), or (ii) the date and time, or the occurrence of an event, specified by vote or written consent of the Required Preferred Holders (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "Mandatory Conversion Time"), then (a) (i) all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective applicable Series A Conversion Price and all outstanding shares of Series B Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Series B Conversion Price, and (ii) all outstanding shares of Series C Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Series C Conversion Price, provided that in addition to such vote or written consent of the Required Preferred Holders, a majority of the then outstanding shares of Series C Preferred Stock, voting together as a separate series on as-converted to Common Stock basis, shall have provided their written consent or affirmative vote, and (b) such shares of Preferred Stock may not be reissued by the Corporation.

4.2 Procedural Requirements. All holders of record of shares of the Preferred Series shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of the Preferred Series pursuant to this Section 4. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of the Preferred Series in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Series converted pursuant to Section 4.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Section 4.2. As soon as practicable after the Mandatory Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for the Preferred Series, the Corporation shall (a) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and (b) pay cash as provided in Section 3.3 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of the Preferred Series converted. Such converted Preferred Series shall be retired and cancelled and may not be reissued as shares of its respective series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of the Preferred Series accordingly.

5. Adjustments to Conversion Price(s) for Diluting Issues.

5.1 Special Definitions. For purposes of this Section 5, the following definitions shall apply.

(a) "Options" means rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(b) "Convertible Securities" means any evidences of indebtedness, shares (other than Common Stock and the Preferred Series) or other securities convertible into or exchangeable for Common Stock, but excluding Options.

(c) "Original Issue Date", as to each of the Preferred Series, means the date on which the first share of Series C Preferred Stock was first issued.

(d) "Additional Shares of Common Stock" means all shares of Common Stock issued (or, pursuant to Section 5.3, deemed to be issued) by the Corporation after the Original Issue Date, other than (1) the following shares of Common Stock, and (2) shares of Common Stock deemed issued pursuant to Section 5.3, under any of the following Options and Convertible Securities (clauses (1) and (2), collectively, "Exempted Securities"):

(i) to officers or employees or directors of, or consultants to, the Corporation pursuant to any plan (including without limitation, the Corporation's 2014 Equity Incentive Plan (as may be amended)), agreement or arrangement approved by the Corporation's Board of Directors, which approval shall include the affirmative vote of a majority of the Preferred Directors then in office, or upon exercise of the same;

(ii) upon conversion of, or as dividend or distribution on, any Preferred Series (including Options and/or Convertible Securities);

(iii) in connection with equipment lease financing transactions, bank or other debt financing transactions, real estate leasing transactions or other strategic or partner transactions approved by the Board of Directors, which approval shall include the affirmative vote of the Preferred Directors then in office, where the issuance of such securities is not principally for the purpose of raising additional equity capital for the Corporation;

(iv) pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement approved by the Board of Directors, which approval shall include the affirmative vote of a majority of the Preferred Directors then in office;

(v) by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (i)-(iv) above, or on shares of Common Stock so excluded;

(vi) by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsections 5.6, 5.7, 5.8, and 5.9;

(vii) upon exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided that such issuance is pursuant to the terms of such Option or Convertible Security and that such Option or Convertible Security is outstanding as of the Original Issue Date;

(viii) in a registered public offering under the Securities Act of 1933 as amended, pursuant to which all outstanding shares of the Preferred Series are automatically converted into Common Stock pursuant to a mandatory conversion;

(ix) pursuant to any transaction effective after the Original Issue Date that would result in an adjustment to the then-applicable Series A Conversion Price but for the consent, in writing, by the holders of no less than two-thirds (66.67%) of the then outstanding Series A Preferred Stock waiving the adjustment provision of this definition (with such waiver effective solely as to the Series A Conversion Price);

(x) pursuant to any transaction effective after the Original Issue Date that would result in an adjustment to the then-applicable Series B Conversion Price but for the consent, in writing, by the holders of no less than two-thirds (66.67%) of the then outstanding Series B Preferred Stock waiving the adjustment provision of this definition (with such waiver effective solely as to the Series B Conversion Price); and

(xi) pursuant to any transaction effective after the Original Issue Date that would result in an adjustment to the then-applicable Series C-1 Conversion Price or Series C-2 Conversion Price but for the consent, in writing, by the holders of no less than two-thirds (66.67%) of the then outstanding Series C Preferred Stock voting together waiving the adjustment provision of this definition (with such waiver effective solely as to the Series C-1 Conversion Price and/or Series C-2 Conversion Price, as applicable).

5.2 No Adjustment of Conversion Price. No adjustment in the Series A Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series A Conversion Price in effect on the date of, and immediately prior to such issue. No adjustment in the Series A Conversion Price pursuant to Section 5.4 shall be made as a result of any stock dividend or subdivision that causes an adjustment in the Series A Conversion Price pursuant to Section 5.6. No adjustment in the Series B Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Series B Conversion Price in effect on the date of, and immediately prior to such issue. No adjustment in the Series B Conversion Price pursuant to Section 5.4 shall be made as a result of any stock dividend or subdivision that causes an adjustment in the Series B Conversion Price pursuant to Section 5.7. No adjustment in the applicable Series C Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Series C Conversion Price in effect on the date of, and immediately prior to such issue. No adjustment in the applicable Series C Conversion Price pursuant to Section 5.4 shall be made as a result of any stock dividend or subdivision that causes an adjustment in the applicable Series C Conversion Price pursuant to Section 5.7.

5.3 Deemed Issue of Additional Shares of Common Stock. As to each of the Preferred Series, if the Corporation at any time or from time to time after the Original Issue Date issues any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or fixes a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of the Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of the Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of the issue or, if a record date has been fixed, as of the close of business on the record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued with respect to the Preferred Series unless the consideration per share (determined pursuant to Section 5.5) of the Additional Shares of Common Stock would be less than the applicable Conversion Price for a Preferred Series in effect on the date of and immediately prior to the issue or the record date, as the case may be, and provided further that in any case in which Additional Shares of Common Stock are deemed to be issued:

(a) no further adjustment in the applicable Conversion Price for the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of the Options or conversion or exchange of the Convertible Securities;

(b) if the Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Price, the Series B Conversion Price and the applicable Series C Conversion Price, each computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect the increase or decrease insofar as it affects the Options or the rights of conversion or exchange under the Convertible Securities; and

(c) on the expiration or cancellation of any Options, or the termination of the right to convert or exchange any Convertible Securities which has not been exercised, if the Series A Conversion Price, the Series B Conversion Price or the Series C Conversion Price shall have been adjusted upon the original issuance thereof or shall have been subsequently adjusted pursuant to clause (b) above, the applicable Conversion Price shall be recomputed as if:

(i) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of the Options or the conversion or exchange of the Convertible Securities, and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all Convertible Securities which were actually converted or exchanged plus the additional consideration actually received by the Corporation upon the conversion or exchange, if any; and

(ii) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of the Options and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which the Options were actually exercised; and

(iii) no readjustment pursuant to clauses (b) and (c) above shall have the effect of increasing the applicable Conversion Price to an amount which exceeds the lower of (A) the applicable Conversion Price on the original adjustment date or (B) the applicable Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and the readjustment date.

5.4 Adjustment of Conversion Price(s) Upon Issuance of Additional Shares of Common Stock. If, after the Original Issue Date, the Corporation issues Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 5.3) without consideration or for a consideration per share less than the applicable Conversion Price in effect on the date of and immediately prior to the issue, then and in that event, the applicable Conversion Price shall be reduced, concurrently with the issue, to a price (calculated to the nearest hundredth of a cent) determined in accordance with the following formula:

$$CP2 = CP1^* (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(a) "CP2" shall mean the applicable Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;

(b) "CP1" shall mean the applicable Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(c) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Series) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP1); and

(e) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

5.5 Determination of Consideration. For purposes of Section 5.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property. The consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation (excluding amounts paid or payable for accrued interest or dividends);

(ii) insofar as it consists of securities (1) if the securities are then traded on a national securities exchange or The Nasdaq Stock Market (or a similar national quotation system), then the value shall be computed based on the average of the closing prices of the securities on such exchange or system over the thirty-day period ending three days prior to receipt by the Corporation, (2) if the securities are actively traded over-the-counter, then the value shall be computed based on the average of the closing bid prices over the thirty-day period ending three days prior to the receipt by the Corporation and (3) if there is no active public market, then the value shall be computed based on the fair market value thereof on the date of receipt by the Corporation, as determined in good faith by the Board of Directors of the Corporation;

(iii) insofar as it consists of property other than cash and securities, be computed at the fair value thereof at the time of the issue, as determined in good faith by the Board of Directors; and

(iv) if Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of the consideration so received, computed as provided in paragraphs (i), (i) and (iii) above, as determined in good faith by the Board of Directors.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 5.3, relating to Options and Convertible Securities, shall be determined by dividing:

(i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of the Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of the consideration designed to protect against dilution) payable to the Corporation upon the exercise of the Options or the conversion or exchange of the Convertible Securities, or in the case of Options for Convertible Securities, the exercise of the Options for Convertible Securities and the conversion or exchange of the Convertible Securities, by

(ii) the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number designed to protect against dilution) issuable upon the exercise of the Options or the conversion or exchange of the Convertible Securities.

5.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the applicable Conversion Price pursuant to the terms of Section 5.4, and such issuance dates occur within a period of no more than ninety (90) days from the first such issuance to the final such issuance, then, upon the final such issuance, the applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

5.7 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

5.8 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(a) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(b) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution,

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

5.9 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property, then and in each such event the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the kind and amount of securities of the Corporation, cash or other property which they would have been entitled to receive had the Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Preferred Stock; provided, however, that no such provision shall be made if the holders of Preferred Stock receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities, cash or other property in an amount equal to the amount of such securities, cash or other property as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

5.10 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.1, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 5.4, 5.7 or 5.8), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in Section 5 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 5 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock.

5.11 No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Series against impairment.

5.12 Notices of Record Date. If the Corporation proposes at any time to:

(a) declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(b) offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(c) effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(d) merge with or into any other corporation (other than a merger in which the holders of the outstanding voting equity securities of the Corporation immediately prior to such merger hold more than fifty (50%) of the voting power of the surviving entity immediately following such merger), or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up or consummate a Liquidation Event;

then, in connection with each such event, the Corporation shall send to the holders of the Preferred Series:

(i) at least twenty (20) days' prior written notice of the date on which a record shall be taken for the dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in Subsections 5.11(c) and 5.11(d) above; and

(ii) in the case of the matters referred to in Subsections 5.11(c) and 5.11(d) above, at least twenty (20) days' prior written notice of the date when the event is to take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of that event).

Each such written notice shall be given by first class mail, postage prepaid, addressed to the holders of Preferred Series at the address for each holder as shown on the books of this Corporation.

5.13 Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 5, the Corporation, at its expense, shall promptly compute the adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of the Preferred Series a certificate executed by the Corporation's President or Chief Financial Officer setting forth the adjustment or readjustment and showing in detail the facts upon which the adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of the Preferred Series, furnish or cause to be furnished to the holder a like certificate setting forth (i) the adjustments and readjustments, (ii) the applicable Conversion Price in effect for such series and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such series.

5.14 Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of the Preferred Series. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of a Preferred Series by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to the fraction a sum in cash equal to the fair market value of the fraction on the date of conversion (as determined in good faith by the Board of Directors).

5.15 Issue Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of the Preferred Series pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

5.16 Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Series, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Series; and if at any time the number of authorized but unissued shares of Common Stock are not sufficient to effect the conversion of all then outstanding shares of the Preferred Series, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to a number of shares sufficient for that purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate of Incorporation.

6. Voting Rights.

6.1 General. Except as otherwise required by law and as provided in Section 6.2 and Section 7, the holders of the Preferred Series shall be entitled to notice of any stockholders' meeting and to vote together with the Common Stock as a single class on an as- converted basis upon any matter submitted to the stockholders for a vote, with each holder of outstanding shares of the Preferred Series entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of the applicable Preferred Series held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter.

6.2 Right to Elect Directors. For so long as at least 6,988,161 shares of Preferred Series remain outstanding (subject to appropriate adjustment in the event of any stock distribution, split, combination or other similar recapitalization with respect to the Preferred Series), the holders of the Series A Preferred Stock and Series B Preferred Stock shall be entitled, voting together as a separate class, to elect three (3) directors of this Corporation (the "Existing Preferred Directors"). For so long as at least 1,449,915 shares of Series C Preferred Stock remain outstanding (subject to appropriate adjustment in the event of any stock distribution, split, combination or other similar recapitalization with respect to the Preferred Series), the holders of the Series C Preferred Stock shall be entitled, voting together as a separate class, to elect one (1) director of this Corporation (the "Series C Director" and sometimes collectively with the Existing Preferred Directors, the "Preferred Directors"). The holders of the Common Stock, voting together as a separate class, shall be entitled to elect one (1) director; provided, however, that at such time that the Corporation's Chief Executive Officer, Ayub Khattak, shall cease to serve as the Chief Executive Officer of the Corporation, the holders of the Common Stock shall be entitled to elect two (2) directors, one of whom shall be the Chief Executive Officer of the Corporation. The holders of the Common Stock and the Preferred Series, voting together as a single class shall be entitled to elect any remaining directors of the Corporation. In the case of any vacancy in the office of a director occurring among the directors elected by the holders of a class as aforesaid, the vacancy shall be filled by the by the affirmative vote of the holders of the applicable class as provided above. Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of (i) Preferred Series, or (ii) Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Subsection 6.2, then any directorship not so filled shall remain vacant until such time as the holders of shares of (i) Preferred Series, or (iii) Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 6.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 6.2.

7. Preferred Series Protective Provisions. In addition to any other rights provided by law and except as provided by law, so long as at least 6,988,161 shares of a Preferred Series remain outstanding (appropriately adjusted for stock splits, stock dividends, combinations of similar events), this Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law) first obtaining the affirmative vote or written consent of the Required Preferred Holders:

(a) amend, alter, change or repeal any provision of the Corporation's or any subsidiary's Certificate of Incorporation, Bylaws, or any other organizational documents;

(b) increase or decrease the authorized number of shares of Common Stock or Preferred Stock or any series thereof;

(c) create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock unless the same ranks junior to the Series C-1 Preferred Stock or Series C-2 Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, voting rights, the payment of dividends and rights of redemption, or increase the authorized number of shares of Series C-1 Preferred Stock or Series C-2 Preferred Stock, or increase the authorized number of shares of any additional class or series of capital stock;

(d) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Preferred Series as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock, (iii) repurchases of unvested stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof, and (iv) or purchases in connection with the exercise of Corporation's right of first refusal;

(e) increase or decrease the authorized number of directors constituting the Board of Directors;

(f) enter into or be a party to any transaction or agreement with any executive officer of the Corporation or any "associate" (as defined in Rule 12b-2 promulgated under the Securities Exchange Act of 1934) or affiliate of any such person, except as approved by the Board of Directors, except for transactions contemplated by the purchase agreement and stockholder agreements entered into by the Corporation in connection with the initial issuance of shares of Series C Preferred Stock;

(g) commence any case, proceeding or other action (i) under any bankruptcy, insolvency or similar law seeking to have an order of relief entered with respect to it or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts or (ii) seek appointment of a receiver, trustee, custodian or other similar official for it or all or substantial part of its property, or make a general assignment for the benefit of its creditors, or admission in writing of its inability to pay its debts when they become due;

(h) liquidate, dissolve or wind-up the business and affairs of the Corporation or any of its subsidiaries, effect any merger or consolidation or any other Liquidation Event, or consent to any of the foregoing, or effect a firm commitment underwritten initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended; or

(i) agree to take any of the foregoing actions.

ARTICLE V

Subject to any additional vote required by the Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

ARTICLE VI

Subject to any additional vote required by the Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation. Each director shall be entitled to one vote on each matter presented to the Board of Directors; provided, however, that, so long as the holders of Preferred Series are entitled to elect the Preferred Directors, the affirmative vote of a majority of the Preferred Directors then in office shall be required for the authorization by the Board of Directors of any of the matters set forth in Sections 5.3, 5.4 and 5.5 of the Amended and Restated Investors' Rights Agreement, dated as of June 1, 2020, by and among the Corporation and the other parties thereto, as such agreement may be amended from time to time.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE IX

To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article IX by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

ARTICLE X

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification.

ARTICLE XI

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

ARTICLE XII

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article XII shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article XII (including, without limitation, each portion of any sentence of this Article XII containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

ARTICLE XIII

For purposes of Section 500 of the California Corporations Code (to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under this Certificate of Incorporation from employees, officers, directors or consultants of the Corporation in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board of Directors (in addition to any other consent required under this Certificate of Incorporation), such repurchase may be made without regard to any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined therein) shall be deemed to be zero (0).

* * *

Exhibit 3.2

BYLAWS OF

CUE HEALTH INC.

Adopted December 14, 2017

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(Continued)

BYLAWS

ARTICLE I — MEETINGS OF STOCKHOLDERS

1.1 ***Place of Meetings***. Meetings of stockholders of **Cue Health Inc.** (the "**Company**") shall be held at any place, within or outside the State of Delaware, determined by the Company's board of directors (the "**Board**"). The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "**DGCL**"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Company's principal executive office.

1.2 ***Annual Meeting***. An annual meeting of stockholders shall be held for the election of directors at such date and time as may be designated by resolution of the Board from time to time. Any other proper business may be transacted at the annual meeting. The Company shall not be required to hold an annual meeting of stockholders, *provided* that (i) the stockholders are permitted to act by written consent under the Company's certificate of incorporation and these bylaws, (ii) the stockholders take action by written consent to elect directors and (iii) the stockholders unanimously consent to such action or, if such consent is less than unanimous, all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

1.3 ***Special Meeting***. A special meeting of the stockholders may be called at any time by the Board, Chairperson of the Board, Chief Executive Officer or President (in the absence of a Chief Executive Officer) or by one or more stockholders holding shares in the aggregate entitled to cast not less than 10% of the votes at that meeting.

If any person(s) other than the Board calls a special meeting, the request shall:

(i) be in writing;

(ii) specify the time of such meeting and the general nature of the business proposed to be transacted; and

(iii) be delivered personally or sent by registered mail or by facsimile transmission to the Chairperson of the Board, the Chief Executive Officer, the President (in the absence of a Chief Executive Officer) or the Secretary of the Company.

The officer(s) receiving the request shall cause notice to be promptly given to the stockholders entitled to vote at such meeting, in accordance with the provisions of **sections 1.4** and **1.5** of these bylaws, that a meeting will be held at the time requested by the person or persons calling the meeting. No business may be transacted at such special meeting other than the business specified in such notice to stockholders. Nothing contained in this paragraph of this **section 1.3** shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board may be held.

1.4 ***Notice of Stockholders' Meetings***. All notices of meetings of stockholders shall be sent or otherwise given in accordance with either **section 1.5** or **section 7.1** of these bylaws not less than 10 or more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

1.5 ***Manner of Giving Notice; Affidavit of Notice***. Notice of any meeting of stockholders shall be given:

(i) if mailed, when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the Company's records; or

(ii) if electronically transmitted as provided in **section 7.1** of these bylaws.

An affidavit of the Secretary or an Assistant Secretary of the Company or of the transfer agent or any other agent of the Company that the notice has been given by mail or by a form of electronic transmission, as applicable, shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

1.6 ***Quorum***. Except as otherwise provided by law, the certificate of incorporation or these bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, in the manner provided in **section 1.7**, until a quorum is present or represented.

1.7 ***Adjourned Meeting; Notice***. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

1.8 ***Conduct of Business***. Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in the absence of the foregoing persons by the Chief Executive Officer, or in the absence of the foregoing persons by the President, or in the absence of the foregoing persons by a Vice President, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting. The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business.

1.9 ***Voting***. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of **section 1.11** of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of capital stock held by such stockholder which has voting power upon the matter in question. Voting at meetings of stockholders need not be by written ballot and, unless otherwise required by law, need not be conducted by inspectors of election unless so determined by the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote thereon which are present in person or by proxy at such meeting. If authorized by the Board, the requirement of a written ballot for the election of directors shall be satisfied by a ballot submitted by electronic transmission (as defined in **section 7.2** of these bylaws), *provided* that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

At all meetings of stockholders for the election of directors a plurality of the votes cast shall be sufficient to elect. All other elections and questions shall, unless otherwise provided by law, the certificate of incorporation or these bylaws, be decided by the vote of the holders of shares of stock having a majority of the votes which could be cast by the holders of all shares of stock entitled to vote thereon which are present in person or represented by proxy at the meeting.

1.10 ***Stockholder Action by Written Consent Without a Meeting***. Unless otherwise provided in the certificate of incorporation, any action required by the DGCL to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Company as provided in Section 228 of the DGCL. In the event that the action which is consented to is such as would have required the filing of a certificate under any provision of the DGCL, if such action had been voted on by stockholders at a meeting thereof, the certificate filed under such provision shall state, in lieu of any statement required by such provision concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

1.11 ***Record Date for Stockholder Notice; Voting; Giving Consents***. In order that the Company may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date:

(i) in the case of determination of stockholders entitled to notice of or to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting;

(ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board; and

(iii) in the case of determination of stockholders for any other action, shall not be more than sixty days prior to such other action.

If no record date is fixed by the Board:

(i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held;

(ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action; and

(iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, *provided* that the Board may fix a new record date for the adjourned meeting.

1.12 ***Proxies***. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

1.13 ***List of Stockholders Entitled to Vote***. The officer who has charge of the stock ledger of the Company shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Company shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Company's principal executive office. In the event that the Company determines to make the list available on an electronic network, the Company may take reasonable steps to ensure that such information is available only to stockholders of the Company. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

ARTICLE II — DIRECTORS

2.1 ***Powers***. Subject to the provisions of the DGCL and any limitations in the certificate of incorporation or these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the Company shall be managed and all corporate powers shall be exercised by or under the direction of the Board.

2.2 ***Number of Directors***. The number of directors shall be determined from time to time by resolution of the Board, *provided* that the Board shall consist of at least one (1) member. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

2.3 ***Election, Qualification and Term of Office of Directors***. Except as provided in **section 2.4** of these bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors. Each director, including a director elected to fill a vacancy, shall hold office until such director's successor is elected and qualified or until such director's earlier death, resignation or removal.

2.4 ***Resignation and Vacancies***. Any director may resign at any time upon notice given in writing or by electronic transmission to the Company. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation or these bylaws:

(i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Company should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

2.5 ***Place of Meetings; Meetings by Telephone***. The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

2.6 ***Conduct of Business***. Meetings of the Board shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

2.7 ***Regular Meetings***. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board.

2.8 ***Special Meetings; Notice***. Special meetings of the Board for any purpose or purposes may be called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, the Secretary or any two directors.

Notice of the time and place of special meetings shall be:

(i) delivered personally by hand, by courier or by telephone;

(ii) sent by United States first-class mail, postage prepaid;

(iii) sent by facsimile; or

(iv) sent by electronic mail, directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the Company's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the Company's principal executive office) nor the purpose of the meeting.

2.9 ***Quorum***. At all meetings of the Board, a majority of the total number of directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

2.10 ***Board Action by Written Consent Without a Meeting***. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.11 ***Fees and Compensation of Directors***. Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board shall have the authority to fix the compensation of directors.

2.12 ***Approval of Loans to Officers***. The Company may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Company or of its subsidiary, including any officer or employee who is a director of the Company or its subsidiary, whenever, in the judgment of the Board, such loan, guaranty or assistance may reasonably be expected to benefit the Company. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board shall approve, including, without limitation, a pledge of shares of stock of the Company.

2.13 ***Removal of Directors***. Unless otherwise restricted by statute, the certificate of incorporation or these bylaws, any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

ARTICLE III — COMMITTEES

3.1 ***Committees of Directors***. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Company. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Company.

3.2 ***Committee Minutes***. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

3.3 ***Meetings and Action of Committees***. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(i) **section 2.5** (Place of Meetings; Meetings by Telephone);

(ii) **section 2.7** (Regular Meetings);

(iii) **section 2.8** (Special Meetings; Notice);

(iv) **section 2.9** (Quorum);

(v) **section 2.10** (Board Action by Written Consent Without a Meeting); and

(vi) **section 6.10** (Waiver of Notice)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. *However*:

(i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(ii) special meetings of committees may also be called by resolution of the Board; and

(iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE IV — OFFICERS

4.1 ***Officers***. The officers of the Company shall be a Chairperson of the Board, a President and Chief Executive Officer, a Secretary and a Treasurer or Chief Financial Officer. The Company may also have, at the discretion of the Board, a Vice Chairperson of the Board, one or more Vice Presidents, one or more Assistant Treasurers, one or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

4.2 ***Appointment of Officers***. The Board shall appoint the officers of the Company, except such officers as may be appointed in accordance with the provisions of **sections 4.3** and **4.5** of these bylaws, subject to the rights, if any, of an officer under any contract of employment.

4.3 ***Subordinate Officers***. The Board may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint, such other officers and agents as the business of the Company may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

4.4 ***Removal and Resignation of Officers***. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board at any regular or special meeting of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Company. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

4.5 ***Vacancies in Offices***. Any vacancy occurring in any office of the Company shall be filled by the Board or as provided in **section 4.2**.

4.6 ***Representation of Shares of Other Corporations***. Unless otherwise directed by the Board, the President or any other person authorized by the Board or the President is authorized to vote, represent and exercise on behalf of the Company all rights incident to any and all shares of any other corporation or corporations standing in the name of the Company. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

4.7 ***Authority and Duties of Officers***. Except as otherwise provided in these bylaws, the officers of the Company shall have such powers and duties in the management of the Company as may be designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

ARTICLE V — RECORDS AND REPORTS

5.1 ***Maintenance and Inspection of Records***. The Company shall, either at its principal executive office or at such place or places as designated by the Board, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Company's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent so to act on behalf of the stockholder. The demand under oath shall be directed to the Company at its registered office in Delaware or at its principal executive office.

5.2 ***Inspection by Directors***. Any director shall have the right to examine the Company's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the Company to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

5.3 ***Annual Report***. The Company shall cause an annual report to be sent to the stockholders of the Company to the extent required by applicable law. If and so long as there are fewer than 100 holders of record of the Company's shares, the requirement of sending of an annual report to the stockholders of the Company is expressly waived (to the extent permitted under applicable law).

ARTICLE VI — GENERAL MATTERS

6.1 ***Stock Certificates; Partly Paid Shares***. The shares of the Company shall be represented by certificates, *provided* that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the Company by the Chairperson of the Board or Vice Chairperson of the Board, or the Chief Executive Officer or President or a Vice President, and by the Chief Financial Officer or Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Company representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

The Company may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the Company in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Company shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

6.2 ***Special Designation on Certificates***. If the Company is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Company shall issue to represent such class or series of stock; *provided* that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Company shall issue to represent such class or series of stock a statement that the Company will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

6.3 ***Lost Certificates***. Except as provided in this **section 6.3**, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Company and cancelled at the same time. The Company may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Company may require the owner of the lost, stolen or destroyed certificate, or such owner’s legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 ***Construction; Definitions***. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

6.5 ***Dividends***. The Board, subject to any restrictions contained in either (i) the DGCL, or (ii) the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the Company's capital stock.

The Board may set apart out of any of the funds of the Company available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Company, and meeting contingencies.

6.6 ***Fiscal Year***. The fiscal year of the Company shall be fixed by resolution of the Board and may be changed by the Board.

6.7 ***Seal***. The Company may adopt a corporate seal, which shall be in such form as may be approved from time to time by the Board. The Company may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

6.8 ***Stock Transfer Agreements***. The Company shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Company to restrict the transfer of shares of stock of the Company of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

6.9 ***Registered Stockholders***. The Company:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;

(ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and

(iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

6.10 ***Waiver of Notice***. Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

6.11 ***Restrictions on Transfer and Ownership of Common Stock of the Company.***

Before a stockholder may transfer any of his, her, or its shares of common stock of the Company, such stockholder must comply with the provisions of this Section 6.11, together with any other contractual restrictions on transfer as otherwise agreed by such stockholder (e.g., any right of first refusal and co-sale agreement in effect by and among the Company, such stockholder and certain holders of the Company's stock).

(i) ***Notice of Proposed Transfer***. Prior to the selling stockholder (for purposes of this Section 6.11, the "**Seller**") Transferring any of its shares (the "**Seller Shares**"), Seller shall deliver to the Company a written notice (the "**Transfer Notice**") stating: (a) Seller's *bona fide* intention to Transfer such Seller Shares; (b) the name, address and phone number of each proposed purchaser or other transferee (each, a "**Proposed Transferee**"); (c) the aggregate number of Seller Shares proposed to be Transferred to each Proposed Transferee (the "**Offered Shares**"); (d) the *bona fide* cash price or, in reasonable detail, other consideration for which Seller proposes to Transfer the Offered Shares (the "**Offered Price**"); and (e) the Company's right to exercise its Right of First Refusal with respect to the Offered Shares.

(ii) ***Company's Right of First Refusal***. For a period of twenty (20) days (the "**Initial Exercise Period**") after the date on which the Transfer Notice is delivered to the Company, the Company shall have the right to purchase all or any part of the Offered Shares on the terms and conditions set forth in this Section 6.11(ii). In order to exercise its right hereunder, the Company must deliver written notice to Seller within the Initial Exercise Period. Upon the earlier to occur of (a) the expiration of the Initial Exercise Period or (b) the time when Seller has received written confirmation from the Company regarding its exercise of its Right of First Refusal, the Company shall be deemed to have made its election with respect to the Offered Shares.

(iii) ***ROFR Confirmation Notice***. Within five (5) days after the expiration of the Initial Exercise Period, Seller will give written notice to the Company specifying the number of Offered Shares to be purchased by the Company if it exercises its Right of First Refusal (the "**ROFR Confirmation Notice**"). The ROFR Confirmation Notice shall also specify the number of Offered Shares not purchased by the Company, if any, pursuant to Section 6.11(ii) ("**Unsubscribed Shares**").

(iv) ***Seller's Right to Transfer***. Subject to Section 6.11(v), if any of the Offered Shares remain available after the exercise of all Rights of First Refusal as described in this Section 6.11, then the Seller shall be free to transfer any such remaining shares to the Proposed Transferee at the Offered Price or a higher price as provided in the Transfer Notice; *provided however* that if the Offered Shares are not so Transferred during the seventy-two (72) day period following the delivery of the Transfer Notice, then Seller may not Transfer any such remaining Offered Shares without complying again in full with the provisions of this Section 6.11.

(v) ***Board's Overall Right to Approve***. Notwithstanding anything in this Section 6.11 to the contrary, the Seller's right to Transfer provided in Section 6.11(iv) shall be subject in all cases to the prior written approval of such Transfer by a majority of the members of the Board. For the avoidance of doubt, no Transfer by the Seller pursuant to Section 6.11(iv) shall be effective without the prior written approval of a majority of the members of the Board.

(vi) ***Purchase Price.*** The purchase price for the Offered Shares to be purchased by the Company exercising its Right of First Refusal under this Agreement will be as detailed in the Transfer Notice, and will be payable within ten (10) days of the later of (a) the delivery of the ROFR Confirmation Notice or (b) the delivery of the prior written approval of the Board, if necessary.

For purposes of this section 6.11, the following definitions shall apply:

"***Right of First Refusal***" shall mean the rights of first refusal provided to the Company in this Section 6.11.

"***Transfer***" shall mean and include any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including but not limited to transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceeds or general assignees for the benefit of creditors, whether voluntarily or by operation of law, directly or indirectly, *except* (i) any transfers of Seller Shares by a Seller to Seller's spouse, ex-spouse, domestic partner, lineal descendant or antecedent, brother or sister, the adopted child or adopted grandchild, or the spouse or domestic partner of any child, adopted child, grandchild or adopted grandchild of Seller, or to a trust or trusts for the exclusive benefit of Seller or those members of Seller's family specified in this definition or transfers of Seller Shares by Seller by devise or descent; *provided* that, in all cases, the transferee or other recipient executes an instrument acknowledging receipt of a copy of these Bylaws; (ii) any *bona fide* gift effected for tax planning purposes, *provided* that the pledgee, transferee or donee or other recipient executes an instrument acknowledging receipt of a copy of these Bylaws; (iii) any transfer to the Company pursuant to the terms of this Section 6.11; and (iv) any repurchase of Seller Shares by the Company pursuant to agreements under which the Company has the option to repurchase such Seller Shares upon the occurrence of certain events, such as termination of employment, or in connection with the exercise by the Company of any Rights of First Refusal.

ARTICLE VII — NOTICE BY ELECTRONIC TRANSMISSION

7.1 ***Notice by Electronic Transmission***. Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the Company under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any such consent shall be deemed revoked if:

(i) the Company is unable to deliver by electronic transmission two consecutive notices given by the Company in accordance with such consent; and

(ii) such inability becomes known to the Secretary or an Assistant Secretary of the Company or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iv) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Company that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

7.2 ***Definition of Electronic Transmission***. An "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

7.3 ***Inapplicability***. Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

ARTICLE VIII — INDEMNIFICATION

8.1 ***Indemnification of Directors and Officers***. The Company shall indemnify and hold harmless, to the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended, any director or officer of the Company who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director, officer, employee or agent of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding. The Company shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized by the Board.

8.2 ***Indemnification of Others***. The Company shall have the power to indemnify and hold harmless, to the extent permitted by applicable law as it presently exists or may hereafter be amended, any employee or agent of the Company who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an employee or agent of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding.

8.3 ***Prepayment of Expenses***. The Company shall pay the expenses incurred by any officer or director of the Company, and may pay the expenses incurred by any employee or agent of the Company, in defending any Proceeding in advance of its final disposition; *provided* that the payment of expenses incurred by a person in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this **Article VIII** or otherwise.

8.4 ***Determination; Claim***. If a claim for indemnification or payment of expenses under this **Article VIII** is not paid in full within sixty days after a written claim therefor has been received by the Company the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Company shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

8.5 ***Non-Exclusivity of Rights***. The rights conferred on any person by this **Article VIII** shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

8.6 ***Insurance***. The Company may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Company would have the power to indemnify him or her against such liability under the provisions of the DGCL.

8.7 ***Other Indemnification***. The Company's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

8.8 ***Amendment or Repeal***. Any repeal or modification of the foregoing provisions of this **Article VIII** shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE IX — AMENDMENTS

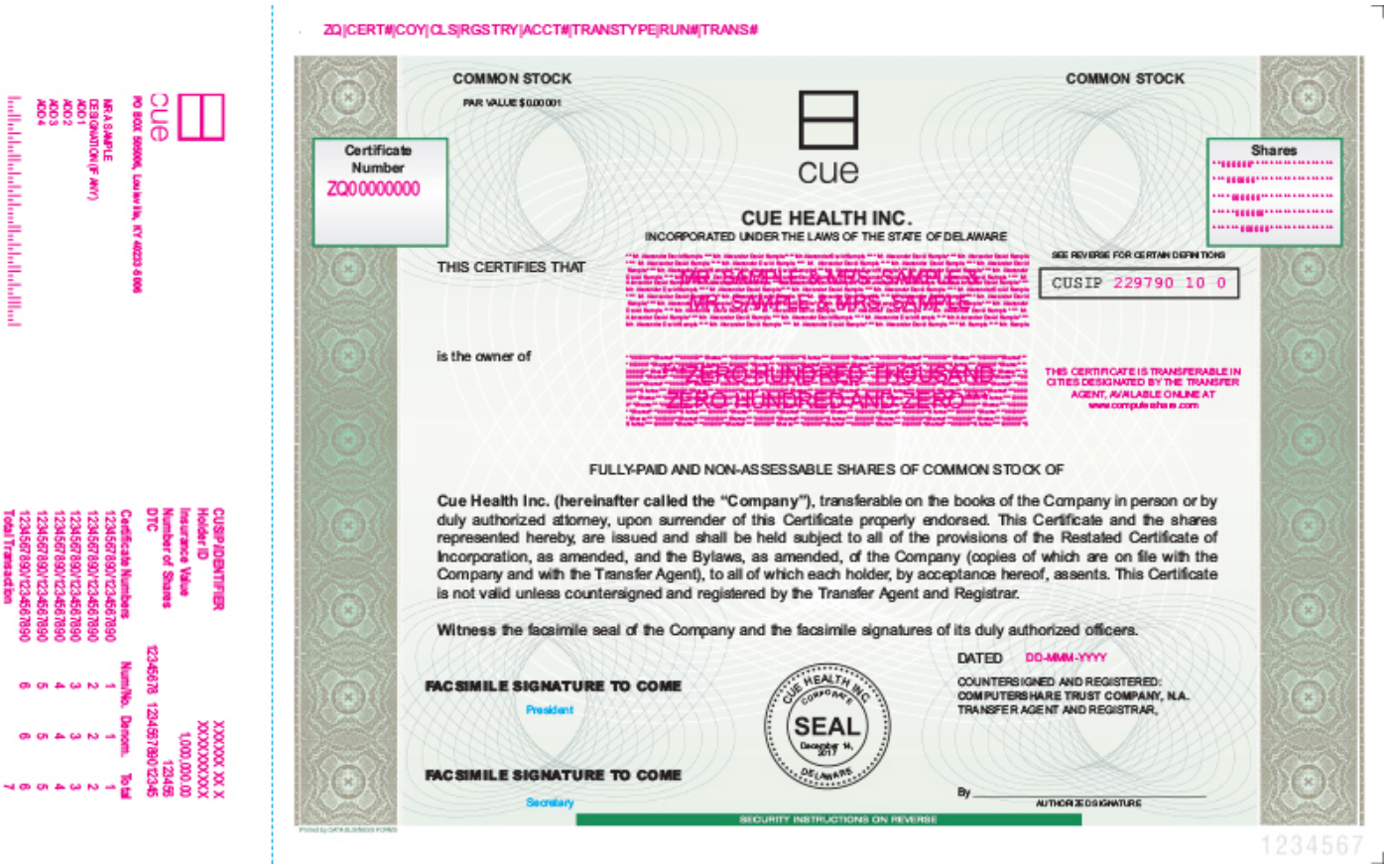
These bylaws may be adopted, amended or repealed by a majority of the stockholders entitled to vote. However, the Company may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

CERTIFICATE OF ADOPTION OF BYLAWS
OF
CUE HEALTH INC.

The undersigned certifies that he is the duly elected, qualified and acting Secretary of Cue Health Inc., a Delaware corporation (the "**Company**"), and that the foregoing bylaws, comprising a total seventeen (17) pages, were adopted as the bylaws of the Company on December 14, 2017 by the sole incorporator of the Company.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of December 14, 2017.

/s/ Ayub Khattak
Ayub Khattak, Secretary


ZQ|CERT#|COY|CLS|RGSTRY|ACCT#|TRANSTYPE|RUN#|TRANS#
COMMON STOCK
PAR VALUE $0.000001
COMMON STOCK
Certificate Number
ZQ00000000
Shares
CUE HEALTH INC.
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
THIS CERTIFIES THAT
SEE REVERSE FOR CERTAIN DEFINITIONS
CUSIP 229790 10 0
is the owner of
THIS CERTIFICATE IS TRANSFERABLE IN CITIES DESIGNATED BY THE TRANSFER AGENT, AVAILABLE ONLINE AT www.computershare.com
FULLY-PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK OF
Cue Health Inc. (hereinafter called the "Company"), transferable on the books of the Company in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. This Certificate and the shares represented hereby, are issued and shall be held subject to all of the provisions of the Restated Certificate of Incorporation, as amended, and the Bylaws, as amended, of the Company (copies of which are on file with the Company and with the Transfer Agent), to all of which each holder, by acceptance hereof, assents. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar.
Witness the facsimile seal of the Company and the facsimile signatures of its duly authorized officers.
DATED DD-MMM-YYYY
FACSIMILE SIGNATURE TO COME
President
SEAL
FACSIMILE SIGNATURE TO COME
Secretary
COUNTERSIGNED AND REGISTERED:
COMPUTERSHARE TRUST COMPANY, N.A.
TRANSFER AGENT AND REGISTRAR,
By
AUTHORIZED SIGNATURE
SECURITY INSTRUCTIONS ON REVERSE
1234567
CUSIP/IDENTIFIER
Holder ID
Insurance Value
Number of Shares
DTC
Certificate Numbers
Num
No.
Denom.
To
Id
Total Transaction

CUE HEALTH INC.

THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH SHAREHOLDER WHO SO REQUESTS, A SUMMARY OF THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OF THE COMPANY AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND RIGHTS, AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES, WHICH ARE FIXED BY THE CERTIFICATE OF INCORPORATION OF THE COMPANY, AS AMENDED, AND THE RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES. SUCH REQUEST MAY BE MADE TO THE OFFICE OF THE SECRETARY OF THE COMPANY OR TO THE TRANSFER AGENT. THE BOARD OF DIRECTORS MAY REQUIRE THE OWNER OF A LOST OR DESTROYED STOCK CERTIFICATE, OR HIS LEGAL REPRESENTATIVES, TO GIVE THE COMPANY A BOND TO INDEMNIFY IT AND ITS TRANSFER AGENTS AND REGISTRARS AGAINST ANY CLAIM THAT MAY BE MADE AGAINST THEM ON ACCOUNT OF THE ALLEGED LOSS OR DESTRUCTION OF ANY SUCH CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	- as tenants in common	UNIF GIFT MIN ACT	- _____ (Cust) Custodian _____ (Minor) under Uniform Gifts to Minors Act _____ (State)
TEN ENT	- as tenants by the entireties		
JT TEN	- as joint tenants with right of survivorship and not as tenants in common	UNIF TRF MIN ACT	- _____ (Cust) Custodian (until age _____) _____ (Minor) under Uniform Transfers to Minors Act _____ (State)

Additional abbreviations may also be used though not in the above list.

For value received, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE, OF ASSIGNEE)

_____

_____

_____ Shares

of the common stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said stock on the books of the within-named Company with full power of substitution in the premises.

Dated: _____ 20_____

Signature: _____

Signature: _____

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Signature(s) Guaranteed: Medallion Guarantee Stamp

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions) WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C. RULE 17Ad-15.

SECURITY INSTRUCTIONS

THIS IS WATERMARKED PAPER. DO NOT ACCEPT WITHOUT NOTICE. NO WATERMARK. HOLD TO LIGHT TO VERIFY WATERMARK.

The IRS requires that the named transfer agent ("we") report the cost basis of certain shares or units acquired after January 1, 2011. If your shares or units are covered by the legislation, and you requested to sell or transfer the shares or units using a specific cost basis calculation method, then we have processed as you requested. If you did not specify a cost basis calculation method, then we have defaulted to the first in, first out (FIFO) method. Please consult your tax advisor if you need additional information about cost basis.

If you do not keep in contact with the issuer or do not have any activity in your account for the time period specified by state law, your property may become subject to state unclaimed property laws and transferred to the appropriate state.

1S3426J

Exhibit 4.2

AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

THIS AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT (this "**Agreement**"), is made as of the 1st day of June, 2020, by and among Cue Health Inc., a Delaware corporation (the "**Company**"), and each of the investors listed on Schedule A hereto, each of which is referred to in this Agreement as an "**Investor**," and any Additional Purchaser (as defined in the Purchase Agreement) that becomes a party to this Agreement in accordance with Section 6.9 hereof.

RECITALS

WHEREAS, certain Investors (the "**Prior Investors**") own outstanding shares of the Company's Series A Preferred Stock and Series B Preferred Stock, and are parties to the Amended and Restated Investors' Rights Agreement, dated as of December 20, 2017 (the "**Prior Agreement**"), and it is a condition to closing of the sale of the Series C Preferred Stock under the Purchase Agreement that, pursuant to the requirements of Section 6.6 of the Prior Agreement, the requisite parties to the Prior Agreement amend and restate the Prior Agreement by entering into this Agreement;

WHEREAS, the Company and certain Investors are parties to that certain Series C Preferred Stock Purchase Agreement dated as of even date herewith (the "**Purchase Agreement**"); and

WHEREAS, the undersigned Prior Investors, as holders of a majority of the outstanding Registrable Securities, the Company and the Series C Investors, desire to enter into this Agreement to amend, restate and replace their rights and obligations under the Prior Agreement with the rights and obligations set forth in this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1 Definitions. For purposes of this Agreement:

"**Affiliate**" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including without limitation any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person. For purposes of this Agreement, Cove, and any future company under common administration with Cove, shall be considered "Affiliates".

"**Common Stock**" means shares of the Company's Common Stock, par value $0.00001 per share.

"**Competitor**" means a Person engaged, directly or indirectly (including through any partnership, limited liability company, corporation, joint venture or similar arrangement (whether now existing or formed hereafter)), in the quantification and/or detection of molecular analytes, but shall not include (i) any financial investment firm or collective investment vehicle that, together with its Affiliates, holds less than twenty percent (20%) of the outstanding voting power of any Competitor and does not, nor do any of its Affiliates, have a right to designate any members of the Board of Directors of any Competitor, (ii) JJDC, (iii) Decheng, (iv) Section 32, (v) Madrone, (vi) Acme, or NVGA I, LLC.

"**Cove**" means, collectively, Cove Investors I, LLC, a Delaware limited liability company, and Cove Investors II, LLC, a Delaware limited liability company.

"**Damages**" means any loss, damage, claim or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, damage, claim or liability (or any action in respect thereof) arises out of or is based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law.

"**Decheng**" means Decheng Capital China Life Sciences USD Fund III, L.P. a Cayman Islands exempted limited partnership.

"**Derivative Securities**" means any securities or rights convertible into, or exercisable or exchangeable for (in each case, directly or indirectly)**,** Common Stock, including options and warrants.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Excluded Registration**" means (i) a registration relating to the sale of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

"**Form S-1**" means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

"**Form S-3**" means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits incorporation of substantial information by reference to other documents filed by the Company with the SEC.

"**GAAP**" means generally accepted accounting principles in the United States.

"**Holder**" means any holder of Registrable Securities who is a party to this Agreement.

"**Immediate Family Member**" means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, registered domestic partner, sibling, mother-in-law, father-in- law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, of a natural person referred to herein.

"**Initiating Holders**" means, collectively, Holders who properly initiate a registration request under this Agreement.

"**IPO**" means the Company's first firm commitment underwritten public offering of its Common Stock under the Securities Act.

"**JJDC**" means Johnson & Johnson Innovation – JJDC, Inc.

"**Madrone**" means Madrone Opportunity Fund, L.P., a Delaware limited partnership.

"**Major Investor**" means any Investor that, individually or together with such Investor's Affiliates, holds at least 5,000,000 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof); provided, however, that for purposes of this Agreement, (i) JJDC shall be deemed a Major Investor for so long as JJDC holds at least 697,107 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof), (ii) PGVC 2018 LLC ("**PGVC**") shall be deemed a Major Investor for so long as PGVC holds at least 697,107 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof), and (iii) Section 32 shall be deemed a Major Investor for so long as Section 32 holds at least 697,107 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof).

"**New Securities**" means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

"**Person**" means any individual, corporation, partnership, trust, limited liability company, association or other entity.

"**Preferred Directors**" means any director of the Company that the holders of record of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock are entitled to elect pursuant to the Company's Certificate of Incorporation, as amended.

"**Preferred Stock**" means shares of the Company's Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock.

"**Registrable** Securities" means (i) the Common Stock issuable or issued upon conversion of the Preferred Stock; (ii) any Common Stock, or any Common Stock issued or issuable (directly or indirectly) upon conversion and/or exercise of any other securities of the Company, acquired by the Investors after the date hereof; and (iii) any Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right, or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clause (i) and (ii) above; excluding in all cases, however, any Registrable Securities sold by a Person in a transaction in which the applicable rights under this Agreement are not assigned pursuant to Subsection 6.1, and excluding for purposes of Section 2 any shares for which registration rights have terminated pursuant to Subsection 2.13 of this Agreement.

"**Registrable Securities then outstanding**" means the number of shares determined by adding the number of shares of outstanding Common Stock that are Registrable Securities and the number of shares of Common Stock issuable (directly or indirectly) pursuant to then exercisable and/or convertible securities that are Registrable Securities.

"**Restricted Securities**" means the securities of the Company required to be notated with the legend set forth in Subsection 2.12(b) hereof.

"**Section 32**" means Section 32 Fund 2, LP.

"**SEC**" means the Securities and Exchange Commission.

"**SEC Rule 144**" means Rule 144 promulgated by the SEC under the Securities Act.

"**SEC Rule 145**" means Rule 145 promulgated by the SEC under the Securities Act.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Selling Expenses**" means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Subsection 2.6.

"**Series A Preferred Stock**" means shares of the Company's Series A Preferred Stock, par value $0.00001 per share.

"**Series B Preferred Stock**" means shares of the Company's Series B Preferred Stock, par value $0.00001 per share.

"**Series C Preferred Stock**" means shares of the Company's Series C-1 Preferred Stock and Series C-2 Preferred Stock.

"**Series C-1 Preferred Stock**" means shares of the Company's Series C-1 Preferred Stock, par value $0.00001 per share.

"**Series C-2 Preferred Stock**" means shares of the Company's Series C-2 Preferred Stock, par value $0.00001 per share.

2 Registration Rights. The Company covenants and agrees as follows:

2.1 Demand Registration.

(a) Form S-1 Demand. If at any time after the earlier of (i) five (5) years after the date of this Agreement or (ii) one hundred eighty (180) days after the effective date of the registration statement for the IPO, the Company receives a request from Holders of a majority of the Registrable Securities then outstanding that the Company file a Form S-1 registration statement with respect to the Registrable Securities then outstanding with an anticipated aggregate offering price of at least $20 million, then the Company shall within ten (10) days after the date such request is given, give notice thereof (the "**Demand Notice**") to all Holders other than the Initiating Holders; and (y) as soon as practicable, and in any event within sixty (60) days after the date such request is given by the Initiating Holders, file a Form S-1 registration statement under the Securities Act covering all Registrable Securities that the Initiating Holders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Subsections 2.1(c) and 2.3.

(b) Form S-3 Demand. If at any time when it is eligible to use a Form S-3 registration statement, the Company receives a request from Holders of at least twenty-five percent (25%) of the Registrable Securities then outstanding that the Company file a Form S-3 registration statement with respect to outstanding Registrable Securities of such Holders having an anticipated aggregate offering price, net of Selling Expenses, of at least $1 million, then the Company shall (i) within ten (10) days after the date such request is given, give a Demand Notice to all Holders other than the Initiating Holders; and (ii) as soon as practicable, and in any event within forty-five (45) days after the date such request is given by the Initiating Holders, file a Form S-3 registration statement under the Securities Act covering all Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Subsections 2.1(c) and 2.3.

(c) Notwithstanding the foregoing obligations, if the Company furnishes to Holders requesting a registration pursuant to this Subsection 2.1 a certificate signed by the Company's chief executive officer stating that in the good faith judgment of the Company's Board of Directors it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act, then the Company shall have the right to defer taking action with respect to such filing, and any time periods with respect to filing, and any time periods with respect to filing or effectiveness thereof shall be tolled correspondingly, for a period of not more than one hundred twenty (120) days after the request of the Initiating Holders is given; provided, however, that the Company may not invoke this right more than twice in any twelve (12) month period; and provided further that the Company shall not register any securities for its own account or the account of any other stockholder during such one hundred twenty (120) day period other than an Excluded Registration.

(d) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(a)(i) during the period that is ninety (90) days before the Company's good faith estimate of the date of filing of, and ending on a date that is one hundred eighty (180) days after the effective date of, a Company- initiated registration, provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; (ii) after the Company has effected two registrations pursuant to Subsection 2.1(a); or (iii) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Subsection 2.1(b). The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(b) (i) during the period that is ninety (90) days before the Company's good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration, provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; or (ii) if the Company has effected two registrations pursuant to Subsection 2.1(b) within the twelve (12) month period immediately preceding the date of such request. A registration shall not be counted as "effected" for purposes of this Subsection 2.1(d) until such time as the applicable registration statement has been declared effective by the SEC, unless the Initiating Holders withdraw their request for such registration (other than as a result of a material adverse change to the Company, elect not to pay the registration expenses therefor, and forfeit their right to one demand registration statement pursuant to Subsection 2.6, in which case such withdrawn registration statement shall be counted as "effected" for purposes of this Subsection 2.1(d).

2.2 Company Registration. If the Company proposes to register (including, for this purpose, a registration effected by the Company for stockholders other than the Holders) any of its Common Stock under the Securities Act in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give each Holder notice of such registration. Upon the request of each Holder given within twenty (20) days after such notice is given by the Company, the Company shall, subject to the provisions of Subsection 2.3, cause to be registered all of the Registrable Securities that each such Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Subsection 2.2 before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such withdrawn registration shall be borne by the Company in accordance with Subsection 2.6.

2.3 Underwriting Requirements.

(a) If, pursuant to Subsection 2.1, the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Subsection 2.1, and the Company shall include such information in the Demand Notice. The underwriter(s) will be selected by the Company and shall be reasonably acceptable to a majority in interest of the Initiating Holders. In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Subsection 2.4(e)) enter into an underwriting agreement in customary form with the underwriter(s) selected for such underwriting. Notwithstanding any other provision of this Subsection 2.3, if the managing underwriter advises the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities owned by each Holder or in such other proportion as shall mutually be agreed to by all such selling Holders; provided, however, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting.

(b) In connection with any offering involving an underwriting of shares of the Company's capital stock pursuant to Subsection 2.2, the Company shall not be required to include any of the Holders' Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the number of securities to be sold (other than by the Company) that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable to) the number of Registrable Securities owned by each selling Holder or in such other proportions as shall mutually be agreed to by all such selling Holders. Notwithstanding the foregoing, in no event shall the number of Registrable Securities included in the offering be reduced unless all other securities (other than securities to be sold by the Company) are first entirely excluded from the offering or (ii) the number of Registrable Securities included in the offering be reduced below thirty percent (30%) of the total number of securities included in such offering, unless such offering is the IPO, in which case the selling Holders may be excluded further if the underwriters make the determination described above and no other stockholder's securities are included in such offering. For purposes of the provision in this Subsection 2.3(b) concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, stockholders, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the foregoing Persons, shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such "selling Holder," as defined in this sentence.

2.4 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the registration statement has been completed; provided, however, that such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common Stock (or other securities) of the Company, from selling any securities included in such registration;

(b) prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the Securities Act in order to enable the disposition of all securities covered by such registration statement;

(c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities;

(d) use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the selling Holders; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

(f) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on a national securities exchange or trading system and each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed;

(g) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) promptly make available for inspection by the selling Holders, any managing underwriter participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the selling Holders, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company's officers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(i) notify each selling Holder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed; and

(j) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus.

In addition, the Company shall ensure that, at all times after any registration statement covering a public offering of securities of the Company under the Securities Act shall have become effective, its insider trading policy shall provide that the Company's directors may implement a trading program under Rule 10b5-1 of the Exchange Act.

2.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as is reasonably required to effect the registration of such Holder's Registrable Securities.

2.6 Expenses of Registration. All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 2, including all registration, filing, and qualification fees; printers' and accounting fees; fees and disbursements of counsel for the Company; and the reasonable fees and disbursements of one counsel for the selling Holders not to exceed Twenty Five Thousand Dollars ($25,000) ("**Selling Holder Counsel**"), shall be borne and paid by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Subsection 2.1 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one registration pursuant to Subsections 2.1(a) or 2.1(b), as the case may be. All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. If any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, officers, directors, and stockholders of each such Holder; legal counsel and accountants for each such Holder; any underwriter (as defined in the Securities Act) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its directors, each of its officers who has signed the registration statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act), any other Holder selling securities in such registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration; and each such selling Holder will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further that in no event shall the aggregate amounts payable by any Holder by way of indemnity or contribution under Subsections 2.8(b) and 2.8(d) exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of fraud or willful misconduct by such Holder.

(c) Promptly after receipt by an indemnified party under this Subsection 2.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Subsection 2.8, give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action. The failure to give notice to the indemnifying party within a reasonable time of the commencement of any such action shall relieve such indemnifying party of any liability to the indemnified party under this Subsection 2.8, to the extent that such failure materially prejudices the indemnifying party's ability to defend such action. The failure to give notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Subsection 2.8.

(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either: (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Subsection 2.8 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Subsection 2.8 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any party hereto for which indemnification is provided under this Subsection 2.8, then, and in each such case, such parties will contribute to the aggregate losses, claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case (x) no Holder will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered and sold by such Holder pursuant to such registration statement, and (y) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and provided further that in no event shall a Holder's liability pursuant to this Subsection 2.8(d), when combined with the amounts paid or payable by such Holder pursuant to Subsection 2.8(b), exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of willful misconduct or fraud by such Holder.

(e) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Subsection 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9 Reports Under Exchange Act. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Company for the IPO;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after the Company has become subject to such reporting requirements); and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the registration statement filed by the Company for the IPO), the Securities Act, and the Exchange Act (at any time after the Company has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); and (ii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration (at any time after the Company has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of a majority of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that would provide to such holder the right to include securities in any registration on other than either a pro rata basis with respect to the Registrable Securities or on a subordinate basis after all Holders have had the opportunity to include in the registration and offering all shares of Registrable Securities that they wish to so include; provided that this limitation shall not apply to any additional Investor who becomes a party to this Agreement in accordance with Subsection 6.9.

2.11 "Market Stand-off" Agreement. Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the registration by the Company on its own behalf of shares of its Common Stock or any other equity securities under the Securities Act on a registration statement on Form S-1, and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days, or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (1) the publication or other distribution of research reports, and (2) analyst recommendations and opinions, including, but not limited to, the restrictions contained in applicable FINRA rules, or any successor provisions or amendments thereto), (i) lend; offer; pledge; sell; contract to sell; sell any option or contract to purchase; purchase any option or contract to sell; grant any option, right, or warrant to purchase; or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Stock (whether such shares or any such securities are then owned by the Holder or are thereafter acquired) or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash, or otherwise. The foregoing provisions of this Subsection 2.11 shall apply only to the IPO, shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement or purchased at or after the IPO, or the transfer of any shares to any trust for the direct or indirect benefit of the Holder or the immediate family of the Holder, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such transfer shall not involve a disposition for value, and shall be applicable to the Holders only if all officers and directors are subject to the same restriction and the Company uses commercially reasonable efforts to obtain a similar agreement from all stockholders individually owning more than one percent (1%) of the Company's outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding Preferred Stock). The underwriters in connection with such registration are intended third-party beneficiaries of this Subsection 2.11 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Subsection 2.11 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply pro rata to all Holders subject to such agreements, based on the number of shares subject to such agreements.

2.12 Restrictions on Transfer.

(a) The Preferred Stock and the Registrable Securities shall not be sold, pledged, or otherwise transferred, and the Company shall not recognize and shall issue stop-transfer instructions to its transfer agent with respect to any such sale, pledge, or transfer, except upon the conditions specified in this Agreement, which conditions are intended to ensure compliance with the provisions of the Securities Act. A transferring Holder will cause any proposed purchaser, pledgee, or transferee of the Preferred Stock and the Registrable Securities held by such Holder to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Agreement.

(b) Each certificate, instrument, or book entry representing (i) the Preferred Stock, (ii) the Registrable Securities, and (iii) any other securities issued in respect of the securities referenced in clauses (i) and (ii), upon any stock split, stock dividend, recapitalization, merger, consolidation, or similar event, shall (unless otherwise permitted by the provisions of Subsection 2.12(c)) be notated with a legend substantially in the following form:

> THE SECURITIES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. SUCH SHARES MAY NOT BE SOLD, PLEDGED, OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR A VALID EXEMPTION FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT.
>
> THE SECURITIES REPRESENTED HEREBY MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

The Holders consent to the Company making a notation in its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer set forth in this Subsection 2.12.

(c) The holder of such Restricted Securities, by acceptance of ownership thereof, agrees to comply in all respects with the provisions of this Section 2. Before any proposed sale, pledge, or transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed transaction, the Holder thereof shall give notice to the Company of such Holder's intention to effect such sale, pledge, or transfer. Each such notice shall describe the manner and circumstances of the proposed sale, pledge, or transfer in sufficient detail and, if reasonably requested by the Company, shall be accompanied at such Holder's expense by either (i) a written opinion of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effected without registration under the Securities Act; (ii) a "no action" letter from the SEC to the effect that the proposed sale, pledge, or transfer of such Restricted Securities without registration will not result in a recommendation by the staff of the SEC that action be taken with respect thereto; or (iii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed sale, pledge, or transfer of the Restricted Securities may be effected without registration under the Securities Act, whereupon the Holder of such Restricted Securities shall be entitled to sell, pledge, or transfer such Restricted Securities in accordance with the terms of the notice given by the Holder to the Company. The Company will not require such a legal opinion or "no action" letter (x) in any transaction in compliance with SEC Rule 144; or (y) in any transaction in which such Holder distributes Restricted Securities to an Affiliate of such Holder for no consideration; provided that each transferee agrees in writing to be subject to the terms of this Subsection 2.12. Each certificate, instrument, or book entry representing the Restricted Securities transferred as above provided shall be notated with, except if such transfer is made pursuant to SEC Rule 144, the appropriate restrictive legend set forth in Subsection 2.12(b), except that such certificate instrument or book entry shall not be notated with such restrictive legend if, in the opinion of counsel for such Holder and the Company, such legend is not required in order to establish compliance with any provisions of the Securities Act.

2.13 Termination of Registration Rights. The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Subsections 2.1 or 2.2 shall terminate upon the earlier to occur of:

(a) the closing of a Liquidation Event, as such term is defined in the Company's Certificate of Incorporation;

(b) such time after the IPO that Rule 144 or another similar exemption under the Securities Act is available for the sale of all of such Holder's shares without limitation during a three (3) month period without registration; and

(c) the fifth anniversary of the IPO.

3 Information and Observer Rights.

3.1 Delivery of Financial Statements. The Company shall deliver to each Major Investor, provided that the Board of Directors has not reasonably determined that such Major Investor is a Competitor of the Company:

(a) as soon as practicable, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Company, (i) a balance sheet as of the end of such year, (ii) statements of income and of cash flows for such year; and (iii) a statement of stockholders' equity as of the end of such year, all such financial statements audited and certified by independent public accountants selected by the Company; *provided*, *however*, that the audit requirement shall not be required until the Company's Board of Directors determines that it is appropriate.

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, unaudited statements of income and cash flows for such fiscal quarter, and an unaudited balance sheet and a statement of stockholders' equity as of the end of such fiscal quarter, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments; and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(c) as soon as practicable, but in any event within thirty (30) days of the end of each month, an unaudited income statement and statement of cash flows for such month, and an unaudited balance sheet as of the end of such month, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(d) as soon as practicable, but in any event within forty-five (45) days after the end of each quarter of each fiscal year of the Company, a statement showing the number of shares of each class and series of capital stock and securities convertible into or exercisable for shares of capital stock outstanding at the end of the period, the Common Stock issuable upon conversion or exercise of any outstanding securities convertible or exercisable for Common Stock and the exchange ratio or exercise price applicable thereto, and the number of shares of issued stock options and stock options not yet issued but reserved for issuance, if any, all in sufficient detail as to permit the Major Investors to calculate their respective percentage equity ownership in the Company;

(e) within thirty (30) days prior to the beginning of each new fiscal year, a budget and business plan for such fiscal year (collectively, the "**Budget**"), approved by the Board of Directors and prepared on a monthly basis, including balance sheets, income statements, and statements of cash flow for such months and, promptly after prepared, any other budgets or revised budgets prepared by the Company.

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Notwithstanding anything else in this Subsection 3.1 to the contrary, the Company may cease providing the information set forth in this Subsection 3.1 during the period starting with the date sixty (60) days before the Company's good-faith estimate of the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules applicable to such registration statement and related offering; provided that the Company's covenants under this Subsection 3.1 shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable efforts to cause such registration statement to become effective.

3.2 Inspection. The Company shall permit each Major Investor (provided that the Board of Directors has not reasonably determined that such Major Investor is a Competitor of the Company), at such Major Investor's expense, to visit and inspect the Company's properties; examine its books of account and records; and discuss the Company's affairs, finances, and accounts with its officers, during normal business hours of the Company as may be reasonably requested by the Major Investor; provided, however, that the Company shall not be obligated pursuant to this Subsection 3.2 to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

3.3 Observer Rights.

(a) Observer Rights. So long as Sherpa Ventures Fund, LP ("**Acme**") owns not less than 1,090,180 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof), the Company shall invite one (1) representative of Acme to attend all meetings of the Board of Directors in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors; provided, however, that such representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest, or if such Investor or its representative is a Competitor of the Company.

(b) Observer Rights. So long as Cove Investors I, LLC and Cove Investors II, LLC (collectively, "**Cove**") collectively owns not less than 1,090,180 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof), the Company shall invite one (1) representative of Cove to attend all meetings of the Board of Directors in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors; provided, however, that such representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest, or if such Investor or its representative is a Competitor of the Company.

(c) Observer Rights. So long as JJDC owns not less than 697,107 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof), the Company shall invite one (1) representative of JJDC to attend all meetings of the Board of Directors in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors; provided, however, that such representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest, or if such Investor or its representative is a Competitor of the Company.

(d) Observer Rights. So long as Decheng owns not less than 819,247 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof), the Company shall invite one (1) representative of Decheng to attend all meetings of the Board of Directors in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors; provided, however, that such representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest, or if such Investor or its representative is a Competitor of the Company.

3.4 Termination of Information and Observation Rights. The covenants set forth in Subsections 3.1, 3.2 and 3.3 shall terminate and be of no further force or effect (i) immediately before the consummation of an IPO that results in the conversion of all outstanding Preferred Stock to Common Stock, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon a Liquidation Event, as such term is defined in the Company's Certificate of Incorporation, whichever event occurs first.

3.5 Confidentiality. Each Investor agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information obtained from the Company pursuant to the terms of this Agreement (including notice of the Company's intention to file a registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Subsection 3.5 by such Investor), (b) is or has been independently developed or conceived by the Investor without use of the Company's confidential information, or (c) is or has been made known or disclosed to the Investor by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that an Investor may disclose confidential information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any Registrable Securities from such Investor, if such prospective purchaser is not a Competitor of the Company (as reasonably determined by the Company's Board of Directors), and agrees to be bound by the provisions of this Subsection 3.5; (iii) to any Affiliate, partner, member, stockholder, or wholly owned subsidiary of such Investor in the ordinary course of business, provided that such Investor informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information; or (iv) as may otherwise be required by law, provided that the Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure. Rights to Future Stock Issuances.

4 Rights to Future Stock Issuances.

4.1 Right of First Offer. Subject to the terms and conditions of this Subsection 4.1, and applicable securities laws, if the Company proposes to offer or sell any New Securities, the Company shall first offer such New Securities to each Major Investor. A Major Investor shall be entitled to apportion the right of first offer hereby granted to it in such proportions as it deems appropriate among itself and its Affiliates; provided that each such Affiliate (x) is not a Competitor of the Company (as reasonably determined by the Company's Board of Directors), unless such party's purchase of New Securities is otherwise consented to by the Board of Directors, and (y) agrees to enter into this Agreement and the Voting Agreement of even date herewith among the Company, the Investors and the other parties named therein, as an "Investor" under each such agreement (provided that any Competitor (as reasonably determined by the Company's Board of Directors) shall not be entitled to any rights as a Major Investor under Subsections 3.1, 3.2, 3.3 and 4.1 hereof).

(a) The Company shall give notice (the "**Offer Notice**") to each Major Investor, stating (i) its bona fide intention to offer such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) By notification to the Company within twenty (20) days after the Offer Notice is given, each Major Investor may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such New Securities which equals the proportion that the Common Stock then held by such Major Investor (including all shares of Common Stock then issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of Preferred Stock and any other Derivative Securities then held by such Major Investor) bears to the total Common Stock of the Company then outstanding (assuming full conversion and/or exercise, as applicable, of all Preferred Stock and other Derivative Securities). At the expiration of such twenty (20) day period, the Company shall promptly notify each Major Investor that elects to purchase or acquire all the shares available to it (each, a "**Fully Exercising Investor**") of any other Major Investor's failure to do likewise. During the ten (10) day period commencing after the Company has given such notice, each Fully Exercising Investor may, by giving notice to the Company, elect to purchase or acquire, in addition to the number of shares specified above, up to that portion of the New Securities for which Major Investors were entitled to subscribe but that were not subscribed for by the Major Investors which is equal to the proportion that the Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of Preferred Stock and any other Derivative Securities then held, by such Fully Exercising Investor bears to the Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then held, by all Fully Exercising Investors who wish to purchase such unsubscribed shares. The closing of any sale pursuant to this Subsection 4.1(b) shall occur within the later of one hundred twenty (120) days of the date that the Offer Notice is given and the date of initial sale of New Securities pursuant to Subsection 4.1(c).

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in Subsection 4.1(b), the Company may, during the ninety (90) day period following the expiration of the periods provided in Subsection 4.1(b), offer and sell the remaining unsubscribed portion of such New Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Company does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within forty-five (45) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Major Investors in accordance with this Subsection 4.1.

(d) The right of first offer in this Subsection 4.1 shall not be applicable to (i) Exempted Securities (as defined in the Company's Certificate of Incorporation); (ii) equity securities issued in the IPO; and (iii) the issuance of shares of Series B Preferred Stock to Additional Purchasers pursuant to Subsection 1.3 of the Purchase Agreement.

4.2 Termination. The covenants set forth in Subsection 4.1 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO that results in the conversion of all outstanding Preferred Stock to Common Stock, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon a Liquidation Event, as such term is defined in the Company's Certificate of Incorporation, whichever event occurs first.

5 Additional Covenants.

5.1 Insurance. The Company will use commercially reasonable efforts to cause its existing Directors and Officers liability insurance coverage in an amount not less than $5,000,000 to be maintained until such time as the Board of Directors, including a majority of the Preferred Directors, determines that such insurance should be discontinued.

5.2 Employee Agreements. The Company will cause each person now or hereafter employed by it or by any subsidiary (or engaged by the Company or any subsidiary as a consultant/independent contractor) with access to confidential information and/or trade secrets to enter into a nondisclosure and proprietary rights assignment agreement.

5.3 Employee Stock. Unless otherwise approved by the Board of Directors, including a majority of the Preferred Directors, all future employees and consultants of the Company who purchase, receive options to purchase, or receive awards of shares of the Company's capital stock after the date hereof shall be required to execute restricted stock or option agreements, as applicable, providing for (i) vesting of shares over a four (4) year period, with the first twenty-five percent (25%) of such shares vesting following twelve (12) months of continued employment or service, and the remaining shares vesting in equal quarterly installments over the following thirty-six (36) months, (ii) a market standoff provision substantially similar to that in Subsection 2.11, and (iii) no acceleration of vesting upon a Liquidation Event, as defined in the Company's Certificate of Incorporation, as amended from time to time. In addition, unless otherwise approved by the Board of Directors, including a majority of the Preferred Directors, the Company shall retain a "right of first refusal" on employee transfers until the IPO and shall have the right to repurchase unvested shares at the lower of cost or fair market value upon termination (with or without cause) of employment of a holder of restricted stock.

5.4 Matters Requiring Investor Director Approval. So long as the holders of Preferred Stock are entitled to elect Preferred Directors, the Company hereby covenants and agrees with each of the Investors that it shall not, without approval of the Board of Directors, which approval must include the affirmative vote of a majority of the Preferred Directors:

(a) incur any expenditures, or create or authorize aggregate indebtedness, in either case in excess of $500,000 that is not already included in a budget approved by the Board of Directors, other than trade credit incurred in the ordinary course of business;

(b) increase the number of shares of Common Stock reserved for issuance under the Company's 2014 Equity Incentive Plan or create any new equity incentive plan;

(c) create any committee of the Board of Directors;

(d) acquire more than fifty percent (50%) of the voting securities, or all or substantially all of the assets of any business (whether by stock or asset purchase, merger, consolidation or otherwise) for consideration in excess of $500,000;

(e) establish or invest in any subsidiary or joint venture;

(f) enter into any materially new line of business or materially alter or change the Company's business as it is presently conducted and contemplated to be conducted today;

(g) terminate or change the Company's then current chief executive officer;

(h) transfer of any intellectual property or grant any exclusive rights to the Company's intellectual property or any exclusive distribution rights;

(i) effect any sales or other dispositions of Company assets outside the ordinary course of business exceeding $250,000; or

(j) enter into any agreement or transaction with any officer or director or employee or stockholder of the Corporation or any family member thereof.

5.5 Board Matters. Unless otherwise determined by the vote of a majority of the directors then in office, the Board of Directors shall meet at least quarterly in accordance with an agreed-upon schedule. The Company shall reimburse the directors for all reasonable out-of-pocket travel expenses incurred (consistent with the Company's travel policy) in connection with attending meetings of the Board of Directors. The Company shall enter in an indemnification agreement with each current and future Preferred Director in a form approved by the Board of Directors, including at least two of the Preferred Directors. Additionally, the Preferred Director designated by JJDC shall be entitled in such person's discretion to be a member of any committee of the Board of Directors.

5.6 Successor Indemnification. If the Company or any of its successors or assignees consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board as in effect immediately before such transaction, whether such obligations are contained in the Company's Bylaws, the Certificate of Incorporation (as amended, or elsewhere, as the case may be.

5.7 Right to Conduct Activities. The Company hereby agrees and acknowledges that Acme, Decheng, Madrone, Section 32 and JJDC (together with their respective Affiliates) are investment funds or venture arms of their Affiliates, and as such make or hold investments in, or trade in securities of, companies that may be deemed competitive with the Company's business (as currently conducted or as currently proposed to be conducted). The Company hereby agrees that, to the extent permitted under applicable law, Acme, Decheng, Madrone, Section 32 and JJDC (together with their respective Affiliates) shall not be liable to the Company for any claim arising out of, or based upon, (i) the investment by Acme, Decheng, Madrone, Section 32 or JJDC in any entity competitive with the Company, or activities of such Affiliates that may be competitive to the Company, or (ii) actions taken by any partner, officer or other representative of Acme, Decheng, Madrone, Section 32 or JJDC, to assist any such competitive company (including, but not limited to, JJDC's activities in connection with its Affiliates), whether or not such action was taken as a member of the board of directors of such company or otherwise, and whether or not such action has a detrimental effect on the Company; provided, however, that the foregoing shall not relieve (x) any of the Investors from liability associated with unauthorized disclosure of the Company's confidential information obtained pursuant to this Agreement, or (y) any director or officer of the Company from any liability associated with his or her fiduciary duties to the Company. The Company acknowledges that Decheng, Acme, Section 32, Madrone and JJDC are in the business of private equity investing and therefore review the business plans and related proprietary information of many enterprises, including enterprises which may have products or services which compete directly or indirectly with those of the Company. Nothing in this Agreement shall preclude, create an obligation or duty, or in any way restrict Decheng, Madrone, Section 32, Acme and JJDC (or any of their respective Affiliates) from evaluating or purchasing securities, including publicly traded securities, of a particular enterprise, or investing or participating in any particular enterprise, whether or not such enterprise has products or services which compete with those of the Company.

5.8 Founder Grants. Promptly after the Closing, the Company's Board of Directors will approve new equity grants to each of the Company's Founders, Ayub Khattak and Clint Sever, equal to six percent (6%) in the aggregate (four percent (4%) to Ayub Khattak and two percent (2%) to Clint Sever) of the Company's fully diluted capitalization immediately after the Closing, subject to 4 year vesting (no cliff), and on the same terms and conditions as earlier grants to such Founders.

5.9 Termination of Covenants. The covenants set forth in this Section 5 (other than Sections 5.6, 5.7 and 5.10) shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO that results in the conversion of all outstanding Preferred Stock to Common Stock, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, and (iii) upon a Liquidation Event, as such term is defined in the Company's Certificate of Incorporation.

5.10 Indemnification Matters. The Company hereby acknowledges that one (1) or more of the directors nominated to serve on the Board of Directors by the Investors (each a "**Fund Director**") may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more of the Investors and certain of their affiliates (collectively, the "**Fund Indemnitors**"). The Company hereby agrees (a) that it is the indemnitor of first resort (*i.e.*, its obligations to any such Fund Director are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Fund Director are secondary), (b) that it shall be required to advance the full amount of expenses incurred by such Fund Director and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement by or on behalf of any such Fund Director to the extent legally permitted and as required by the Company's Certificate of Incorporation or Bylaws of the Company (or any agreement between the Company and such Fund Director), without regard to any rights such Fund Director may have against the Fund Indemnitors, and, (c) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of any such Fund Director with respect to any claim for which such Fund Director has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Fund Director against the Company.

6 Miscellaneous.

6.1 Successors and Assigns. The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to a transferee of Registrable Securities that (i) is an Affiliate of a Holder, (ii) is a Holder's Immediate Family Member or trust for the benefit of an individual Holder or one or more of such Holder's Immediate Family Members, or (iii) after such transfer holds at least five percent (5%) shares of Registrable Securities (subject to appropriate adjustment for stock, splits, stock dividends, combinations, and other recapitalizations; provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee agrees in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement, including the provisions of Subsection 2.11. For the purposes of determining the number of shares of Registrable Securities held by a transferee, the holdings of a transferee (1) that is an Affiliate or stockholder of a Holder; (2) who is a Holder's Immediate Family Member; or (3) that is a trust for the benefit of an individual Holder or such Holder's Immediate Family Member shall be aggregated together and with those of the transferring Holder; provided further that all transferees who would not qualify individually for assignment of rights shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices, or taking any action under this Agreement. The terms and conditions of this Agreement inure to the benefit of and are binding upon the respective successors and permitted assignees of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

6.2 Governing Law. This Agreement shall be governed by the internal law of the State of Delaware, without giving effect to any conflict of law principles that would result in the application of any law other than the law of the State of Delaware.

6.3 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

6.4 Titles and Subtitles. The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

6.5 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) personal delivery to the party to be notified; (ii) when sent, if sent by electronic mail or facsimile during the recipient's normal business hours, and if not sent during normal business hours, then on the recipient's next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next-day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their addresses as set forth on Schedule A hereto, or to the principal office of the Company and to the attention of the Chief Executive Officer, in the case of the Company, or to such email address, facsimile number, or address as subsequently modified by written notice given in accordance with this Subsection 6.5. If notice is given to the Company, a copy shall also be sent to Wilmer Hale LLP, 950 Page Mill Road, Palo Alto, CA 94304, Attn: E. Thom Rumberger Jr., Esq.

6.6 Amendments and Waivers. Any term of this Agreement may be amended, modified or terminated and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Company and the holders of a majority of the Registrable Securities then outstanding; provided that the Company may in its sole discretion waive compliance with Subsection 2.12(c); and provided further that any provision hereof may be waived by any waiving party on such party's own behalf, without the consent of any other party and that Subsection 3.3(a) may not be amended without the written consent of Acme, Subsection 3.3(b) may not be amended without the written consent of Cove and Subsection 3.3(c) may not be amended without the written consent of JJDC. Notwithstanding the foregoing, any amendment to this Agreement that would change the definition of "Major Investor" to increase the Registrable Security ownership threshold for such status shall not apply to a then-current Major Investor without the written consent of such Major Investor (and absent such consent, notwithstanding any amendment to this Agreement to the contrary, such Major Investor shall remain a "Major Investor" following such amendment). Notwithstanding the foregoing, this Agreement may not be amended or terminated and the observance of any term hereof may not be waived with respect to any Investor without the written consent of such Investor, unless such amendment, termination, or waiver applies to all Investors in the same fashion (it being agreed that a waiver of the provisions of Section 4 with respect to a particular transaction shall be deemed to apply to all Investors in the same fashion if such waiver does so by its terms, notwithstanding the fact that certain Investors may nonetheless, by agreement with the Company, purchase securities in such transaction) and (b) Subsections 3.1 and 3.2, Section 4 and any other section of this Agreement applicable to the Major Investors (including this clause (b) of this Subsection 6.6) may not be amended, modified, terminated or waived without the written consent of the holders of a majority of the Registrable Securities then outstanding and held by the Major Investors. Notwithstanding the foregoing, Schedule A hereto may be amended by the Company from time to time to add transferees of any Registrable Securities in compliance with the terms of this Agreement without the consent of the other parties; and Schedule A hereto may also be amended by the Company after the date of this Agreement without the consent of the other parties to add information regarding any additional Investor who becomes a party to this Agreement in accordance with Subsection 6.9. The Company shall give prompt notice of any amendment, modification or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, modification, termination, or waiver. Any amendment, modification, termination, or waiver effected in accordance with this Subsection 6.6 shall be binding on all parties hereto, regardless of whether any such party has consented thereto. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

6.7 Severability. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

6.8 Aggregation of Stock. All shares of Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

6.9 Additional Investors. Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of the Company's Preferred Stock after the date hereof, whether pursuant to the Purchase Agreement or otherwise, any purchaser of such shares of Preferred Stock shall become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement, and thereafter shall be deemed an "Investor" for all purposes hereunder. No action or consent by the Investors shall be required for such joinder to this Agreement by such additional Investor, so long as such additional Investor has agreed in writing to be bound by all of the obligations as an "Investor" hereunder.

6.10 Entire Agreement. Upon the effectiveness of this Agreement, the Prior Agreement shall be deemed amended and restated to read in its entirety as set forth in this Agreement. This Agreement (including any Schedules and Exhibits hereto) constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

6.11 Waiver of Right of First Offer. Except as set forth in the proviso below, solely for purposes of the transactions contemplated by the Purchase Agreement and solely with respect to the issuance of up to 27,308,229 shares of Series C-1 Preferred Stock and 1,690,380 shares of Series C-2 Preferred Stock, the right of first offer set forth in Section 4 of the Prior Agreement is hereby waived in its entirety; *provided, however,* that the foregoing waiver shall have no force or effect with respect to, and nothing contained herein shall (or shall be deemed to) waive or modify the rights, preferences, privileges, or remedies of, any Major Investor who exercised or exercises its right of first offer in respect of the Company's offering of Series C Preferred Stock, in each case, in accordance with Section 4 of the Prior Agreement.

6.12 Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of the State of California and to the jurisdiction of the United States District Court for the Southern District of California for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of State of California or the United States District Court for the Southern District of California, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

In any dispute between the parties, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled. Each of the parties to this Agreement consents to personal jurisdiction for any equitable action sought in the U.S. District Court for the Southern District of California or any court of the State of California having subject matter jurisdiction.

6.13 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such non-breaching or non-defaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

6.14 Press Releases. The Company hereby agrees not to issue any press releases or make any public communications in connection with any Investor's purchase of shares of Series C Preferred Stock pursuant to the Purchase Agreement without the prior written consent of Acme, Decheng and JJDC, except as may be required by law. The expenses of any press releases or public communication issued by the Company in accordance with this Subsection 6.14 shall be borne by the Company.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

COMPANY:

CUE HEALTH INC.

By: /s/ Ayub Khattak
Name: Ayub Khattak
Title: President and Chief Executive Officer

Address: 4980 Carroll Canyon Rd Suite 100,
San Diego, CA 92121

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

SHERPA VENTURES FUND, LP

By: Sherpa Ventures Fund GP, LLC
Its: General Partner

By: /s/ Scott Stanford
Name: Scott Stanford
Title: Managing Partner

Address: 800 Market Street, Floor 8
San Francisco, CA 94102
portfolio@sherpa.com

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

SHERPA VENTURES FUND, LP

By: Sherpa Ventures Fund GP, LLC
Its: General Partner

By: /s/ Scott Stanford
Name: Scott A. Stanford
Title: Managing Director

Address: 800 Market Street, Floor 8
San Francisco, CA 94102
portfolio@sherpa.com

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

JOHNSON & JOHNSON INNOVATION – JJDC, INC.

By: /s/ Asish K. Xavier. Ph.D.
Name: Asish K. Xavier. Ph.D.
Title: Vice President, Venture Investments

Address: 410 George Street
New Brunswick, New Jersey 08901
Attention: Vijay Murthy & Linda Vogel

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

BROAD STREET PRINCIPAL INVESTMENTS, L.L.C.

By: /s/ Tammy A. Keely
Name: Tammy A. Keely
Title: Vice President

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

10100 LLC

By: /s/ Tara Dhingra
Name: Tara Dhingra
Title: President

Dept #1178
PO Box 2652
Menlo Park, CA

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

COVE INVESTORS I, LLC

By: Oakmont Corporation
Its: Administrator

By: /s/ Peter Carlton
Name: Peter Carlton
Title: President
Address: 865 South Figueroa St, 7th Floor
Los Angeles, CA 90017

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

TARSADIA FOUNDATION

By: /s/ Maya Patel
Name: Maya Patel
Title: President

Address: 520 Newport Center Drive, 21st Floor
Newport Beach, CA 92660

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

FORESITE CAPITAL FUND IV, L.P.

By: Foresite Capital Management IV, LLC
Its: General Partner

By: /s/ Dennis D. Ryan
Name: Dennis D. Ryan
Title: Chief Financial Officer

Address: 600 Montgomery Street, Suite 4500
San Francisco, CA 94111

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

FORESITE CAPITAL OPPORTUNITY FUND V, L.P.

By: Foresite Capital Opportunity Management V, LLC
Its: General Partner

By: /s/ Dennis D. Ryan
Name: Dennis D. Ryan
Title: Chief Financial Officer

Address: 600 Montgomery Street, Suite 4500
San Francisco, CA 94111

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

LINDAMERE DRIVE, LLC

By: Oakmont Corporation
Its: Administrator

By: /s/ Peter Carlton
Name: Peter Carlton
Title:

Address: 865 South Figueroa St, 7th Floor Los Angeles, CA 90017

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

COVE INVESTORS II, LLC

By: Oakmont Corporation
Its: Administrator

By: /s/ Peter Carlton
Name: Peter Carlton
Title: President

Address: 865 South Figueroa St, 7th Floor Los Angeles, CA 90017

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

GREYSCALE, LLC

By: /s/ Matt Agnune
Name: Matt Agnune
Title: CFO

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

AMERICAN FIDELITY CORPORATION

By: John Cassil
Its: SVP, CFO

By: /s/ John Cassil
Name: John Cassil
Title: SVP, CFO

Address: 9000 Cameron Parkway
Oklahoma City, OK 73114
Attn: Jim Wheeler

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

FLAT WORLD (CUE) LP

By: /s/ Anna-Marie Wascher
Name: Anna-Marie Wascher
Title: Managing Partner

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

FLAT WORLD (CUE) LP

By: /s/ Anna-Marie Wascher
Name: Anna-Marie Wascher
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

ROHAN OZA

By: /s/ Rohan Oza

Address: 145 Reade Street Apt. 175
New York, NY 10013

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

PGVC 2018 LLC

By: Jabodon PT Company dba Pritzker Group
Its: Managing Member

By: /s/ Christopher E. Girgenti
Name: Christopher E. Girgenti
Title: Authorized Signatory

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

ANP HANOVER HOLDINGS LLC

By: Jabodon PT Company, Manager

By: /s/ Eric A. Schreiner
Name: Eric A. Schreiner
Title: President

Address: 111 S. Wacker Drive, Suite 4000
Chicago, IL 60606
Email: investments@pritzkergroup.com

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

RONO, LLC

By: /s/ Rohan Oza
Name: Rohan Oza
Title: Manager

Address: 145 Reade Street Apt. 175
New York, NY 10013

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

Hlth Wrk LLC

By: /s/ Chris Achar

Address: 6443 Lindenhurst Avenue
Los Angeles, CA 90048

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

SECTION 32 FUND 2, LP

By: Section 32 GP 2, LLC,
Its: General Partner

By: /s/ Jennifer L. Kercher
Name: Jennifer L. Kercher
Title: Chief Operating Officer

Address: 171 Main Street, #671
Los Altos, CA 94022

Email: notice@section32.com
Attn: Chief Operating Officer

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

DECHENG CAPITAL CHINA LIFE SCIENCES USD FUND Ill, L.P.

By: Decheng Capital Management III (Cayman), LLC
Name: Xiangmin Cui Title: Managing Director

By: /s/ Xiangmin Cui
Name: Xiangmin Cui
Title: Managing Director

Address: 3000 Sand Hill Road
Building 2, Suite 110
Menlo Park, CA 94025

Attn:
Fax:
Email:
Email: [***]

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

WEIJI CUI AND JIN ZHOU, TRUSTEES OF THE CUI FAMILY REVOCABLE TRUST

By: /s/ Weiji Cui
Name: Weiji Cui
Title: Trustee

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

MADRONE OPPORTUNITY FUND, L.P.
by its General Partner:

By: /s/ Greg Penner
Name: Greg Penner
Title: Managing Member

Address: 1149 Chestnut Street, Suite 200
Menlo Park, CA 94025
madrone@weimail.com

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

RCHI, LLC

By: /s/ Daniel Larsen
Name: Daniel Larsen
Title: Assistant Vice President & Secretary

Address: 4980 Carroll Canyon Rd Suite 100,
San Diego, CA 92121

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

RAJENDRA SINGH2008 FAMILY TRUST

By: /s/ Neera Singh
Name: Neera Singh
Title: Trustee

Address: 23 Indian Creek Island Road
Indian Creek Village, FL 33154

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

NEERAJ CHANDRA

By: /s/ Neeraj Chandra
Name: Neeraj Chandra

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

NVGA I, LLC

By: TFC Manager, LLC
Its: Manager

By: /s/ Vikram Patel
Name: Vikram Patel
Title: Manager

Address: 4980 Carroll Canyon Rd Suite 100,
San Diego, CA 92121

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

ART99 INVESTMENTS LLC

By: /s/ Wendi Murdoch
Name: Wendi Murdoch
Title: Managing Member

Address: c/o NKSFB
810 Seventh Ave, Suite 1701
New York, NY 10019

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

SOFREH CAPITAL

By: /s/ Shervin Pishevar
Name: Shervin Pishevar
Title: Managing Director

Address: 382 NE 191st ST #24148
Miami, FL 33179

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

NOW INVESTMENTS, INC.

By: /s/ Peter Sadek
Name: Peter Sadek
Title: Director

Address: Craigmuir Chambers, Road Town
VG1110 Tortola, BVI

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTORS:

PPC IP INVESTOR 2020-II LLC

By: /s/ Ceron Rhee
Name: Ceron Rhee
Title: Manager

Address: 11150 Santa Monica Blvd, Suite 1510
Los Angeles, CA 90025

SCHEDULE A

Investors

Investor

Sherpa Ventures Fund, LP
800 Market Street, Floor 8
San Francisco, CA 94102
[***]

Sherpa Ventures Fund II, LP
800 Market Street, Suite
800 San Francisco, CA 94102
[***]

NVGA I, LLC
c/o Sierra Fiduciary Support Services
100 West Liberty St., Ste. 750
Reno, NV 89501
[***]

Johnson & Johnson Innovation – JJDC, Inc.
410 George Street
New Brunswick, New Jersey 08901
Attention: Vijay Murthy & Linda Vogel

With a copy to:

Johnson & Johnson Law Department
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, New Jersey 08933
Attention: Kevin Norman, Senior Counsel, Equity Transactions

Cove Investors I, LLC
865 South Figueroa Street, 7th
Floor Los Angeles, CA 90017

Cove Investors II, LLC
865 South Figueroa Street, 7th
Floor Los Angeles, CA 90017

Code Holdings LLC
Attn: Robert L. Schooler, CFO
101 Second Street, Suite 2225 San Francisco, CA 94105

RONO, LLC
145 Reade Street, Apt. 175
New York, NY 10013

Rohan Oza
[***]

WEHO Investments, LLC
Attn: Robert P. Hrtica, Manager
c/o Appian Way
9255 Sunset Blvd., Suite 615
West Hollywood, CA 90069

Been There, LLC
Attn: Kenneth B. Hertz, Managing Member
1800 Century Park East, Suite 1000
Los Angeles, CA 90067

John C. Kennedy
[***]

The Tanbark Trust
c/o Lee C. Linden, Trustee
[***]

Amber R. Arbucci
[***]

Vincent V. Laresca
[***]

Jason Goldberg
[***]

Charles M. Pacheco
[***]

Di-Ann Eisnor
[***]

Trendtrade International P/L
Attn: Lance Kalish, Director
[***]

The Marc R. Benioff Revocable Trust u/a/d 12/3/04
c/o Marc R. Benioff, Trustee
[***]

Brooklyn Elias
[***]

Mokhtarzada Holdings, LLC
Attn: Haroon Mokhtarzada
[***]

April D. Underwood
[***]

James A Messina
[***]

Playtime Ventures, LLC
Attn: Mr. John Shahidi
[***]

Sage Spring Partners LLC
Attn: Bikram Dang, Partner
[***]

Greg Silverman
[***]

Treeline Interactive, LLC
3725 Mission Blvd.
San Diego, CA 92109

Flat World (Cue) LP
386 Park Ave South
18th Floor
New York, New York 10013

Flat World (Cue III) LP
3725 Mission Blvd.
San Diego, CA 92109

Neeraj Chandra
[***]

RCHI, LLC
c/o The Yucaipa Companies
9130 West Sunset Boulevard
Los Angeles, CA 90069
Attn: Legal Department
[***]

Greyscale, LLC
121 Kercheval Avenue
Gross Pointe, MI 48236

Rajendra Singh 2008 Family Trust
23 Indian Creek Island Road
Indian Creek Village, FL 33154
[***]

10100 LLC
Dept #1178
PO Box 2652
Menlo Park, CA 94026
[***]

American Fidelity
9000 Cameron Parkway
Oklahoma City, OK 73114
Attn: Jim Wheeler
[***]

Broad Street Principal Investments, L.L.C.
200 West Street
New York, NY 10282
Attn: Benjamin Hohl
[***]

IHS Ventures Partners LLC
600 Brickell Avenue
Suite 1725
Miami, FL 33131

Dentsu Ventures Global Fund I
1-8-1
Higashi-Shimbashi,
Minato-Ku, Tokyo
105-7001, Japan

KBBO Ventures
38th KBBO Office
Jumeriah Etihad Towers,
Abu Dhabi

Babel SPV I LLC
441 Burnett Avenue
San Francisco, California 94131

Babel SPV II LLC
441 Burnett Avenue
San Francisco, California 94131

Babel Fund I LP
441 Burnett Avenue
San Francisco, California 94131

Zephyr Cove Capital, LLC
276 Kingsbury Grade, Suite 2000
P.O. Box 3390
Stateline, NV 89449-3390

Dr. Vishal Mehta
[***]

Kali J. Caldwell
[***]

Bravetime International Limited
P.O. Box 957
Offshore Incorporations Centre
Road Town, Tortola, British Virgin Islands

ANP Hanover Holdings LLC
111 S Wacker Drive, Suite 4000
Chicago, IL 60606
investments@pritzkergroup.com

M13 Holding LLC
215 La Cienega Blvd #200
Beverly Hills, CA 90211

Troy Capital Partners Fund I, LP
225 Arizona Avenue, Suite 200
Santa Monica, CA 90401

Hlth Wrk LLC
Attn: Chris Achar
[***]

Sarrah Hallock
[***]

Brett Thomas
[***]

Section 32 Fund 2, LP
Address: 171 Main Street, #671
Los Altos, CA 94022
Email: notice@section32.com
Attn: Chief Operating Officer

Kevin Krenitsky Revocable Trust 2018
[***]

Decheng Capital China Life Sciences USD Fund III, L.P.
3000 Sand Hill Rd, Bldg 2, Ste 110
Menlo Park, CA 94025

Madrone Opportunity Fund, L.P.
1149 Chestnut Street
Suite 200
Menlo Park, CA 94025
[***]

Weiji Cui and Jin Zhou, Trustees of the Cui Family Revocable Trust
[***]

Foresite Capital Fund V, L.P.
600 Montgomery St, Ste 4500
San Francisco, CA 94111
Attn: Dennis Ryan
[***]

Foresite Capital Opportunity Fund V,
L.P. 600 Montgomery St, Ste 4500
San Francisco, CA 94111
Attn: Dennis Ryan
[***]

Foresite Capital Fund IV, L.P.
600 Montgomery St, Ste 4500
San Francisco, CA 94111
Attn: Dennis Ryan
[***]

Lindamere Drive, LLC
865 South Figueroa Street, 7th
Floor Los Angeles, CA 90017
[***]

Tarsadia Foundation
520 Newport Center Dr., 21st Floor
Newport Beach, CA 92660
Attn: Rishi Reddy
[***]

PGVC 2018 LLC
111 S Wacker Drive, Suite 4000
Chicago, IL 60606
[***]

Art99 Investments LLC
c/o NKSFB
810 Seventh Ave, Suite 701
New York, NY 10019
[***]

Sofreh Capital LP
382 NE 191st Street #24148
Miami, FL 33179-3899
[***]

PPC IP Investor 2020-II LLC
11150 Santa Monica Blvd, Suite 1510
Los Angeles, CA 90025
[***]

Exhibit 4.3

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR ANY STATE SECURITIES LAWS. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. HOLDERS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN THE FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

CUE INC.

WARRANT TO PURCHASE COMMON STOCK

CSW-4

This Warrant (this "**Warrant**") certifies that as of August 22, 2017 (the "**Issue Date**"), WEHO Investments LLC ("**Holder**") is entitled to subscribe for and purchase, subject to the terms hereof, up to an aggregate of 75,744 shares of Class A Common Stock (the "**Warrant Shares**") of Cue, Inc., a Delaware corporation (the "**Company**"), and at a purchase price per share equal to $0.40 (the "**Warrant Price**"), in each case as adjusted pursuant to Article 3 hereof. This Warrant is issued pursuant to the Advisor Agreement, dated of even date herewith (the "Advisor Agreement"), between the Company and the Holder, pursuant to which the Holder is providing services to the Company. Unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Advisor Agreement.

Holder (as defined below) shall be only entitled to exercise this Warrant for Vested Warrant Shares in accordance with the terms hereof and during the period commencing on the Initial Vesting Date, if any, and ending on the earliest to occur of (i) a Sale of the Company, and (ii) 5:00 p.m. PST on the tenth (10^{th}) anniversary of the Exercise Commencement Date, upon the occurrence of which this Warrant shall expire and be cancelled, with no further force or effect. During the term of this Warrant, the Company shall provide Holder with at least ten (10) days prior written notice of a Sale of the Company. The number of Warrant Shares purchasable upon exercise of this Warrant is subject to vesting as provided in Section 2.8 below.

ARTICLE 1.
DEFINITIONS

1.1 "**Affiliate**" shall mean, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, officer or director of such Person or any venture capital, private equity or other similar fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person. "Affiliate" shall also mean, in the case of any venture capital, private equity or other similar fund now or hereafter existing that is an Investor, all partners, members, shareholders or other equity holders of any kind of such venture capital, private equity or other similar fund, regardless of whether such partners, members, shareholders or other equity owners control such venture capital, private equity or other similar fund.

1.2 "**Aggregate Price**" shall mean the total number of Warrant Shares multiplied by the Warrant Price.

1.3 "**Sale of the Company**" means either: (a) a transaction or series of related transactions in which a Person, or a group of related Persons, acquires from shareholders of the Company shares representing more than fifty percent (50%) of the outstanding voting power of the Company (a "**Stock Sale**"); or (b) a transaction that qualifies as a "**Liquidation Event**" as defined in the Certificate.

1.4 "**Class A Common Stock**" shall mean the Company's Class A Common stock, no par value.

1.5 "**Holder**" shall have the meaning set forth in the introductory paragraph above, or any party to whom this Warrant is assigned in compliance with the terms hereof.

1.6 "**Person**" shall mean any individual, corporation, partnership, trust, limited liability company, association or other entity.

1.7 "**Securities Act**" shall mean the Securities Act of 1933, as amended.

1.8 "**Vesting Commencement Date**" shall mean the Issue Date.

ARTICLE 2.
EXERCISE AND PAYMENT

2.1 ***Cash Exercise***. The purchase rights represented by this Warrant may be exercised by the Holder, in whole or in part, by the surrender of this Warrant at the principal office of the Company, located at the address set forth on the signature page hereof, accompanied by the form of Notice of Cash Exercise in substantially the form attached hereto as **Exhibit A-1** (the "**Notice of Cash Exercise**") and by the payment to the Company, by cash or by certified, cashier's or other check acceptable to the Company, of an amount equal to the aggregate Warrant Price of the Warrant Shares being purchased.

2.2 ***Net Issue Exercise***. In lieu of exercising this Warrant pursuant to Section 2.1, the Holder may elect to receive shares of Class A Common Stock equal to, in whole or in part, the value of this Warrant determined in the manner described below (or of any portion thereof remaining unexercised) by surrender of this Warrant at the principal office of the Company together with the form of Notice of Cashless Exercise in substantially the form attached hereto as **Exhibit A-2** (the "**Notice of Cashless Exercise**" and together with the Notice of Cash Exercise, each a "**Notice of Exercise**") in which event the Company shall issue to the Holder a number of shares of the Class A Common Stock computed using the following formula:

$$X = \frac{Y\,(A-B)}{A}$$

Where X = the number of Warrant Shares to be issued to the Holder of this Warrant (on the date of such calculation).

Y = the number of Warrant Shares purchasable under this Warrant on the date of such calculation (or, if this Warrant is exercised in part, the number of Warrant Shares represented by the portion of this Warrant being exercised).

A = the fair market value of one share of the Class A Common Stock (on the date of such calculation).

B = Warrant Price (as adjusted in accordance with Article 3 as applicable to the date of such calculation).

2.3 ***Fair Market Value***. For purposes of this Article 2, except as set forth in clause (ii) below, the fair market value of one share of the Class A Common Stock shall mean as follows:

(i) The per share fair market value of the Class A Common Stock shall be as determined in the reasonable and good faith discretion of the Company's Board of Directors; and

(ii) Notwithstanding the foregoing, in the event this Warrant is exercised in connection with any Sale of the Company, the fair market value per share of Class A Common Stock shall be the price per share paid to the holders of such Class A Common Stock in such Sale of the Company transaction, or if no payment is made to such holders in connection with such Sale of the Company transaction, then the amount per share that would be paid to such holders if, immediately after such Sale of the Company transaction the Company (or its successor in interest, as the case may be) were to liquidate and distribute the value of all of its assets to its shareholders after settling its debts.

2.4 ***Stock Certificates***. In the event of any exercise of the rights represented by this Warrant, certificates for the shares of Class A Common Stock so purchased shall be delivered to the Holder within a reasonable time and, unless this Warrant has been fully exercised for the Maximum Warrant Shares or has expired, a new Warrant representing the number of shares that can be acquired, subject to any remaining vesting conditions, for the remaining unexercised Aggregate Price shall also be issued to the Holder at such time. Notwithstanding the date of the delivery of the certificate(s) for the Class A Common Stock, the person in whose name the certificate(s) for such capital stock are to be issued shall be deemed to have become a stockholder of record on the next succeeding day on which the transfer books are open after the date of the appropriate Notice of Exercise is received by the Company.

2.5 ***Stock Fully Paid***. The Company represents and warrants that all Class A Common Stock which may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, security interests, liens, charges (excluding taxes based on the income of the Holder), except to the extent imposed by or as a result of the status, act or omission of, the Holder.

2.6 ***Fractional Shares***. No fractional share of Class A Common Stock will be issued in connection with any exercise hereof; in lieu of a fractional share upon complete exercise hereof, the Holder may purchase a whole share by delivering payment equal to the appropriate portion of the then effective Warrant Price.

2.7 ***Conditional Exercise***. Notwithstanding anything to the contrary herein, any Notice of Exercise may be conditioned, and effective only, upon the occurrence of any event(s) specified therein, including the consummation of a Sale of the Company or the declaration of a dividend.

2.8 ***Vesting***. This Warrant shall be exercisable for *up to* the number of Warrant Shares set forth on the cover page of this Warrant (the "**Maximum Shares Amount**") based upon the following vesting condition (such Warrant Shares which shall have vested in accordance with the terms hereof, "**Vested Warrant Shares**"): fifty percent (50%) of the total Warrant Shares subject to this Warrant (i.e., 37,872) shall vest, if at all, on the first anniversary of the Vesting Commencement Date (the "**Initial Vesting Date**"), and the remaining fifty percent (50%) of the Warrant Shares shall vest in 1/24th increments (i.e., 3,156) of the total number of Warrant Shares granted hereunder shall become Vested Warrant Shares on the last day of each full calendar month in each case only if Holder is continuously providing services per the Advisor Agreement through the applicable vesting date. Notwithstanding the foregoing, vesting of the Warrant Shares shall accelerate and this Warrant shall be exercisable for the full Maximum Shares Amount upon (i) a Sale of the Company or (ii) any termination of the Advisor Agreement (x) by Holder due to the Company's material breach of the Advisor Agreement or (y) by the Company for any reason other than an uncured material breach of the Advisor Agreement by Advisor. Holder may purchase such Vested Warrant Shares at any time on or after the initial number of Vested Warrant Shares have vested. In lieu of any fractional amount of vesting, the Company may elect to pay to Holder an amount of cash equal to such incremental value.

ARTICLE 3.
CERTAIN ADJUSTMENTS OF NUMBER OF SHARES PURCHASABLE AND WARRANT PRICE

The number and kind of securities purchasable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the happening of certain events, as follows:

3.1 ***Reclassification or Consolidation***. In case of any reclassification or change of outstanding securities issuable upon exercise of this Warrant, the Company, shall execute a new warrant of like form, tenor and effect and which will provide that the Holder shall have the right to exercise such new warrant and purchase upon such exercise, in lieu of each share of Class A Common Stock theretofore issuable upon exercise of this Warrant, the kind and amount of securities, money and property receivable upon such reclassification, change or consolidation by a holder of one share of Class A Common Stock issuable upon exercise of this Warrant had this Warrant been exercised immediately prior to such reclassification, change, or consolidation. Such new Warrant shall be as nearly equivalent in all substantive respects as practicable to this Warrant and the adjustments provided in this Article 3 and the provisions of this Section 3.1, shall similarly apply to successive reclassifications, changes, and consolidations.

3.2 ***Subdivision or Combination of Shares***. If the Company shall at any time while this Warrant remains outstanding and less than fully exercised: (i) split or subdivide its Class A Common Stock, the Warrant Price shall be proportionately reduced; or (ii) shall combine or reverse-split shares of its Class A Common Stock, the Warrant Price shall be proportionately increased.

3.3 ***Time of Adjustments to the Warrant Price and Shares Purchasable***. All adjustments to the Warrant Price and the number of shares purchasable hereunder, unless otherwise specified herein, shall be effective, as applicable, as of the earliest of:

(i) the date of issue of the security, or the occurrence of the other event, causing the adjustment;

(ii) the date of sale of the security causing the adjustment;

(iii) the effective date of a division or combination of shares; and

(iv) the record date of any action of holders of any class of the Company's capital stock taken for the purpose of entitling the stockholders of the Company to receive a distribution or dividend payable in equity securities, *provided that* such division, combination, distribution or dividend actually occurs;

provided, *however*, that notwithstanding anything else to the contrary herein, the first adjustment, if applicable, to the Warrant Price and the number of shares purchasable hereunder, shall be calculated based off of the initial aggregate number of Warrant Shares hereunder.

3.4 ***Notices***. During the term of this Warrant, in addition to any other notices required or permitted hereunder, at least fourteen (14) days prior to (i) the Company declaring a record date for holders of its Class A Common Stock (or any other securities receivable upon the exercise of this Warrant) for the purpose of entitling such holders to receive any dividend, distribution, right to subscribe or purchase other securities or any other right; (ii) any reclassification or change of outstanding securities issuable upon exercise of this Warrant; (iii) any Sale of the Company or any consolidation or merger of the Company with or into another corporation (other than a merger with another corporation in which the Company is a continuing corporation and which does not result in any reclassification, change or exchange of outstanding securities issuable upon exercise of this Warrant); (iv) any sale or transfer to another corporation or entity of all, or substantially all, of the property of the Company; (v) any voluntary dissolution, liquidation or winding-up of the Company; or (vi) any public offering of the Company's capital stock pursuant to an effective registration statement under the Securities Act, the Company shall give notice to the Holder stating the record date for determining the holders entitled to such distribution or the date on which securities of the Company are to be exchanged in connection with a reclassification, consolidation, merger, sale of all or substantially all the assets of the Company, dissolution, liquidation or winding-up is to take place and the date, if any, on which the capital stock of the Company is to be exchanged in connection therewith.

3.5 ***Duration of Adjusted Warrant Price***. Following each adjustment of the Warrant Price, such adjusted Warrant Price shall remain in effect until a further adjustment of the Warrant Price.

3.6 ***Adjustment of Number of Shares***. Upon each adjustment of the Warrant Price pursuant to this Article 3, the number of shares of Class A Common Stock purchasable hereunder shall be adjusted to the nearest whole share, to the number obtained by dividing the Aggregate Price by the Warrant Price as adjusted.

ARTICLE 4.
TRANSFER, RIGHT OF FIRST REFUSAL; DRAG ALONG; EXCHANGE AND LOSS

4.1 ***Transfer***. This Warrant and any and all rights hereunder are not transferable unless otherwise agreed to by Company in writing, which agreement may be withheld in the Company's sole and absolute discretion. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

4.2 ***Right of First Refusal***. The shares of Class A Common Stock issuable upon exercise of this Warrant are subject to a right of first refusal as set forth in the Company's Bylaws (the "**ROFR**"). Before any such shares of Class A Common Stock issuable upon exercise of this Warrant (or any beneficial interest in such shares) may be sold, transferred, encumbered or otherwise disposed of in any way (whether by operation of law or otherwise) by Holder or any subsequent transferee, such party must first offer such shares or beneficial interest to the Company and/or its assignee(s) in accordance with the terms of the ROFR.

4.3 ***Drag Along***. In the event that (i) the Board, (ii) the holders of the majority of the shares of Common Stock then issued or issuable upon conversion of the shares of the Company's Preferred Stock (the "**Selling Investors**"); and (iii) the holders of the majority of the shares of Common Stock then issued and outstanding (other than those issued or issuable upon conversion of the Preferred Stock) (collectively, the "**Electing Holders**"), approve a Sale of the Company, then Holder agrees (such agreement the Company's "**Drag-Along Right**") with respect to all shares of capital stock of the Company pursuant to this Warrant that it holds or otherwise exercises dispositive power as follows:

(i) in the event such transaction requires the approval of the stockholders of the Company, (x) if the matter is to be brought to a vote at a stockholder meeting, after receiving proper notice of any meeting of stockholders of the Company to vote on the approval of a Sale of the Company, to be present, in person or by proxy, as a holder of shares of capital stock, at all such meetings and be counted for the purposes of determining the presence of a quorum at such meetings; and (y) to vote (in person, by proxy or by action by written consent, as applicable) all shares of capital stock in favor of such Sale of the Company and in opposition of any and all other proposals that could reasonably be expected to delay or impair the ability of the Company to consummate such Sale of the Company;

(ii) in the event that the Sale of the Company is to be effected by the sale of shares of capital stock by the Company's stockholders (the "Selling Holders") without the need for stockholder approval, Holder agrees to sell all shares of capital stock that it beneficially holds (or in the event that the Selling Holders are selling fewer than all of their shares of capital stock of the Company, shares in the same proportion as the Selling Holders are selling) to the person to whom the Selling Holders propose to sell their shares of capital stock;

(iii) to refrain from exercising any dissenters' rights or rights of appraisal under applicable law at any time with respect to such Sale of the Company;

(iv) to execute and deliver all related documentation and take such other action in support of the Sale of the Company as shall reasonably be requested by the Company;

(v) in the event that the Electing Holders, in connection with such Sale of the Company, appoint a stockholder representative (the "Stockholder Representative") with respect to matters affecting the stockholders of the Company under the applicable definitive transaction agreements following consummation of such Sale of the Company, (x) to consent to (i) the appointment of such Stockholder Representative, (ii) the establishment of any applicable escrow, expense or similar fund in connection with any indemnification or similar obligations, and (iii) the payment of Holder's pro rata portion (from the applicable escrow or expense fund or otherwise) of any and all reasonable fees and expenses to such Stockholder Representative in connection with such Stockholder Representative's services and duties in connection with such Sale of the Company and its related service as the representative of the stockholders of the Company, and (y) not to assert any claim or commence any suit against the Stockholder Representative or any other stockholder of the Company with respect to any action or inaction taken or failed to be taken by the Stockholder Representative in connection with its service as the Stockholder Representative, absent fraud or willful misconduct;

(vi) if the consideration to be paid in exchange for the shares pursuant such Sale of the Company includes any securities and due receipt thereof by Holder would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities or (y) the provision to Holder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act of 1933, as amended, the Company may cause to be paid to Holder in lieu thereof, against surrender of the shares which would have otherwise been sold by Holder, an amount in cash equal to the fair value (as determined in good faith by the Company) of the securities which Holder would otherwise receive as of the date of the issuance of such securities in exchange for such shares; and

(vii) not to deposit any voting securities owned by Holder in a voting trust or subject any such voting securities to any arrangement or agreement with respect to the voting of such shares of capital stock, unless specifically requested to do so by the acquiror in connection with a Sale of the Company.

Notwithstanding the foregoing, Holder will not be required to comply with these restrictions in connection with any proposed Sale of the Company unless (1) Holder receives with respect to Holder's shares of a class or series of capital stock consideration per share that is no less than every other stockholder participating in the Sale of the Company with respect to his, her or its shares of the same class or series of capital stock, (2) the proceeds payable to Holder in connection with such transaction are equal to or greater than the proceeds required to be paid to Holder pursuant to the Company's certificate of incorporation in effect at such time, (3) Holder's maximum liability in connection with such Sale of the Company does not exceed the consideration payable to Holder in such Sale of the Company (other than in the case of potential liability for fraud or willful misconduct or breach of a representation by Holder relating to Holder's title to Holder's securities as to which liability there need not be any such limitation) and (4) the terms of such transaction applicable to Holder are materially no less favorable than the terms applicable to each other stockholder holding the same class or series of shares as Holder.

By Holder's execution of this Warrant, Holder hereby constitutes and appoints the President and Secretary of the Company, and each of them, with full power of substitution, as Holder's proxies with respect to the Drag- Along Right, including without limitation, votes regarding any Sale of the Company, and hereby authorize each of them to represent and to vote, if and only if Holder (i) fails to vote or (ii) attempts to vote (whether by proxy, in person or by written consent), in a manner that is inconsistent with the terms of this Warrant, all of Holder's shares of capital stock of the Company in favor of any Sale of the Company pursuant to and in accordance with the terms and provisions hereof. The proxy granted pursuant to the immediately preceding sentence is given for good and valuable consideration the receipt and sufficiency is hereby acknowledged and, as such, is coupled with an interest and shall be irrevocable unless and until this Warrant terminates or expires.

4.4 ***Securities Laws***. In connection with the issuance of shares of Class A Common Stock to the Holder, the Holder agrees to execute an investment intent letter or purchase agreement in such form as reasonably requested by the Company and its counsel and as may be required to comply with federal and applicable state securities laws. If required by the Company, in connection with each issuance of shares of Class A Common Stock upon exercise of this Warrant, the Holder will give: (i) assurances in writing, satisfactory to the Company's counsel, that such shares are not being purchased with a view to the distribution thereof in violation of applicable laws, (ii) sufficient information, in writing, to enable the Company's counsel to reasonably rely on exemptions from the registration or qualification requirements of applicable laws, if available, with respect to such exercise, and (iii) its cooperation to the Company in connection with such compliance.

4.5 ***Exchange***. This Warrant is exchangeable at the principal office of the Company for Warrants which represent, in the aggregate, the applicable Aggregate Price and aggregate number of Vested Warrant Shares hereunder; each new Warrant to represent the right to purchase such portion of the Aggregate Price and aggregate number of Warrant Shares, whether or not vested, hereunder as the Holder shall designate at the time of such exchange. Each new Warrant shall be identical in form and content to this Warrant, except for appropriate changes in the number of shares of Class A Common Stock covered thereby, the percentage stated in Section 4.1 above, and any other changes which are necessary in order to prevent the Warrant exchange from changing the respective rights and obligations of the Company and the Holder as they existed immediately prior to such exchange.

4.6 ***Loss or Mutilation***. Upon receipt by the Company of evidence satisfactory to it of the ownership of, and the loss, theft, destruction or mutilation of, this Warrant and in the case of loss, theft, or destruction, of indemnity satisfactory to it, and in the case of mutilation, upon surrender and cancellation hereof, the Company will execute and deliver in lieu hereof a new Warrant identical in form and content.

ARTICLE 5.
HOLDER RIGHTS

5.1 ***No Stockholder Rights Until Exercise***. The Holder, solely by virtue of the existence of this Warrant, shall not be entitled to any rights as a stockholder of the Company until this Warrant is exercised for Warrant Shares in accordance with the terms hereof.

5.2 ***Restrictions on Transfer of Shares of Class A Common Stock***. Holder acknowledges and understands that the shares of Class A Common Stock issuable upon exercise hereof are subject to certain restrictions on transfer, including, without limitation, a right of first refusal and market standoff provision, as set forth in the Company's Bylaws.

ARTICLE 6.
REPRESENTATIONS AND WARRANTIES BY THE HOLDER

The Holder represents and warrants to the Company as follows:

6.1 This Warrant and the Class A Common Stock issuable upon exercise hereof are being acquired for its own account, for investment and not with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act. Upon exercise of this Warrant, the Holder shall, if so requested by the Company, confirm in writing, in a form satisfactory to the Company's counsel, that the securities issuable upon exercise of this Warrant are being acquired for investment and not with a view toward distribution or resale in violation of applicable securities laws.

6.2 The Holder understands that the Warrant and the Class A Common Stock issuable hereunder have not been registered under the Securities Act by reason of their issuance in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act pursuant to Section 4(a)(2) thereof, and that they must be held by the Holder indefinitely, and that the Holder must therefore bear the economic risk of such investment indefinitely, unless a subsequent disposition thereof is registered under the Securities Act or is exempted from such registration.

6.3 The Holder understands that no federal or state securities administrator has made any finding or determination relating to the fairness of investment in the Company or purchase of the Class A Common Stock hereunder and that no federal or state securities administrator has recommended or endorsed the offering of securities by the Company hereunder.

6.4 The Holder has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the purchase of this Warrant and the Class A Common Stock purchasable pursuant to the terms of this Warrant and of protecting its interests in connection therewith.

6.5 The Holder is able to bear the economic risk of the purchase of the Class A Common Stock pursuant to the terms of this Warrant.

6.6 Holder has reviewed with Holder's own tax advisors the federal, state, local and foreign tax consequences of the transactions contemplated by this Warrant. Holder is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. Holder understands that Holder (and not the Company) shall be responsible for any tax liability that may arise as a result of the transactions contemplated by this Warrant.

6.7 The Holder is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

ARTICLE 7.
MISCELLANEOUS

7.1 ***GOVERNING LAWS***. IT IS THE INTENTION OF THE PARTIES HERETO THAT THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (IRRESPECTIVE OF ITS CHOICE OF LAW PRINCIPLES) SHALL GOVERN THE VALIDITY OF THIS WARRANT, THE CONSTRUCTION OF ITS TERMS, AND THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES HERETO.

7.2 ***Binding Upon Successors and Assigns***. Subject to, and unless otherwise provided in, this Warrant, each and all of the covenants, terms, provisions, and agreements contained herein shall be binding upon, and inure to the benefit of the permitted successors, executors, heirs, representatives, administrators and assigns of the parties hereto.

7.3 ***Severability***. If any one or more provisions of this Warrant, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Warrant and the application of such provisions to other persons or circumstances shall be interpreted so as best to reasonably effect the intent of the parties hereto. The parties further agree to replace any such void or unenforceable provisions of this Warrant with valid and enforceable provisions which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provisions.

7.4 ***Default, Amendment and Waivers***. Any provision of this Warrant may be amended, waived or modified upon the written consent of the Company and the Holder. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions. The waiver by a party of any breach hereof for default in payment of any amount due hereunder or default in the performance hereof shall not be deemed to constitute a waiver of any other default or any succeeding breach or default. The failure to cure any breach of any term of this Warrant within ten (10) days of written notice thereof shall constitute an event of default under this Warrant.

7.5 ***Notices***. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or: (i) personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth on the signature page, or to such e-mail address, facsimile number or address as subsequently modified by written notice given in accordance with this Section 7.5. If notice is given to the Company, a copy (which shall not constitute notice) shall also be sent to Foley & Lardner, LLP, 975 Page Mill Road, Palo Alto, CA 94304, Attention: E. Thom Rumberger, Jr.. Any party may change its address for such communications by giving notice thereof to the other party in conformity with this Section 7.5.

7.6 ***Construction of Agreement***. A reference in this Warrant to any section shall include a reference to every section the number of which begins with the number of the Section to which reference is specifically made (e.g., a reference to Section 3 shall include a reference to Sections 3.4 and 3.6). The titles and headings herein are for reference purposes only and shall not in any manner affect the interpretation of this Warrant. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require.

7.7 ***Full Payment***. Holder hereby acknowledges and agrees that the issuance of this Warrant represents the sole obligation of the Company and its affiliates to Holder for all services rendered to the Company by Holder pursuant to the Advisor Agreement.

7.8 ***Further Assurances***. Each party agrees to cooperate fully with the other parties and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by any other party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Warrant.

7.9 ***Restricted Shares***. The shares of Class A Common Stock purchasable under this Warrant are subject to restrictions on transfer and shall not be sold or transferred unless either (i) they first shall have been registered under the Securities Act, or (ii) the Company first shall have been furnished with evidence, which may be an opinion of legal counsel, satisfactory to the Company's counsel to the effect that such sale or transfer is exempt from the registration requirements of the Securities Act, and the other requirements of Sections 4.1 through 4.4 inclusive hereof have been satisfied, as applicable.

7.10 ***Counterparts***. This Warrant may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Warrant on the date first written above.

COMPANY:

CUE, INC.

By: /s/ Ayub Khattak
Name: Ayub Khattak
Title: Chief Executive Officer

Address: 11100 Roselle St. Suite A
San Diego, CA 92121
Email: [***]

Agreed and Acknowledged:

HOLDER:

WEHO INVESTMENTS, LLC

By: /s/ Robert P. Hrtica
Name: Robert P. Hrtica
Title: Manager

Address: 9255 W. Sunset Blvd., Ste. 615
West Hollywood, CA 90069

[*Signature Page to Cue Inc. Common Stock Warrant*]

EXHIBIT "A-1"

FORM NOTICE OF EXERCISE OF WARRANT BY CASH PAYMENT OF WARRANT PRICE

[insert date]

Cue, Inc.
11100 Roselle St. Suite A
San Diego, CA 92121
Attention: Chief Executive Officer

CASH EXERCISE

Ladies and Gentlemen:

The undersigned registered Holder of the Warrant to Purchase Stock delivered herewith ("Warrant"), hereby irrevocably exercises such Warrant for, and purchases thereunder, shares of the Class A Common Stock (the "Common Stock") of Cue Inc., a Delaware corporation (the "Company"), as provided below. Capitalized terms used herein, unless otherwise defined herein, shall have the meanings given in the Warrant. The portion of the Aggregate Price (as defined in the Warrant) to be applied toward the purchase of Common Stock pursuant to this Notice of Exercise is $, thereby leaving a remainder Aggregate Price (if any) equal to $. Such exercise shall be pursuant to the cash exercise provisions of Section 2.1 of the Warrant. Therefore, the Holder makes payment with this Notice of Exercise by way of [check payable or wire transfer (cross out inapplicable payment method)] to the Company in the amount of $. Such [check or wire transfer (cross out inapplicable payment method)] is payment in full under the Warrant for shares of Common Stock based upon the Warrant Price of $per share, as currently in effect under the Warrant. The Holder requests that the certificates for the purchased shares of Common Stock be issued in the name of and delivered to. To the extent the foregoing exercise is for less than the full Aggregate Price, a replacement Warrant representing the remainder of the Aggregate Price and otherwise of like form, tenor and effect should be delivered to the Holder along with the share certificates evidencing the Common Stock issued in response to this Notice of Exercise.

The undersigned represents that the aforesaid shares of Common Stock are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares except in compliance with applicable securities laws and all representations and warranties of the undersigned set forth in Section 6 of the attached Warrant are true and correct as of the date hereof. Additionally, the undersigned agrees and covenants to abide by the transfer restriction terms and conditions as set forth in Sections 4.1 through 4.6, inclusive, of the Warrant, as well as the restrictions on transfer imposed on the shares of Common Stock pursuant to the Company's Amended and Restated Bylaws, as amended.

HOLDER

By: _____

Name: _____

Title:

NOTE: The signature to the foregoing Notice of Exercise must exactly correspond to the name of the Holder as typed on Warrant.

EXHIBIT "A-2"

FORM OF NOTICE OF EXERCISE OF WARRANT PURSUANT TO NET ISSUE ("CASHLESS") EXERCISE PROVISIONS

[insert date]

Cue, Inc.
11100 Roselle St. Suite A
San Diego, CA 92121
Attention: Chief Executive Officer

CASHLESS EXERCISE

Ladies and Gentlemen:

The undersigned, registered Holder of the Warrant to Purchase Stock delivered herewith ("Warrant"), hereby irrevocably exercises such Warrant for, and purchases thereunder, shares of the Class A Common Stock (the "Common Stock") of Cue Inc., a Delaware corporation (the "Company"), as provided below. Capitalized terms used herein, unless otherwise defined herein, shall have the meanings given in the Warrant. The portion of the Aggregate Price (as defined in the Warrant) to be applied toward the purchase of Common Stock pursuant to this Notice of Exercise is $, thereby leaving a remainder Aggregate Price (if any) equal to $. Such exercise shall be pursuant to the net issue exercise provisions of Section 2.2 of the Warrant; therefore, Holder makes no payment with this Notice of Exercise. The number of shares to be issued pursuant to this exercise shall be determined by reference to the formula in Section 2.2 of the Warrant which, by reference to Section 2.3, requires the use of the current per share fair market value of the Common Stock. The current fair market value of one share of the Company's Common Stock shall be determined in the manner provided in Section 2.3, which amount has been determined or agreed to by Holder and the Company to be $, which figure is acceptable to Holder for calculations of the number of shares of Common Stock issuable pursuant to this Notice of Exercise, resulting in the issuance ofshares of Common Stock. Holder requests that the certificates for the purchased shares of Common Stock be issued in the name of and delivered to. To the extent the foregoing exercise is for less than the full Aggregate Price of the Warrant, a replacement Warrant representing the remainder of the Aggregate Price (and otherwise of like form, tenor and effect) shall be delivered to Holder along with the share certificate evidencing the Common Stock issued in response to this Notice of Exercise.

The undersigned represents that the aforesaid shares of Common Stock are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares except in compliance with applicable securities laws and all representations and warranties of the undersigned set forth in Section 6 of the attached Warrant are true and correct as of the date hereof. Additionally, the undersigned agrees and covenants to abide by the transfer restriction terms and conditions as set forth in Sections 4.1 through 4.6, inclusive, of the Warrant, as well as the restrictions on transfer imposed on the shares of Common Stock pursuant to the Company's Amended and Restated Bylaws, as amended.

HOLDER

By: _____

Name: _____

Title:

NOTE: The signature to the foregoing Notice of Exercise must exactly correspond to the name of the Holder as typed on Warrant.

Exhibit 10.1

IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED IN THE COMMISSIONER'S RULES.

CUE INC.

STOCK OPTION AGREEMENT

CUE INC., a California corporation (the "Company"), hereby grants to the optionee named below an option ("Option") to purchase shares of its Class A Common Stock (the "Shares").

Date of Option Grant:

Name of Optionee or Purchaser:

Number of Shares:

Exercise Price per Share:

By signing this cover sheet, you agree to all of the terms and conditions described in this Agreement.

Optionee:

(Signature)

Company:

Ayub Khattak, Chief Executive Officer

STOCK OPTION AGREEMENT

Vesting	Your Option has been granted to you in connection with your employment with the Company. Your Option vests immediately on the Effective Date of this Option Grant.
Term	Your Option will expire in any event at the close of business at Company headquarters on the day before the 10th anniversary of the Date of Grant, as shown on the cover sheet.
Acceleration	Notwithstanding anything to the contrary contained herein, if, during the Vesting Period, the Company is acquired by means an Acquisition Event (defined below), then all of the unvested Shares shall become fully vested immediately prior to the closing of such Acquisition Event.
Termination	Upon termination of the Employment Agreement for any reason, with or without cause, then your Option will stop vesting and you may exercise your Option only with respect to your vested Shares at any time during the ten-year term of this Option.
Restrictions on Exercise	You will be permitted to exercise this Option only if the Company's stockholders representing a majority of the outstanding securities entitled to vote have approved the Option and the issuance of Shares at that time would not otherwise violate any law or regulation.
Notice of Exercise	When you wish to exercise this Option, you must notify the Company by giving your written notice of exercise to the Chief Executive Officer of the Company. Your notice must specify how many Shares you wish to purchase. Your notice must also specify how your Shares should be registered (in your name only or in your and your spouse's names as community property or as joint tenants with right of survivorship). The notice will be effective when it is received by the Company. If someone else wants to exercise this Option after your death, that person must prove to the Company's satisfaction that he or she is entitled to do so.
Periods of Nonexercisability	Any other provision of this Agreement notwithstanding, the Company shall have the right to designate one or more periods of time, each of which shall not exceed 180 days in length, during which this Option shall not be exercisable if the Company determines (in its sole discretion) that such limitation on exercise could facilitate the registration or qualification of any securities by the Company under the Securities Act of 1933 (the "Securities Act") or any state securities laws, or facilitate the perfection of any exemption from the registration or qualification requirements of the Securities Act or any applicable state securities laws for the issuance or transfer of any securities. Such limitation on exercise shall not alter the vesting schedule set forth in this Agreement other than to limit the periods during which this Option shall be exercisable.
Form of Payment	When you submit your notice of exercise, you must include payment of the total exercise price for the Shares you are purchasing. Payment shall be made in the form of your personal check, a cashier's check or a money order.

Withholding Taxes You will not be allowed to exercise this Option unless you make acceptable arrangements to pay any withholding or other taxes that may be due as a result of the Option exercise or the sale of shares acquired upon exercise of this Option and the sale of the shares.

Restrictions on Resale By signing this Option, you agree not to sell any Shares at a time when applicable laws, regulations or Company or underwriter trading policies prohibit a sale.

Transfer of Option Prior to your death, only you may exercise this Option. You cannot transfer or assign this Option. For instance, you may not sell this Option or use it as security for a loan. If you attempt to do any of these things, this Option will immediately become invalid. You may, however, dispose of this Option in your will. Regardless of any marital property settlement agreement, the Company is not obligated to honor a notice of exercise from your spouse or former spouse, nor is the Company obligated to recognize such individual's interest in your Option in any other way.

Retention Rights Neither this Option nor this Agreement gives you the right to be retained by the Company in any capacity. The Company reserves the right to terminate your service pursuant to the terms of the Advisory Agreement.

Shareholder Rights You, or your estate or heirs, have no rights as a shareholder of the Company until a certificate for your Shares has been issued.

Restriction on Transfer; Rights of First Refusal Before any Shares registered in your name may be sold or transferred (including transfer by operation of law other than as excepted pursuant herein), you must first obtain the written consent of the Company. If such written consent is not given, then the Company shall have a right of first refusal to purchase all, but not less than all, such Shares for the same price and, to the extent practicable, on substantially the same terms and conditions offered to such prospective purchaser, in accordance with the procedures set forth below (the "Rights of First Refusal").

If the proposed price per share is to be other than in cash, then an equivalent cash value shall be determined in good faith by the Board of Directors of the Company. If a transfer other than a voluntary sale is proposed to be made, then the price per share for purposes of the Rights of First Refusal shall be determined by the mutual agreement between you and the Company or, if no agreement can be reached, the price shall be the fair market value of such Shares, as determined in good faith by the Company's Board of Directors.

Prior to any sale or transfer of any of Shares, you, or your legal representative, shall promptly deliver to the Secretary of the Company a written notice of the price and other terms and conditions of the offer by the prospective purchaser, the identity of the prospective purchaser, and, in the case of a sale, your bona fide intention to sell or dispose of such shares together with a copy of a written agreement between yourself and the prospective purchaser conditioned only upon the satisfaction of the procedures set forth in these Rights of First Refusal. If the Company does not give its written consent to such transfer, then the Company (or its assignees) shall, for thirty (30) days after such notice from you or your representative, have the right under this section to purchase all such Shares, as set forth herein. After the expiration of the Rights of First Refusal, or upon the written consent of the Company to the proposed transfer, you or your representative may sell or transfer the Shares specified in the notice to the Company, on the terms and conditions specified in such notice; provided, however, that the sale must be consummated within three (3) months after the date of the notice and that all Shares sold or transferred shall remain subject to the provisions and restrictions of this Agreement, including restrictions on further transfer as provided in this section, and shall carry a legend to that effect.

If the Rights of First Refusal hereunder are not exercised but you fail to consummate such sale on the same terms and conditions as set forth in the notice to the Company within three (3) months after the date of the notice, then such Rights of First Refusal shall be reinstated.

The provisions of this section shall terminate on the closing date of an underwritten public offering of Common Stock of the Company. The provisions of this section shall not apply to a transfer of any Shares by you, either during your lifetime or on death to your ancestors, descendants or spouse, or any custodian or trustee for your account or for your ancestors, descendants or spouse; provided, in each such case a transferee shall receive and hold such shares subject to the provisions and restrictions on transfer of this Agreement and there shall be no further transfer of such Shares except in accordance herewith.

The Company shall not be required to transfer on its books any Shares of the Company which shall have been sold or transferred in violation of any of the provisions set forth in this Agreement, or to treat as owner of such Shares, or to accord the right to vote as such owner or to pay dividends to, any transferee to whom such shares shall have been so transferred.

Right to Repurchase Shares

The Company shall have the right (the "Purchase Right"), but not the obligation, to purchase any Shares acquired upon exercise of this Option if any of the following events occurs (the date of such event, a "Trigger Date"): (i) your termination of employment or service from the Company and its affiliates by the Company for Cause (defined hereafter) or your resignation without Good Reason (defined hereafter), or (ii) the issuance of any Shares following your termination of employment or service from the Company and its affiliates pursuant to the terms of this Option, such as upon the exercise of the Option following termination of employment or services for Cause or without Good Reason. The purchase price for the Shares subject to such Purchase Right shall be the fair market value of the Shares on the applicable Trigger Date.

The Company may exercise its Purchase Right by giving written notice thereof to you within thirty (30) days after the Trigger Date (the thirty (30) day period in each case, the "Call Period") of the number of Shares with respect to which the Purchase Right is being exercised. The Company shall promptly determine the Purchase Price for the Shares subject to the Purchase Right and shall notify you of such determination. The Company may elect to pay all or any portion of such Purchase Price in cash; provided that if the Company does not elect to pay the entire Purchase Price in cash, the Company shall, at a minimum, pay at least ten percent (10%) of the Purchase Price in cash, and shall deliver a promissory note with a principal amount equal to the remainder of the Purchase Price, which promissory note shall provide that: (i) the principal shall be paid in no more than five (5) equal annual installments commencing one (1) year from the delivery of such promissory note, (ii) interest on the unpaid principal amount shall accrue at an annual rate equal to the prime interest rate interest charged by the principal bank with which the Company conducts business as determined on the date the promissory note is issued, and shall be payable together with and in addition to each principal payment, and (iii) the Company shall have the right, without penalty, to prepay all or any portion of the principal and accrued interest owing thereunder at any time.

Upon the delivery of the payment and/or the promissory note described herein by the Company, you shall take all actions necessary, and execute all related documents specified by the Company as being reasonably necessary to consummate the sale of the Shares to the Company, and, by accepting this Option, you appoint the Company's Secretary as your true and lawful attorney-in-fact to exercise and deliver all such instruments, documents and writings, and to take all such actions as shall be required to consummate the sale of the Shares to the Company as contemplated in this Section. Such power is a special Power of Attorney coupled with an interest, is irrevocable, and shall run with the shares to any subsequent owners thereof.

For purposes hereof (A) "Cause" means (i) the commission of an act of fraud or embezzlement by the Optionee that is materially injurious to the Company, as determined, in each case, in good faith by the Company, and is not reimbursed to the Company in full and with interest within five (5) business days of notification to the Optionee; (ii) the Optionee's conviction of, or plea of *nolo contendere* to a felony of moral turpitude, and not including felonies related to driving under the influence of alcohol; or (iii) the commission of an act by the Optionee which constitutes unfair competition with the Company or any of its affiliates (not including a passive investment by the Optionee in any other company or business which constitutes no more than three percent (3%) of the equity of that company or business) which unfair competition is readily demonstrable by significant loss of revenues to the Company and which is not cured within thirty (30) days after notice to the Optionee by the Company in writing; (B) "Good Reason" shall mean, without the Optionee's written consent, (i) only at such time on and after the Optionee becomes a paid employee of the Company, a material diminution in the Optionee's base salary (as applicable) rate, except in the case where the Company's failure to pay the Optionee's base salary (as applicable) in full is due to a reduction effected in connection with an across-the-board reduction in the compensation of the Company's executive management team necessitated by the business or financial condition of the Company, (ii) a relocation by the Company of the office where the Optionee is based to a location over fifty (50) miles from its location immediately prior to such relocation, (iii) only at such time on and after the Optionee becomes a paid employee of the Company, a material reduction in the Optionee's duties, position or responsibilities, or (iv) the Optionee's death or Disability; *provided*, *however*, that you must provide written notice to the Company of the alleged breach, act or failure to act that allegedly constitutes Good Reason which notice shall describe the alleged breach, act or failure to act in question, and the you shall afford the Company an opportunity to cure the alleged breach, act or failure to act for a period of thirty (30) days after such notice: if such breach, act or failure to act is not cured prior to the expiration of the thirty (30) day cure period, then such termination by you for Good Reason shall be effective upon the expiration of said cure period

Investment Intent; Covenant

Upon the grant of this Option and upon purchasing Shares upon exercise of this Option, you hereby make the following representations to the Company:

(a) You have had an opportunity to discuss the business prospects and business plan of the Company with the officers and directors of the Company. You have a preexisting personal or business relationship with the Company or one of its officers, directors or controlling persons and/or by reason of your business or financial experience you have the capacity to protect your own interests in connection with the transactions contemplated by this Agreement.

(b) You are acquiring this Option and the Shares for investment and not with a view to or for sale in connection with any distribution of said Shares or with any present intention of distributing or selling said the Shares and you do not presently have reason to anticipate any change in circumstances or any particular occasion or event which would cause you to sell said the Shares. You understand that the Shares have not been registered under the Securities Act and may not be sold or otherwise disposed of except pursuant to an effective Registration Statement filed under the Securities Act or pursuant to an exemption from the registration requirements of such Securities Act. You acknowledge that the Company is under no obligation to register the Shares under the Securities Act on your behalf. You represent and warrant that you understand that the Shares constitutes restricted securities within the meaning of Rule 144 promulgated under the Act; that the exemption from registration under Rule 144 will not be available in any event for at least one year from the date of purchase and payment for the Shares, and even then will not be available unless the terms and conditions of Rule 144 are complied with and will be subject to the limitations on amount set forth therein.

(c) Without limiting the representations and warranties set forth above, you agree that you will not make any transfer of all or any part of the Shares unless (i) there is a registration statement under the Securities Act in effect with respect to such transfer and such transfer is made in accordance therewith, or (ii) you have furnished the Company an opinion of counsel satisfactory to the Company and its counsel to the effect that such transfer will not require registration under the Securities Act. You agree that, prior to the closing of the Company's initial public offering registered under the Act, you will not sell any of such securities through a registered broker-dealer or market maker in reliance on Rule 144(k) without the Company's prior consent, even if you are otherwise permitted to transfer them pursuant to Rule 144(k) under the Securities Act.

Legends All certificates representing the Shares issued upon exercise of this Option shall, where applicable, have endorsed thereon the following legends:

"THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A REPURCHASE OPTION AND CERTAIN RESTRICTIONS UPON AND OBLIGATIONS WITH RESPECT TO TRANSFER AND RIGHTS OF FIRST REFUSAL AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL REGISTERED HOLDER, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY."

"THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED."

You agree that, in order to ensure compliance with the restrictions referred to above, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

Drag-Along Rights In the event the holders of a majority of the Company's voting capital stock then outstanding (the "Majority Shareholders") determine to sell or otherwise dispose of all or substantially all of the assets of the Company or fifty percent (50%) or more of the capital stock of the Company, in each case in a transaction constituting an Acquisition Event, to any non-affiliate(s) of the Company or any of the Majority Shareholders, or to cause the Company to merge with or into or consolidate with any non-affiliate(s) of the Company or any of the Majority Shareholders (in each case, the "Buyer") in a bona fide negotiated transaction (a "Sale"), you shall be obligated to and shall upon the written request of the Majority Shareholders: (a) sell, transfer and deliver, or cause to be sold, transferred and delivered, to the Buyer, some or all of your Shares (including for this purpose all of your Shares that presently or as a result of any such transaction may be acquired upon the exercise of an option (following the payment of the exercise price therefor)) on substantially the same terms applicable to the Majority Shareholders (with appropriate adjustments to reflect the conversion of convertible securities, the redemption of redeemable securities and the exercise of exercisable securities as well as the relative preferences and priorities of preferred stock); and (b) execute and deliver such instruments of conveyance and transfer and take such other action, including voting such Shares in favor of any Sale proposed by the Majority Shareholders and executing any purchase agreements, merger agreements, indemnity agreements, escrow agreements or related documents as the Company, the Majority Shareholders or the Buyer may reasonably require in order to carry out the terms and provisions of this Section. The drag-along right set forth in this section shall terminate as to any Shares upon the earlier of (i) the first sale of Shares to the general public, or (ii) an Acquisition Event in which the successor corporation has equity securities that are publicly traded.

Adjustment of Shares If (i) the Company shall at any time be involved in a merger or other transaction in which the Shares are changed or exchanged; (ii) the Company shall subdivide or combine the Shares or the Company shall declare a dividend payable in Shares, other securities or other property; (iii) the Company shall effect a cash dividend the amount of which, on a per Share basis, exceeds ten percent (10%) of the fair market value of a Share at the time the dividend is declared, or the Company shall effect any other dividend or other distribution on the Shares in the form of cash, or a repurchase of Shares, that the Board of Directors of the Company (the "Board") determines by resolution is special or extraordinary in nature or that is in connection with a transaction that is a recapitalization or reorganization involving the Shares;

(iv) the Company shall at any time undergo a recapitalization, combination, reclassification or other distribution of Shares without receipt of consideration by the Company; or (v) any other event shall occur, which, in the case of this subsection (v), in the judgment of the Board necessitates an adjustment to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under this Option, then, in each case, the Board shall, in such manner as it may deem equitable, adjust any or all of: (i) the number and type of Shares (including the number and type of Shares that may be issued pursuant to incentive stock options), (ii) the grant, purchase, or exercise price with respect to this Option, and (iii) the performance goals established under this Option.

In any of the circumstances described in the preceding paragraph, the Board may also make provision for a cash payment, in an amount determined by the Board, to the holder of this Option in exchange for the cancellation of all or a portion of the Option (without consent from you or anyone else with an interest in this Option), effective at such time as the Board specifies (which may be the time such transaction or event is effective); provided that any such adjustment shall be made in manner that permits the Option to continue to be exempt from Section 409A of the Internal Revenue Code (the "Code"). Further, the number of Shares subject to this Option must always be a whole number.

Without limitation, in the event of any reorganization, merger, consolidation, combination or other similar corporate transaction or event, whether or not constituting an Acquisition Event, other than any such transaction in which the Company is the continuing corporation and in which Shares are not being converted into or exchanged for different securities, cash or other property, or any combination thereof, the Board may substitute, on an equitable basis as the Board determines, for each Share then subject to this Option, the number and kind of shares of stock, other securities, cash or other property to which holders of Shares are or will be entitled in respect of each Share pursuant to the transaction.

Notwithstanding the foregoing, in the case of a stock dividend (other than a stock dividend declared in lieu of an ordinary cash dividend) or subdivision or combination of the Shares (including a reverse stock split), if no action is taken by the Board, adjustments contemplated by this section that are proportionate shall nevertheless automatically be made as of the date of such stock dividend or subdivision or combination of the Shares.

Acquisition Event or Cash-Out of Options Upon an Acquisition Event (as defined below), the Board may, in its discretion, determine that this Option shall vest or be deemed to have been earned in full, and:

(i) If the successor or surviving corporation (or parent thereof) so agrees, this Option shall be assumed, or replaced with the same type of award with similar terms and conditions, by the successor or surviving corporation (or parent thereof) in the Acquisition Event. If this Option is so assumed or replaced by the successor or surviving corporation (or parent thereof), it shall be appropriately adjusted, immediately after such Acquisition Event, to apply to the number and class of securities which would have been issuable to you upon the consummation of such Acquisition Event had the Option been exercised or vested immediately prior to such Acquisition Event, and such other appropriate adjustments in the terms and conditions of the Option shall be made. In such a case, if this Option was not vested in full upon the Acquisition Event, then, if your employment is terminated without Cause (as defined below) or as a result of death or disability within one year following the Acquisition Event, the Option shall vest in full on the date of such termination. For purposes of this Option, "Cause" shall have the same meaning as set forth in your employment agreement with the Company, or, if you do not have an employment agreement with the Company that defines Cause, shall mean a good faith finding by the Company that you have (A) failed, neglected, or refused to perform the lawful employment duties related to your position or as from time to time assigned to your (other than due to disability within the meaning of Code Section 22(e)(3)); (B) committed any willful, intentional, or grossly negligent act having the effect of injuring the interest, business, or reputation of the Company or any affiliate; (C) violated or failed to comply in any material respect with the Company's or an affiliate's published rules, regulations, or policies, as in effect or amended from time to time, to the extent applicable to you; (D) committed an act constituting a felony or misdemeanor involving moral turpitude, fraud, theft, or dishonesty; (E) misappropriated or embezzled any property of the Company or an affiliate (whether or not an act constituting a felony or misdemeanor); or (F) breached any material provision of any applicable confidentiality, non-compete, non-solicit, general release, covenant not-to- sue, or other agreement with the Company or any affiliate.

(ii) If the provisions of paragraph (i) do not apply, then all outstanding Options shall be cancelled as of the date of the Acquisition Event in exchange for a payment in cash and/or Shares (which may include shares or other securities of any surviving or successor entity or the purchasing entity or any parent thereof) equal to the excess of the fair market value of the Shares on the date of the Acquisition Event covered by the vested portion of the Option that has not been exercised over the exercise or grant price of such Shares under the Option; provided that, if such fair market value does not exceed the exercise or grant price, the Option shall be cancelled for no consideration.

For the purposes of this Option, an "Acquisition Event" shall be deemed to have occurred as of the first day that any one or more of the following conditions is satisfied, including, but not limited to, the signing of documents by all parties and approval by all regulatory agencies, if required:

(i) Any person (as such term is defined in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a "group" as defined in Section 13(d)) other than an Excluded Person (as defined below) becomes the Beneficial Owner (as such term is defined pursuant to rules promulgated under the Securities Exchange Act of 1934), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities (not including (A) any securities of the Company acquired and/or beneficially owned by such person if such person is an existing stockholder of the Company and (B) any securities acquired directly from the Company or its affiliates);

(ii) The shareholders approve a plan of complete liquidation or dissolution of the Company; or

(iii) The consummation of (A) an agreement for the sale or disposition of all or substantially all of the Company's assets (other than to an Excluded Person), or (B) a merger, consolidation or reorganization of the Company with or involving any other corporation, other than (1) a merger, consolidation or reorganization that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity), at least fifty percent (50%) of the combined voting power of the voting securities of the Company (or such other surviving entity) outstanding immediately after such merger, consolidation or reorganization, or (2) a merger, consolidation or reorganization that would result in at least fifty percent (50%) of the combined voting power of the voting securities of the Company (or such other surviving entity) outstanding immediately after such merger, consolidation or reorganization being held by an Excluded Person.

An Excluded Person means: (i) the Company or any of its affiliates, (ii) a trustee or other fiduciary holding securities under any employee benefit plan of the Company or any of its affiliates, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities or (iv) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of stock in the Company.

Notwithstanding the foregoing, the initial offering of the Company's Shares to the public pursuant to an effective registration statement filed by the Company under the Securities Act of 1933, as amended from time to time, shall not be considered an Acquisition Event.

Lock-Up Agreement You agree, in connection with the Company's initial underwritten public offering of the Company's securities, (1) not to sell, make short sale of, loan, grant any options for the purchase of, or otherwise dispose of any shares of Common Stock of the Company held by you (other than those shares included in the registration) without the prior written consent of the Company or the underwriters managing such initial underwritten public offering of the Company's securities for one hundred eighty (180) days from the effective date of such registration, and (2) you further agree to execute any agreement reflecting (1) above as may be requested by the underwriters at the time of the public offering; provided however that the officers and directors of the Company who own the stock of the Company also agree to such restrictions.

Amendment This Option may be amended only by written consent signed by you and the Company, except to the extent the amendment is not materially adverse to you or the Company deems it necessary to comply with any applicable law or listing requirement of any principal securities exchange or market on which the Company's common stock is then traded, or to preserve favorable accounting or tax treatment of this Option for the Company.

Type of Stock Option This Option is not an incentive stock option under section 422 of the Interal Revenue Code and will be interpreted accordingly.

Applicable Law This Agreement will be interpreted and enforced under the laws of the State of California.

Other Agreements This Agreement (comprised of the cover sheet and this attachment) and the Advisory Agreement constitute the entire understanding between you and the Company regarding this Option. Any prior agreements, commitments or negotiations concerning this Option are superseded.

Exhibit 10.2

AMENDED AND RESTATED CUE HEALTH INC.
2014 EQUITY INCENTIVE PLAN

1. PURPOSE. The Amended and Restated Cue Health Inc. 2014 Equity Incentive Plan (the "Plan") has two complementary purposes: (a) to attract and retain outstanding individuals to serve as officers, employees, directors, consultants and advisors to the Company and its affiliates, and (b) to increase shareholder value. The Plan will provide participants incentives to increase shareholder value by offering the opportunity to acquire shares of the Company's common stock or receive monetary payments based on the value of such common stock, on the potentially favorable terms that this Plan provides.

2. EFFECTIVE DATE. The Plan shall become effective and Awards may be granted on and after August 25, 2014 (the "Effective Date"), subject as to any Awards that are "incentive stock options" under Code Section 422 to approval of the Plan by the shareholders of the Company within twelve (12) months of the effective date. Any incentive stock options granted under the Plan prior to such shareholder approval shall be conditioned on such approval.

3. DEFINITIONS. Capitalized terms used in this Plan have the following meanings:

(a) "Affiliate" means any entity that, directly or through one or more intermediaries, is controlled by, controls, or is under common control with, the Company within the meaning of Code Sections 414(b) or (c), *provided* that, in applying such provisions, the phrase "at least fifty percent (50%)" shall be used in place of "at least eighty percent (80%)" each place it appears therein.

(b) "Award" means a grant of Options, Stock Appreciation Rights, Performance Shares, Restricted Stock or Restricted Stock Units.

(c) "Board" means the Board of Directors of the Company.

(d) "Change of Control" shall be deemed to have occurred as of the first day that any one or more of the following conditions is satisfied, including, but not limited to, the signing of documents by all parties and approval by all regulatory agencies, if required:

(i) Any person (as such term is defined in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a "group" as defined in Section 13(d)) other than an Excluded Person (as defined below) becomes the Beneficial Owner (as such term is defined pursuant to rules promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities (not including (A) any securities of the Company acquired and/or beneficially owned by such person if such person is an existing stockholder of the Company and (B) any securities acquired directly from the Company or its Affiliates);

(ii) The shareholders approve a plan of complete liquidation or dissolution of the Company; or

(iii) The consummation of (A) an agreement for the sale or disposition of all or substantially all of the Company's assets (other than to an Excluded Person), or (B) a merger, consolidation or reorganization of the Company with or involving any other corporation, other than (1) a merger, consolidation or reorganization that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity), at least fifty percent (50%) of the combined voting power of the voting securities of the Company (or such other surviving entity) outstanding immediately after such merger, consolidation or reorganization, or (2) a merger, consolidation or reorganization that would result in at least fifty percent (50%) of the combined voting power of the voting securities of the Company (or such other surviving entity) outstanding immediately after such merger, consolidation or reorganization being held by an Excluded Person.

An Excluded Person means: (i) the Company or any of its Affiliates, (ii) a trustee or other fiduciary holding securities under any employee benefit plan of the Company or any of its Affiliates, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities or (iv) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of stock in the Company.

Notwithstanding the foregoing, with respect to an Award that is considered deferred compensation subject to Code Section 409A, if the definition of "Change of Control" results in the payment of such Award, then such definition shall be amended to the minimum extent necessary, if at all, so that the definition satisfies the requirements of a change of control under Code Section 409A.

Notwithstanding the foregoing, the initial offering of the Company's Shares to the public pursuant to an effective registration statement filed by the Company under the Securities Act of 1933, as amended from time to time, shall not be considered a Change of Control.

(e) "Code" means the Internal Revenue Code of 1986, as amended. Any reference to a specific provision of the Code includes any successor provision and the regulations promulgated under such provision.

(f) "Common Stock" means the Company's Class A Common Stock, no par value.

(g) "Company" means Cue Health Inc., a Delaware corporation, or any successor thereto.

(h) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time. Any reference to a specific provision of the Exchange Act shall be deemed to include any successor provision thereto.

(i) "Fair Market Value" means, per Share on a particular date, the value as determined by the Board using a reasonable application of a reasonable valuation method within the meaning of Code Section 409A, based on all information in the Company's possession at such time, or if applicable, the value as determined by an independent appraiser selected by the Board.

(j) "Option" means the right to purchase Shares at a stated price upon and during a specified time. "Options" may either be "incentive stock options" which meet the requirements of Code Section 422, or "nonqualified stock options" which do not meet the requirements of Code Section 422.

(k) "Participant" means an officer or other employee of the Company or its Affiliates, or an individual that the Company or an Affiliate has engaged to become an officer or employee, or a consultant or advisor who provides services to the Company or its Affiliates, including a non-employee director of the Board, whom the Board designates to receive an Award.

(l) "Performance Shares" means the right to receive Shares to the extent the Company, Subsidiary, Affiliate or other business unit and/or Participant achieves certain goals that the Board establishes over a period of time the Board designates.

(m) "Plan" means this Amended and Restated Cue Health Inc. 2014 Equity Incentive Plan, as amended from time to time.

(n) "Restricted Stock" means Shares that are subject to a risk of forfeiture and/or restrictions on transfer, which may lapse upon the achievement or partial achievement of performance goals during a specified period and/or upon the completion of a period of service or upon the occurrence of other events, as determined by the Board.

(o) "Restricted Stock Unit" means the right to receive a Share, or a cash payment, the amount of which is equal to the Fair Market Value of a Share, which is subject to a risk of forfeiture which may lapse upon the achievement or partial achievement of performance goals during a specified period and/or upon the completion of a period of service or upon the occurrence of other events, as determined by the Board.

(p) "Share" means a share of Common Stock.

(q) "Stock Appreciation Right" or "SAR" means the right of a Participant to receive cash, and/or Shares with a Fair Market Value, equal to the excess of the Fair Market Value of a Share over the grant price.

(r) "Subsidiary" means any corporation in an unbroken chain of corporations beginning with the Company if each of the corporations (other than the last corporation in the chain) owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock in one of the other corporations in the chain.

(s) "10% Owner-Employee" means an employee who, at the time an incentive stock option is granted, owns (directly or indirectly, within the meaning of Code Section 424(d)) more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any Subsidiary.

4. ADMINISTRATION.

(a) *Board Administration*. The Board has full authority to administer this Plan, including the authority to (i) interpret the provisions of this Plan and any Award agreement, (ii) prescribe, amend and rescind rules and regulations relating to this Plan, (iii) correct any defect, supply any omission, or reconcile any inconsistency in any Award or agreement covering an Award in the manner and to the extent it deems desirable to carry this Plan into effect, and (iv) make all other determinations necessary or advisable for the administration of this Plan. All actions or determinations of the Board are made in its sole discretion and will be final and binding on any person with an interest therein.

(b) *Delegation to Committees or Officers*. To the extent applicable law permits, the Board may delegate to another committee of the Board or to one or more officers of the Company any or all of the authority and responsibility of the Board. If the Board has made such a delegation, then all references to the Board in this Plan include such committee or one or more officers to the extent of such delegation.

(c) *No Liability*. No member of the Board, and no individual or officer to whom a delegation under subsection (b) has been made, will be liable for any act done, or determination made, by the individual in good faith with respect to the Plan or any Award. The Company will indemnify and hold harmless such individual to the maximum extent that the law and the Company's bylaws permit.

5. DISCRETIONARY GRANTS OF AWARDS. Subject to the terms of this Plan, the Board has full power and authority to: (a) designate from time to time the Participants to receive Awards under this Plan; (b) determine the type or types of Awards to be granted to each Participant; (c) determine the number of Shares with respect to which an Award relates; and (d) determine any terms and conditions of any Award. Awards may be granted either alone or in addition to, in tandem with, or in substitution for any other Award (or any other award granted under another plan of the Company or any Affiliate). The Board's designation of a Participant in any year will not require the Board to designate such person to receive an Award in any other year. If an Option or SAR is granted to a Participant who does not provide services to the Company or any subsidiary that qualifies as an Affiliate, then such Award is considered nonqualified deferred compensation that must satisfy the requirements of Code Section 409A.

6. SHARES RESERVED UNDER THIS PLAN.

(a) *Plan Reserve*. An aggregate of Seven Million Four Hundred Ninety-Two Thousand Eight Hundred Forty-Four (7,492,844) Shares are reserved for issuance under this Plan, all of which may be issued pursuant to incentive stock options. The limitations of this subsection are subject to adjustment as provided in Section 14. The Shares to be delivered under the Plan may consist, in whole or in part, of authorized but unissued Common Stock or treasury Common Stock.

(b) *Replenishment of Shares Under this Plan*. If an Award lapses, expires, terminates or is cancelled without the issuance of Shares or payment of cash under the Award, then the Shares subject to or reserved for in respect of such Award, or the Shares to which such Award relates, may again be used for new Awards as determined under subsection (a), including issuance pursuant to incentive stock options. If Shares are delivered to (or withheld by) the Company in payment of the exercise price or withholding taxes of an Award, then such Shares may be used for new Awards under this Plan as determined under subsection (a), including issuance pursuant to incentive stock options. If Shares are issued under any Award and the Company subsequently reacquires them pursuant to rights reserved upon the issuance of the Shares, then such Shares may be used for new Awards under this Plan as determined under subsection (a), but excluding issuance pursuant to incentive stock options.

7. OPTIONS. Subject to the terms of this Plan, the Board will determine all terms and conditions of each Option, including but not limited to:

(a) Whether the Option is an incentive stock option or a nonqualified stock option; *provided* that in the case of an incentive stock option, if the aggregate Fair Market Value (determined at the time of grant) of the Shares with respect to which such option and all other incentive stock options issued under this Plan (and under all other incentive stock option plans of the Company or any Affiliate that is required to be included under Code Section 422) are first exercisable by the Participant during any calendar year exceeds $100,000, such Option automatically shall be treated as a nonqualified stock option to the extent this limit is exceeded; and provide further that only employees of the Company or a Subsidiary are eligible to be granted incentive stock options;

(b) The number of Shares subject to the Option;

(c) The exercise price per Share, which may not be less than the Fair Market Value of a Share as determined on the date of grant unless the Option is not an incentive stock option and complies with Code Section 409A; *provided* that an incentive stock option granted to a 10% Owner-Employee must have an exercise price that is at least one hundred ten percent (110%) of the Fair Market Value of a Share on the date of grant;

(d) The terms and conditions of exercise; and

(e) The termination date, except that each Option must terminate no later than the tenth (10th) anniversary of the date of grant, and each incentive stock option granted to any 10% Owner-Employee must terminate no later than the fifth (5^{th}) anniversary of the date of grant.

In all other respects, the terms of any incentive stock option should comply with the provisions of Code Section 422 except to the extent the Board determines otherwise.

8. STOCK APPRECIATION RIGHTS. Subject to the terms of this Plan, the Board will determine all terms and conditions of each SAR, including but not limited to:

(a) The number of Shares to which the SAR relates;

(b) The grant price, provided that the grant price shall not be less than the Fair Market Value of the Shares subject to the SAR as determined on the date of grant unless the SAR complies with Code Section 409A;

(c) The terms and conditions of exercise or maturity;

(d) The term, provided that an SAR must terminate no later than the tenth (10^{th}) anniversary of the date of grant; and

(e) Whether the SAR will be settled in cash, Shares or a combination thereof.

9. PERFORMANCE SHARE AWARDS. Subject to the terms of this Plan, the Board will determine all terms and conditions of each Performance Share Award, including but not limited to:

(a) The number of Shares to which the Performance Share Award relates;

(b) The terms and conditions of each Award, including, without limitation, the selection of the performance goals that must be achieved for the Participant to realize all or a portion of the benefit provided under the Award; and

(c) Whether all or a portion of the Shares subject to the Award will be issued to the Participant, without regard to whether the performance goals have been attained, in the event of the Participant's death, disability, retirement or other circumstance.

10. RESTRICTED STOCK AND RESTRICTED UNIT AWARDS. Subject to the terms of this Plan, the Board will determine all terms and conditions of each Award of Restricted Stock or Restricted Stock Units, including but not limited to:

(a) The number of Shares to which such Award relates;

(b) The period of time over which, and/or the criteria or conditions that must be satisfied so that, the risk of forfeiture and/or restrictions on transfer imposed on the Restricted Stock or Restricted Stock Units will lapse;

(c) Whether all or a portion of the Restricted Stock or Restricted Stock Units will be released from a right of repurchase and/or be paid to the Participant in the event of the Participant's death, disability, retirement or other circumstance;

(d) With respect to Awards of Restricted Stock, the manner of registration of certificates for such Shares, and whether to hold such Shares in escrow pending lapse of the risk of forfeiture, right of repurchase and/or restrictions on transfer or to issue such Shares with an appropriate legend referring to such restrictions;

(e) With respect to Awards of Restricted Stock, whether dividends paid with respect to such Shares will be immediately paid or held in escrow or otherwise deferred and whether such dividends shall be subject to the same terms and conditions as the Award to which they relate; and

(f) With respect to Awards of Restricted Stock Units, whether to credit dividend equivalent units equal to the amount of dividends paid on a Share and whether such dividend equivalent units shall be subject to the same terms and conditions as the Award to which they relate.

11. TRANSFERABILITY. Each Award granted under this Plan is not transferable other than by will or the laws of descent and distribution or as otherwise expressly permitted by the Board in writing.

12. TERMINATION AND AMENDMENT.

(a) *Term*. Subject to the right of the Board to terminate the Plan earlier pursuant to Section 12(b), the Plan shall terminate when all Shares reserved for issuance have been issued. If the term of the Plan extends beyond ten (10) years from the Effective Date, no incentive stock options may be granted after such time unless the shareholders of the Company have approved an extension of the Plan.

(b) *Termination and Amendment*. The Board may amend, alter, suspend, discontinue or terminate this Plan at any time, provided that shareholders must approve any of the following Plan amendments: (i) an amendment to materially increase any number of Shares specified in Section 6(a) (except as permitted by Section 14) or expand the class of individuals eligible to receive an Award to the extent required by the Code, the Company's bylaws or any other applicable law, (ii) any other amendment if required by applicable law or the rules of any self-regulatory organization, or (iii) an amendment that would diminish the protections afforded by Section 12(e).

(c) *Amendment, Modification or Cancellation of Awards*. Except as provided in subsection (e) and subject to the restrictions of this Plan, the Board may modify or amend an Award or waive any restrictions or conditions applicable to an Award (including relating to the exercise, vesting or payment thereof), and the Board may modify the terms and conditions applicable to any Award (including the terms of the Plan), and the Board may cancel any Award, provided that the Participant (or any other person as may then have an interest in such Award as a result of the Participant's death or the transfer of an Award) must consent in writing if any such action would adversely affect the rights of the Participant (or other interested party) under such Award. Notwithstanding the foregoing, the Board need not obtain Participant (or other interested party) consent for the amendment, modification or cancellation of an Award pursuant to the provisions of Section 14, or the amendment or modification of an Award to the extent deemed necessary to comply with any applicable law, the listing requirements of any principal securities exchange or market on which the Shares are then traded, or to preserve favorable accounting or tax treatment of any Award for the Company.

(d) *Survival of Board Authority and Awards*. Notwithstanding the foregoing, the authority of the Board to administer this Plan and modify or amend an Award, and the authority of the Board to amend this Plan, shall extend beyond the date of this Plan's termination. In addition, termination of this Plan will not affect the rights of Participants with respect to Awards previously granted to them, and all unexpired Awards will continue in full force and effect after termination of this Plan except as they may lapse or be terminated by their own terms and conditions.

(e) *Repricing Prohibited*. Notwithstanding anything in this Plan to the contrary, neither the Board nor any other person may decrease the exercise price of any Option or the grant price of any SAR nor take any action that would result in a deemed decrease of the exercise price or grant price of an Option or SAR under Code Section 409A, after the date of grant, except in accordance with Section 14 and Section 1.409A-1(b)(5)(v)(D) of the Treasury Regulations, or in connection with a transaction which is considered the grant of a new Option or SAR for purposes of Section 409A of the Code, provided that the new exercise price or grant price is not less than the Fair Market Value of a Share on the new grant date.

(f) *Foreign Participation*. To assure the viability of Awards granted to Participants employed or residing in foreign countries, the Board may provide for such special terms as it may consider necessary or appropriate to accommodate differences in local law, tax policy or custom. Moreover, the Board may approve such supplements to, or amendments, restatements or alternative versions of this Plan as it determines is necessary or appropriate for such purposes. Any such amendment, restatement or alternative versions that the Board approves for purposes of using this Plan in a foreign country will not affect the terms of this Plan for any other country.

13. TAXES.

(a) *Withholding*. In the event the Company or any Affiliate is required to withhold any foreign, Federal, state or local taxes or other amounts in respect of any income recognized by a Participant as a result of the grant, vesting, payment or settlement of an Award or disposition of any Shares acquired under an Award, the Company may deduct (or require an Affiliate to deduct) from any payments of any kind otherwise due the Participant cash, or with the consent of the Board, Shares otherwise deliverable or vesting under an Award, to satisfy such tax obligations. Alternatively, the Company may require such Participant to pay to the Company, in cash, promptly on demand, or make other arrangements satisfactory to the Company regarding the payment to the Company of the aggregate amount of any such taxes and other amounts required to be withheld. If Shares are deliverable upon exercise or payment of an Award, the Board may permit a Participant to satisfy all or a portion of the foreign, Federal, state and local withholding tax obligations arising in connection with such Award by electing to (a) have the Company withhold Shares otherwise issuable under the Award, (b) tender back Shares received in connection with such Award, or (c) deliver other previously owned Shares; *provided* that the amount to be withheld may not exceed the total minimum foreign, Federal, state and local tax withholding obligations associated with the transaction to the extent needed for the Company to avoid an accounting charge. If an election is provided, the election must be made on or before the date as of which the amount of tax to be withheld is determined and otherwise as the Company requires. The Fair Market Value of fractional Shares remaining after payment of any withholding taxes may be paid to the Participant in cash. The obligations of the Company under the Plan shall be conditional on such satisfactory payments or arrangements by the Participant regarding withholding taxes, and the Company and any Affiliate shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the Participant.

(b) *No Guarantee of Tax Treatment*. Notwithstanding any provisions of the Plan, the Company does not guarantee to any Participant or any other person with an interest in an Award that any Award intended to be exempt from Code Section 409A shall be so exempt, nor that any Award intended to comply with Code Section 409A shall so comply, nor that any Award designated as an incentive stock option within the meaning of Code Section 422 qualifies as such, and neither the Company or any Affiliate shall indemnify, defend or hold harmless any individual with respect to the tax consequences of any such failure.

14. ADJUSTMENT PROVISIONS; CHANGE OF CONTROL.

(a) *Adjustment of Shares*. If (i) the Company shall at any time be involved in a merger or other transaction in which the Shares or other securities of the Company are changed or exchanged; (ii) the Company shall subdivide or combine the Shares or other securities of the Company or the Company shall declare a dividend payable in Shares, other securities or other property; (iii) the Company shall effect a cash dividend the amount of which, on a per share basis, exceeds ten percent (10%) of the Fair Market Value of a share at the time the dividend is declared, or the Company shall effect any other dividend or other distribution on the Shares or other securities of the Company in the form of cash, or a repurchase of Shares or other securities of the Company, that the Board determines by resolution is special or extraordinary in nature or that is in connection with a transaction that is a recapitalization or reorganization involving the Shares or other securities of the Company; (iv) the Company shall at any time undergo a recapitalization, combination, reclassification or other distribution of Shares without receipt of consideration by the Company; or (v) any other event shall occur, which, in the case of this subsection (v), in the judgment of the Board necessitates an adjustment to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under this Plan, then, in each case, the Board shall, in such manner as it may deem equitable, adjust any or all of: (i) the number and type of Shares subject to this Plan (including the number and type of Shares that may be issued pursuant to incentive stock options), (ii) the number and type of Shares subject to outstanding Awards, (iii) the grant, purchase, or exercise price with respect to any Award, and (iv) the performance goals established under any Award.

(i) In any such case, the Board may also make provision for a cash payment, in an amount determined by the Board, to the holder of an outstanding Award in exchange for the cancellation of all or a portion of the Award (without the consent of the holder of an Award), effective at such time as the Board specifies (which may be the time such transaction or event is effective); *provided* that any such adjustment to an Award that is exempt from Code Section 409A shall be made in manner that permits the Award to continue to be so exempt, and any adjustment to an Award that is subject to Code Section 409A shall be made in a manner that complies with the provisions thereof. However, with respect to Awards of incentive stock options, no such adjustment may be authorized to the extent that such authority would cause this Plan to violate Code Section 422(b). Further, the number of Shares subject to any Award payable or denominated in Shares must always be a whole number.

(ii) Without limitation, in the event of any reorganization, merger, consolidation, combination or other similar corporate transaction or event, whether or not constituting a Change of Control, other than any such transaction in which the Company is the continuing corporation and in which the outstanding Common Stock is not being converted into or exchanged for different securities, cash or other property, or any combination thereof, the Board may substitute, on an equitable basis as the Board determines, for each Share then subject to an Award, the number and kind of shares of stock, other securities, cash or other property to which holders of Common Stock are or will be entitled in respect of each Share pursuant to the transaction.

(iii) Notwithstanding the foregoing, in the case of a stock dividend (other than a stock dividend declared in lieu of an ordinary cash dividend) or subdivision or combination of the Shares (including a reverse stock split), if no action is taken by the Board, adjustments contemplated by this subsection that are proportionate shall nevertheless automatically be made as of the date of such stock dividend or subdivision or combination of the Shares.

(b) *Issuance or Assumption*. Notwithstanding any other provision of this Plan, and without affecting the number of Shares otherwise reserved or available under this Plan, in connection with any merger, consolidation, acquisition of property or stock, or reorganization, the Board may authorize the issuance or assumption of awards upon such terms and conditions as it may deem appropriate.

(c) *Change of Control*. Upon a Change of Control, the Board may, in its discretion, determine that any or all outstanding Awards held by Participants who are then in the employ or service of the Company or any Affiliate shall vest or be deemed to have been earned in full (assuming the maximum performance goals provided under such Award were met, if applicable), and:

(i) If the successor or surviving corporation (or parent thereof) so agrees, all outstanding Awards shall be assumed, or replaced with the same type of award with similar terms and conditions, by the successor or surviving corporation (or parent thereof) in the Change of Control. If applicable, each Award which is assumed by the successor or surviving corporation (or parent thereof) shall be appropriately adjusted, immediately after such Change of Control, to apply to the number and class of securities which would have been issuable to the Participant upon the consummation of such Change of Control had the Award been exercised or vested immediately prior to such Change of Control, and such other appropriate adjustments in the terms and conditions of the Award shall be made. In such a case, if an Award was not vested in full upon the Change of Control pursuant to the first paragraph of this subsection (c), then if a Participant is terminated without Cause or as a result of death or disability within one year following the Change of Control, the Award shall vest in full on the date of such termination. For purposes of this Plan, "Cause" shall have the same meaning as set forth in a Participant's employment agreement with the Company, or, if a Participant does not have an employment agreement with the Company, shall mean a good faith finding by the Company that a Participant has (A) failed, neglected, or refused to perform the lawful employment duties related to Participant's position or as from time to time assigned to Participant (other than due to disability within the meaning of Code Section 22(e)(3)); (B) committed any willful, intentional, or grossly negligent act having the effect of injuring the interest, business, or reputation of the Company or any Affiliate; (C) violated or failed to comply in any material respect with the Company's or an Affiliate's published rules, regulations, or policies, as in effect or amended from time to time, to the extent applicable to Participant; (D) committed an act constituting a felony or misdemeanor involving moral turpitude, fraud, theft, or dishonesty; (E) misappropriated or embezzled any property of the Company or an Affiliate (whether or not an act constituting a felony or misdemeanor); or (F) breached any material provision of any applicable confidentiality, non-compete, non-solicit, general release, covenant not-to-sue, or other agreement with the Company or any Affiliate.

(ii) If the provisions of paragraph (i) do not apply, then all outstanding Awards shall be cancelled as of the date of the Change of Control in exchange for a payment in cash and/or Shares (which may include shares or other securities of any surviving or successor entity or the purchasing entity or any parent thereof) equal to:

(A) In the case of an Option or SAR, the excess of the Fair Market Value of the Shares on the date of the Change of Control covered by the vested portion of the Option or SAR that has not been exercised over the exercise or grant price of such Shares under the Award; provided that, if such Fair Market Value does not exceed the exercise or grant price, such Option or SAR shall be cancelled for no consideration;

(B) In the case of Restricted Stock and Restricted Stock Units, the Fair Market Value of a Share on the date of the Change of Control multiplied by the number of vested Shares or Units; and

(C) In the case of Performance Shares, the Fair Market Value of a Share on the date of the Change of Control multiplied by the number of earned Shares.

(d) *Parachute Payment Limitation*.

(i) Except as may be set forth in a written agreement by and between the Company and the holder of an Award, in the event that the Company's auditors determine that any payment or transfer by the Company under the Plan to or for the benefit of a Participant (a "Payment") would be nondeductible by the Company for federal income tax purposes because of the provisions concerning "excess parachute payments" in Code Section 280G, then the aggregate present value of all Payments shall be reduced (but not below zero) to the Reduced Amount; provided that the foregoing reduction in the Payments shall not apply if the After-Tax Value to the Participant of the Payments prior to reduction in accordance herewith is greater than the After-Tax Value to the Participant if the Payments are reduced in accordance herewith. For purposes of this Section 14(d), the "Reduced Amount" shall be the amount, expressed as a present value, which maximizes the aggregate present value of the Payments without causing any Payment to be nondeductible by the Company because of Code Section 280G. For purposes of determining the After-Tax Value of the Payments, the Participant shall be deemed to pay federal income taxes and employment taxes at the highest marginal rate of federal income and employment taxation in the calendar year in which the Payments are to be made and state and local income taxes at the highest marginal rates of taxation in the state and locality of the Participant's domicile for income tax purposes on the date the Payments are to be made, net of the maximum reduction in federal income taxes that may be obtained from deduction of such state and local taxes.

(ii) If the Company's auditors determine that any Payment would be nondeductible by the Company because of Code Section 280G, then the Company shall promptly give the Participant notice to that effect and a copy of the detailed calculation thereof and of the Reduced Amount, and the Participant may then elect, in his or her sole discretion, which and how much of the Payments shall be eliminated or reduced (as long as after such election the aggregate present value of the Payments equals the Reduced Amount) and shall advise the Company in writing of his or her election within ten (10) days of receipt of notice. If no such election is made by the Participant within such ten (10) day period, then the Company may elect which and how much of the Payments shall be eliminated or reduced (as long as after such election the aggregate present value of the Payments equals the Reduced Amount) and shall notify the Participant promptly of such election. For purposes of this Section 14(d), present value shall be determined in accordance with Code Section 280G(d)(4). All determinations made by the Company's auditors under this Section 14(d) shall be binding upon the Company and the Participant and shall be made within sixty (60) days of the date when a Payment becomes payable or transferable. As promptly as practicable following such determination and the elections hereunder, the Company shall pay or transfer to or for the benefit of the Participant such amounts as are then due to him or her under the Plan and shall promptly pay or transfer to or for the benefit of the Participant in the future such amounts as become due to him or her under the Plan.

(iii) As a result of uncertainty in the application of Code Section 280G at the time of an initial determination by the Company's auditors hereunder, it is possible that Payments will have been made by the Company that should not have been made (an "Overpayment") or that additional Payments that will not have been made by the Company could have been made (an "Underpayment"), consistent in each case with the calculation of the Reduced Amount hereunder. In the event that the Company's auditors, based upon the assertion of a deficiency by the Internal Revenue Service against the Company or the Participant that the auditors believe has a high probability of success, determine that an Overpayment has been made, such Overpayment shall be treated for all purposes as a loan to the Participant which he or she shall repay to the Company, together with interest at the applicable federal rate provided in Code Section 7872(f)(2); *provided, however*, that no amount shall be payable by the Participant to the Company if and to the extent that such payment would not reduce the amount subject to taxation under Code Section 4999. In the event that the auditors determine that an Underpayment has occurred, such Underpayment shall promptly be paid or transferred by the Company to or for the benefit of the Participant, together with interest at the applicable federal rate provided in Code Section 7872(f)(2).

(iv) For purposes of this Section 14(d), the term "Company" shall include affiliated corporations to the extent determined by the Auditors in accordance with Code Section 280G(d)(5).

15. STOCK TRANSFER RESTRICTIONS; BRING-ALONG RIGHTS.

(a) *Restriction on Transfer*. Shares issued under the Plan may not be sold or otherwise disposed of except as permitted by the Company. As a condition to the receipt of Shares hereunder, the Participant (or individual entitled to receive Shares following the Participant's death) may be required to execute a shareholders agreement or other agreement required by the Board.

(b) *Restrictions; Legends*. All Shares delivered under the Plan shall be subject to such restrictions as the Company may deem advisable, and the Company may cause a legend or legends to be put on any certificates for shares to make appropriate references to such restrictions.

(c) *Right to Purchase Shares*. Pursuant to the provisions of this Section 15(c), and except as otherwise provided in any Award agreement, stock purchase agreement, stockholders agreement or other similar agreement between the Participant and the Company, the Company shall have the right (the "Purchase Right"), but not the obligation, to purchase the Shares acquired by the Participant under this Plan upon the occurrence of any of the following events (a "Trigger Date"):

(i) the Participant's termination of employment or service from the Company and its Affiliates, or

(ii) the issuance of any Shares following a Participant's termination of employment or service from the Company and its Affiliates pursuant to the terms of an Award, such as upon the exercise of an Option following termination of employment.

The purchase price for the Shares subject to such Purchase Right shall be the Fair Market Value of the Shares on the applicable Trigger Date.

The Company may exercise its Purchase Right by giving written notice thereof to the Participant within thirty (30) days after the Trigger Date (the thirty (30) day period in each case, the "Call Period") of the number of Shares with respect to which the Purchase Right is being exercised. The Company shall promptly determine the Purchase Price for the Shares subject to the Purchase Right and shall notify the Participant of such determination. The Company may elect to pay all or any portion of such Purchase Price in cash; provided that if the Company does not elect to pay the entire Purchase Price in cash, the Company shall, at a minimum, pay to the Participant at least ten percent (10%) of the Purchase Price in cash, and shall deliver to the Participant a promissory note with a principal amount equal to the remainder of the Purchase Price, which promissory note shall provide that: (1) the principal shall be paid in no more than five (5) equal annual installments commencing one (1) year from the delivery of such promissory note, (2) interest on the unpaid principal amount shall accrue at an annual rate equal to the prime interest rate interest charged by the principal bank with which the Company conducts business as determined on the date the promissory note is issued, and shall be payable together with and in addition to each principal payment, and (3) the Company shall have the right, without penalty, to prepay all or any portion of the principal and accrued interest owing thereunder at any time.

Upon the delivery of the payment and/or the promissory note described herein by the Company, the Participant shall take all actions necessary, and execute all related documents specified by the Company as being reasonably necessary to consummate the sale of the Shares to the Company, and, by accepting an Award under this Plan, the Participant appoints the Company's Secretary as his or her true and lawful attorney-in-fact to exercise and deliver all such instruments, documents and writings, and to take all such actions as shall be required to consummate the sale of the Shares to the Company as contemplated in this Section. Such power is a special Power of Attorney coupled with an interest, is irrevocable, and shall run with the shares to any subsequent owners thereof.

(d) *Bring-Along Rights*. In the event the holders of a majority of the Company's voting capital stock then outstanding (the "Majority Shareholders") determine to sell or otherwise dispose of all or substantially all of the assets of the Company or fifty percent (50%) or more of the capital stock of the Company, in each case in a transaction constituting a Change of Control, to any non-affiliate(s) of the Company or any of the Majority Shareholders, or to cause the Company to merge with or into or consolidate with any non-affiliate(s) of the Company or any of the Majority Shareholders (in each case, the "Buyer") in a bona fide negotiated transaction (a "Sale"), Participants who have acquired Shares pursuant to the Plan shall be obligated to and shall upon the written request of the Majority Shareholders: (a) sell, transfer and deliver, or cause to be sold, transferred and delivered, to the Buyer, some or all of such Shares (including for this purpose all of such Shares that presently or as a result of any such transaction may be acquired upon the exercise of an option (following the payment of the exercise price therefor)) on substantially the same terms applicable to the Majority Shareholders (with appropriate adjustments to reflect the conversion of convertible securities, the redemption of redeemable securities and the exercise of exercisable securities as well as the relative preferences and priorities of preferred stock); and (b) execute and deliver such instruments of conveyance and transfer and take such other action, including voting such Shares in favor of any Sale proposed by the Majority Shareholders and executing any purchase agreements, merger agreements, indemnity agreements, escrow agreements or related documents as the Company, the Majority Shareholders or the Buyer may reasonably require in order to carry out the terms and provisions of this Section 15(d). The bring-along right set forth in this Section 15(d) shall terminate as to any Shares upon the earlier of (i) the first sale of Shares to the general public in an initial public offering, or (ii) a Change of Control in which the successor corporation has equity securities that are publicly traded.

16. MISCELLANEOUS.

(a) *Other Terms and Conditions*. The grant of any Award under this Plan may also be subject to other provisions (whether or not applicable to the Award awarded to any other Participant) as the Board determines appropriate, subject to any limitations imposed in the Plan.

(b) *Code Section 409A*. The provisions of Code Section 409A are incorporated herein by reference to the extent necessary for any Award that is subject to Code Section 409A to comply therewith.

(c) *Employment or Service*. The issuance of an Award shall not confer upon a Participant any right with respect to continued employment or service with the Company or any Affiliate, or the right to continue as a consultant or director. Unless determined otherwise by the Board, for purposes of the Plan and all Awards, the following rules shall apply:

(i) a Participant who transfers employment between the Company and any Affiliate, or between Affiliates, will not be considered to have terminated employment;

(ii) a Participant who ceases to be a consultant, advisor or non-employee director because he or she becomes an employee of the Company or an Affiliate shall not be considered to have ceased service with respect to any Award until such Participant's termination of employment with the Company and its Affiliates;

(iii) a Participant who ceases to be employed by the Company or an Affiliate of the Company and immediately thereafter becomes a non-employee director of the Company or any Affiliate, or a consultant to the Company or any Affiliate, shall not be considered to have terminated employment until such Participant's service as a director of, or consultant to, the Company and its Affiliates has ceased; and

(iv) a Participant employed by an Affiliate will be considered to have terminated employment when such entity ceases to be an Affiliate of the Company.

Notwithstanding the foregoing, with respect to an Award subject to Code Section 409A, a Participant shall be considered to have terminated employment (where termination of employment triggers payment of the Award) upon the date of his separation from service within the meaning of Code Section 409A.

(d) *No Fractional Shares*. No fractional Shares or other securities may be issued or delivered pursuant to this Plan, and the Board may determine whether cash, other securities or other property will be paid or transferred in lieu of any fractional Shares or other securities, or whether such fractional Shares or other securities or any rights to fractional Shares or other securities will be canceled, terminated or otherwise eliminated.

(e) *Unfunded Plan*. This Plan is unfunded and does not create, and should not be construed to create, a trust or separate fund with respect to this Plan's benefits. This Plan does not establish any fiduciary relationship between the Company and any Participant. To the extent any person holds any rights by virtue of an Award granted under this Plan, such rights are no greater than the rights of the Company's general unsecured creditors.

(f) *Requirements of Law*. The granting of Awards under this Plan and the issuance of Shares in connection with an Award are subject to all applicable laws, rules and regulations and to such approvals by any governmental agencies or national securities exchanges as may be required. Notwithstanding any other provision of this Plan or any Award agreement, the Company has no liability to deliver any Shares under this Plan or make any payment unless such delivery or payment would comply with all applicable laws and the applicable requirements of any securities exchange or similar entity. In addition, if applicable, the Company has no liability to deliver any Shares under this Plan if the delivery of such Shares would cause the Company to lose its status as an S Corporation under Federal tax laws. In such event, the Company may substitute cash for any Share(s) otherwise deliverable hereunder without the consent of the Participant or any other person.

(g) *Governing Law*. This Plan, and all agreements under this Plan, shall be construed in accordance with and governed by the laws of the State of Delaware, without reference to any conflict of law principles. Any legal action or proceeding with respect to this Plan, any Award or any Award agreement, or for recognition and enforcement of any judgment in respect of this Plan, any Award or any Award agreement, may only be brought and determined in a court sitting in the State of Delware.

(h) *Limitations on Actions*. Any legal action or proceeding with respect to this Plan, any Award or any Award agreement, must be brought within one year (365 days) after the day the complaining party first knew or should have known of the events giving rise to the complaint.

(i) *Construction*. Whenever any words are used herein in the masculine, they shall be construed as though they were used in the feminine in all cases where they would so apply; and wherever any words are used in the singular or plural, they shall be construed as though they were used in the plural or singular, as the case may be, in all cases where they would so apply. Titles of sections are for general information only, and the Plan is not to be construed with reference to such titles.

(j) *Severability*. If any provision of this Plan or any Award agreement or any Award (i) is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction, or as to any person or Award, or (ii) would disqualify this Plan, any Award agreement or any Award under any law the Board deems applicable, then such provision should be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Board, materially altering the intent of this Plan, Award agreement or Award, then such provision should be stricken as to such jurisdiction, person or Award, and the remainder of this Plan, such Award agreement and such Award will remain in full force and effect.

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AMENDMENT NO. 1
TO
AMENDED AND RESTATED
CUE HEALTH INC.
2014 EQUITY INCENTIVE PLAN

This Amendment No. 1 to Amended and Restated Cue Health Inc. 2014 Equity Incentive Plan (the "**Plan**") is hereby made effective as of April 12, 2018 (the "**Effective Date**"). Any capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan.

RECITALS

WHEREAS, the Board of Directors and stockholders of Cue Health Inc., a Delaware (the "**Company**"), approved and adopted the Plan effective as of August 25, 2014;

WHEREAS, the Board of Directors and stockholders of the Company approved and ratified by a written consent an amendment to the Plan to increase the total number of shares of Common Stock reserved for issuance under the Plan to 11,520,590 shares, to be effective as of the Effective Date; and

WHEREAS, the Company is authorized to amend the Plan pursuant to Section 12 thereof.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. The first sentence of Section 6(a) is amended and restated to read in its entirety as follows:

"(a) *Plan Reserve*. An aggregate of eleven million five hundred twenty thousand five hundred ninety (11,520,590) Shares are reserved for issuance under this Plan, all of which may be issued as incentive stock options. The limitations of this subsection are subject to adjustment as provided in Section 14. The Shares to be delivered under the Plan may consist, in whole or in part, of authorized but unissued Common Stock or treasury Common Stock."

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned executes this Amendment by and on behalf of the Company as of the Effective Date.

CUE HEALTH INC.

By: /s/ Ayub Khattak
Ayub Khattak, President

SIGNATURE PAGE TO AMENDMENT NO. 1 TO
AMENDED AND RESTATED CUE HEALTH INC. EQUITY INCENTIVE PLAN

AMENDMENT NO. 2
TO
AMENDED AND RESTATED
CUE HEALTH INC.
2014 EQUITY INCENTIVE PLAN

This Amendment No. 2 to the Amended and Restated Cue Health Inc. 2014 Equity Incentive Plan, as amended (the **"Plan"),** is hereby made effective as of September 6, 2018 (the **"Effective Date").** Any capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan.

RECITALS

WHEREAS, the Board of Directors and stockholders of Cue Health Inc., a Delaware (the **"Company"),** approved and adopted the Plan effective as of August 25, 2014 and Amendment No. 1 to the Plan effective as of April 12, 2018;

WHEREAS, in compliance with the requirements of the exemption from registration provided by Rule 701 under the Securities Act of 1933, as amended (the "Act"), the Plan currently permits awards only to officers or other employees of the Company or its Affiliates (as defined in the Plan), or an individual that the Company or an Affiliate has engaged to become an officer or employee, or a consultant or advisor who provides services to the Company or its Affiliates.

WHEREAS, the Board of Directors and stockholders of the Company believe it is in the best interests of the Company and its stockholders to amend the Plan to permit awards to be made under the Plan to entities, provided that an exemption from registration other than Rule 701 is available or that the registration requirements of the Act are met with respect to such awards, and provided further that "incentive stock options" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended, may be granted only to employees of the Company or its subsidiaries.

WHEREAS, amendments to the Plan are authorized by Section 12 thereof.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. The first sentence of Section 1 is amended and restated to read in its entirety as follows:

"The Amended and Restated Cue Health Inc. 2014 Equity Incentive Plan (the "Plan") has two complementary purposes: (a) to attract and retain outstanding persons to serve as officers, employees, directors, consultants and advisors to the Company and its affiliates, and (b) to increase shareholder value."

2. Section 3(k) is amended by adding the following second sentence thereto:

"In the sole discretion of the Board, an entity that is wholly owned by one or more of the individuals described in the preceding sentence or that is itself providing services to the Company may be deemed a Participant with respect to the Plan, provided that (i) an Award may be granted to or exercised by such an entity only in compliance with the registration requirements of the Securities Act of 1933, as amended from time to time, and any other applicable securities laws, or an exemption from such registration requirements; (ii) any such entity and all persons with an interest in such entity expressly agree that the terms of the Plan and the applicable Award agreement shall apply to the Award as if the owners of the entity were Participants; and (iii) for the avoidance of doubt, no "incentive stock option" within the meaning of Code Section 422 may be granted to such an entity."

[Signature Page Follows]

SIGNATURE PAGE TO AMENDMENT NO. 2 TO
AMENDED AND RESTATED CUE HEALTH INC. EQUITY INCENTIVE PLAN

IN WITNESS WHEREOF, the undersigned executes this Amendment by and on behalf of the Company as of the Effective Date.

CUE HEALTH INC.

By: /s/ Ayub Khattak
Ayub Khattak, President

SIGNATURE PAGE TO AMENDMENT NO. 2 TO
AMENDED AND RESTATED CUE HEALTH INC. EQUITY INCENTIVE PLAN

AMENDMENT NO. 3
TO
AMENDED AND RESTATED
CUE HEALTH INC.
2014 EQUITY INCENTIVE PLAN

This Amendment No. 3 to Amended and Restated Cue Health Inc. 2014 Equity Incentive Plan (the "**Plan**") is hereby made effective as of June 1, 2020 (the "**Effective Date**"). Any capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan.

RECITALS

WHEREAS, the Board of Directors and stockholders of Cue Health Inc., a Delaware (the "**Company**"), approved as of June 1, 2020, an amendment to the Plan to increase the total number of shares of Common Stock reserved for issuance under the Plan to 20,399,691 shares, to be effective as of the Effective Date; and

WHEREAS, the Company is authorized to amend the Plan pursuant to Section 12 thereof.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. The first sentence of Section 6(a) is amended and restated to read in its entirety as follows:

"(a) *Plan Reserve*. An aggregate of 20,399,691 Shares are reserved for issuance under this Plan, all of which may be issued as incentive stock options. The limitations of this subsection are subject to adjustment as provided in Section 14. The Shares to be delivered under the Plan may consist, in whole or in part, of authorized but unissued Common Stock or treasury Common Stock."

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned executes this Amendment by and on behalf of the Company as of the Effective Date.

CUE HEALTH INC.

By: /s/ Ayub Khattak
Ayub Khattak, President

SIGNATURE PAGE TO AMENDMENT NO. 3 TO
AMENDED AND RESTATED CUE HEALTH INC. EQUITY INCENTIVE PLAN

AMENDMENT NO. 4
TO
AMENDED AND RESTATED
CUE HEALTH INC.
2014 EQUITY INCENTIVE PLAN

This Amendment No. 4 to Amended and Restated Cue Health Inc. 2014 Equity Incentive Plan (the "**Plan**") is hereby made effective as of January 15, 2021 (the "**Effective Date**"). Any capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan.

RECITALS

WHEREAS, the Board of Directors and stockholders of Cue Health Inc., a Delaware (the "**Company**"), approved as of January 15, 2021, an amendment to the Plan to increase the total number of shares of Common Stock reserved for issuance under the Plan to 22,399,691 shares, to be effective as of the Effective Date; and

WHEREAS, the Company is authorized to amend the Plan pursuant to Section 12 thereof.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. The first sentence of Section 6(a) is amended and restated to read in its entirety as follows:

"(a) *Plan Reserve*. An aggregate of 22,399,691 Shares are reserved for issuance under this Plan, all of which may be issued as incentive stock options. The limitations of this subsection are subject to adjustment as provided in Section 14. The Shares to be delivered under the Plan may consist, in whole or in part, of authorized but unissued Common Stock or treasury Common Stock."

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned executes this Amendment by and on behalf of the Company as of the Effective Date.

CUE HEALTH INC.

By: /s/ Ayub Khattak
Ayub Khattak, President

Exhibit 10.3

CUE HEALTH INC.
AMENDED AND RESTATED 2014 EQUITY INCENTIVE PLAN
STOCK OPTION AWARD AGREEMENT

Name: _____
Address: _____

_____

_____

Dear _____:

Subject to your signature below, you have been granted an option (the "Option") to purchase shares of common stock ("Common Stock") of Cue Health Inc., a Delaware corporation (the "Company"), pursuant to the Cue Health Inc. Amended and Restated 2014 Equity Incentive Plan (the "Plan") and this Stock Option Award Agreement (the "Option Agreement"). Your Option is granted under and governed by the terms and conditions of the Plan and this Option Agreement. Capitalized terms used but not defined in this Option Agreement shall have the same meaning as set forth in the Plan.

Grant Date:	Award Grant Date
Vesting Commencement Date:	Award Vesting Commencement Date
Type of Option:	Incentive Stock Option Nonstatutory Stock Option
Number of Shares:	Award Shares #
Exercise Price per Share:	U.S. $ Award Purchase Price[1]
Term:	This Option shall expire on the date that is ten (10) years after the Grant Date of your Option (the "Expiration Date") or the date that it is exercised pursuant to its terms, unless terminated earlier pursuant to the terms of this Option Agreement or the Plan. Upon termination, exercise or expiration of this Option, all your rights hereunder shall cease.

[1] To be fair market value of the Company's common stock at time of grant

Vesting:

One fourth (1/4) of the total shares subject to this Option will vest on the last day of the month that includes the first anniversary of the Vesting Commencement Date of this Option and thereafter an additional one forty-eighth (1/48) of the total shares subject to this Option will vest at the end of each month, provided that you are still employed with, or are still in the service of, the Company as of each such monthly vesting date. If application of the vesting schedule causes a fractional share, such share shall be rounded down to the nearest whole share for each month except for the last month of such vesting period. For purposes of clarity, other than described above, you shall not be entitled to any pro rata vesting upon termination.

The Company may delay the vesting of this Option to take into account leaves of absence changes in the number of hours worked, and other changes in your working status to the extent permitted by Company policies, as in effect from time to time, and in such event your rights will be governed by the policies in effect at the time of any such leave of absence or other change.

Termination of Employment:

The following conditions apply to your Option in the event that your employment or service (your "Service") with the Company is terminated prior to the Expiration Date. In no event, however, will the time periods described herein extend the term of this Option beyond its Expiration Date or beyond the date this Option is otherwise cancelled pursuant to the provisions of the Plan. Unless provided otherwise in this Option Agreement or the Plan, upon any termination of your employment with, or cessation of your service to the Company and/or its Affiliates the unvested portion of this Option shall be forfeited. For purposes of this Option, your Service will be deemed to have terminated only if such termination constitutes a "separation from service" within the meaning of Code Section 409A.

a. *Termination As a Result of Death or Disability.* If your employment or service with the Company terminates by reason of your death or Disability at a time when your employment or service could not otherwise have been terminated for Cause, then this Option will terminate on the earlier of: (i) the Expiration Date, or (ii) the date that is six (6) months after the date of such termination of your employment or service by reason of your death or Disability.

b. *Termination for Cause.* If your employment or service with the Company is terminated for Cause, this Option (vested and unvested) shall be forfeited immediately upon such termination, and you shall be prohibited from exercising your Option as of the date of such termination. For purposes of this Option, "Cause" shall have the same meaning as set forth in your employment agreement with the Company, or, if you do not have an employment agreement with the Company that defines Cause, "Cause" shall mean a good faith finding by the Company that you have (i) failed, neglected, or refused to perform the lawful employment duties related to your position or as from time to time assigned to you (other than due to disability within the meaning of Code Section 22(e)(3)); (ii) committed any willful, intentional, or grossly negligent act having the effect of injuring the interest, business, or reputation of the Company or any Affiliate; (iii) violated or failed to comply in any material respect with the Company's or an Affiliate's published rules, regulations, or policies, as in effect or amended from time to time, to the extent applicable to you; (iv) committed an act constituting a felony or misdemeanor involving moral turpitude, fraud, theft, or dishonesty; (v) misappropriated or embezzled any property of the Company or an Affiliate (whether or not an act constituting a felony or misdemeanor); or (vi) breached any material provision of any applicable confidentiality, non-compete, non-solicit, general release, covenant not-to-sue, or other agreement with the Company or any Affiliate.

c. *Termination For a Reason Other than Cause, Death or Disability* (*e.g., resign or fired without Cause*). If your employment or service with the Company is terminated other than for Cause or other than as a result of your death or Disability, then this Option will terminate on the earlier of: (i) the Expiration Date, or (ii) the date that is ninety (90) days after the date of such termination.

d. *Determination of Cause After Termination*. Notwithstanding the foregoing, if after your employment or service terminates the Company determines that it could have terminated you for Cause had all relevant facts been known at the time of your termination, then the Company may terminate this Option immediately upon such determination, and you will be prohibited from exercising this Option thereafter. In such event, you will be notified of the termination of this Option.

e. *Breach of Contract After Termination*. If, after your employment or service is terminated for any reason, you breach any material provision of any applicable confidentiality, non-compete, non-solicit, general release, covenant not-to-sue or other agreement with the Company or any Affiliate, or if the Company learns after the termination of your employment or service that such breach occurred while you were employed or in service, then any portion of this Option that has not been previously forfeited or terminated and has not otherwise expired shall be forfeited immediately upon the date of such breach, and you shall be prohibited from exercising this Option as of the date of such breach. If you exercised this Option after the breach but before the Company became aware of such breach, then you shall also become obligated to repay to the Company any excess of the Fair Market Value of any Shares acquired upon the exercise of this Option after the date of such breach over the exercise price paid for such Shares, determined as of the date of exercise. For the avoidance of doubt, the forfeiture and recoupment described in this paragraph shall be in addition to, and not in place of, any other remedies at law or equity available to the Company or any Affiliate for any such breach.

Exercise:

You (or your estate, beneficiary or heir in the case of your death) may exercise this Option only if it has not been forfeited, terminated or has not otherwise expired, and only to the extent it is then vested. To exercise this Option, you must complete the Notice of Stock Option Exercise in the form attached hereto as **Exhibit A** (the "Notice of Stock Option Exercise") and the Investment Representation Statement attached hereto as **Exhibit B** and return it to the address indicated on that form. The Notice of Stock Option Exercise will become effective upon its receipt by the Company. If your beneficiary or heir, or such other person or persons as may acquire your rights under this Option by will or by the laws of descent and distribution, wishes to exercise this Option after your death, such person must contact the Company and prove to the Company's satisfaction that such person has the right and is entitled to exercise this Option. Your ability to exercise this Option may be restricted by the Company if required by applicable law. For administration purposes, this Option may not be exercised as to fewer than ten percent (10%) of the total Shares underlying the total grant unless it is exercised as to all Shares remaining under the Option.

To exercise this Option, your Notice of Stock Option Exercise must be accompanied by payment of the exercise price through any of the following methods of payment listed in the attached Notice of Stock Option Exercise.

Change of Control:

Notwithstanding any other provision of this Option Agreement, one fourth (1/4) of the total shares subject to this Option shall vest upon a Change of Control, provided that you are providing continuous service to the Company prior to the date of the consummation of the Change of Control and your services to the Company are terminated without Cause (as determined in good faith by the Board) within twelve (12) months following such Change of Control.

Transferability: You may not transfer or assign this Option for any reason, other than as set forth in the Plan, unless otherwise permitted by the Board or Committee. Any attempted transfer or assignment of this Option, other than as set forth in the Plan or as permitted by the Board or Committee, will be null and void.

Lockup Provision: You agree that you will not, without the prior written consent of the managing underwriter (if any), during (a) the period commencing on the date of the final prospectus relating to the Company's initial public offering and ending on the date specified by the Company and the managing underwriter (such period not to exceed two hundred ten (210) days), or (b) during the ninety (90) day period following the effective date of any other registration statement filed under the Securities Act of 1933, as amended (the "Securities Act"): (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Shares acquired under this Option, or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Shares acquired under this Option, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Shares or other securities, in cash or otherwise. The underwriters in connection with the applicable offering are intended third-party beneficiaries of this Stock Option Award Agreement and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. You further agree to execute such agreements as may be reasonably requested by the underwriters in connection with any applicable offering that are consistent with this market stand-off provision or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply to all stockholders subject to such agreements pro rata based on the number of shares subject to such agreements.

Restrictions on Exercise, Issuance and Transfer of Shares:

a. *General*. No individual may exercise the Option, and no shares of Common Stock subject to this Option will be issued, unless and until the Company has determined to its satisfaction that such exercise and issuance will comply with all applicable federal and state securities laws, rules and regulations of the Securities and Exchange Commission, rules of any stock exchange on which shares of Common Stock of the Company may then be traded, or any other applicable laws.

b. *Securities Laws*. You acknowledge that you are acquiring this Option, and the right to purchase the shares of Common Stock subject to this Option, for investment purposes only and not with a view toward resale or other distribution thereof to the public which would be in violation of the Securities Act. You agree and acknowledge with respect to any shares of Common Stock that have not been registered under the Securities Act, that: (i) you will not sell or otherwise dispose of such shares of Common Stock, except as permitted pursuant to a registration statement declared effective under the Securities Act and qualified under any applicable state securities laws, or in a transaction which in the opinion of counsel for the Company is exempt from such required registration, and (ii) that a legend containing a statement to such effect will be placed on the certificates evidencing such shares of Common Stock. Further, as additional conditions to the issuance of the shares of Common Stock subject to this Option, you agree (with such agreement being binding upon any of your beneficiaries, heirs, legatees and/or legal representatives) to do the following prior to any issuance of such shares of Common Stock: (i) to execute and deliver to the Company such investment representations and warranties as set forth in the Investment Representation Statement attached hereto as **Exhibit B**; (ii) to enter into a restrictive stock transfer agreement, stockholders' agreement, investors' rights agreement or similar agreement restricting transfer of the Shares subject to this Option; and (iii) to take or refrain from taking such other actions as counsel for the Company may deem necessary or appropriate for compliance with the Securities Act, and any other applicable federal or state securities laws, regardless of whether the shares of Common Stock have at that time been registered under the Securities Act, or otherwise qualified under any applicable state securities laws.

c. *Right of First Refusal*. The shares issuable upon exercise of this Option are subject to a right of first refusal in favor of the Company pursuant to the Company's Bylaws, a copy of which is available to you upon request.

Miscellaneous:

a. Acceptance of this award shall constitute acknowledgement and renewed assent to any nondisclosure, confidentiality or invention assignment provisions previously made by you to the Company.

b. This Option Agreement may be amended only by written consent signed by both you and the Company, unless the amendment is not to your detriment. In addition, this Option Agreement may be amended or terminated by the Company or the Board without your consent in accordance with the provisions of the Plan.

c. The tax treatment of this Option is not guaranteed. Neither the Company nor any of its designees shall be liable for any taxes, penalties or other monetary amounts owed by any participant, employee, beneficiary or other person as a result of the grant, amendment, modification, exercise and/or payment of, or under, any award, notwithstanding any challenge made to the determination of Fair Market Value by any taxing authority. By accepting this Option, you acknowledge and agree to the foregoing. Furthermore, you acknowledge that there may be adverse tax consequences upon exercise of the Option or disposition of the Shares and that the Company has advised you to consult a tax adviser prior to such exercise or disposition.

d. The failure of the Company to enforce any provision of this Option Agreement at any time shall in no way constitute a waiver of such provision or of any other provision hereof.

e. In the event any provision of this Option Agreement is held illegal, unenforceable or invalid for any reason, such illegality, unenforceability or invalidity shall not affect the legality, enforceability or validity of the remaining provisions of this Option Agreement, and this Option Agreement shall be construed and enforced as if the illegal, unenforceable or invalid provision had not been included in this Option Agreement.

f. As a condition to the grant of this Option, you agree (with such agreement being binding upon your legal representatives, guardians, legatees or beneficiaries) that this Option Agreement shall be interpreted by the Board or the Committee, as the case may be, and that any interpretation by the Board or the Committee of the terms of this Option Agreement, and any determination made by the Board or Committee pursuant to this Option Agreement, shall be final, binding and conclusive.

g. If, as a result of your exercise of this Option, you would own one percent (1.0%) or more of the Company's then outstanding Common Stock (treating for this purpose all shares of Common Stock issuable upon exercise of or conversion of outstanding options, warrants or convertible securities, as if exercised or converted), as a condition to such exercise you shall execute and deliver a joinder to that certain Amended and Restated Voting Agreement and that certain Amended and Restated Right of First Refusal and Co-Sale Agreement, each dated as of December 20, 2017, by and between the Company and the stockholders named therein (as each may be further amended or restated), as a condition to the issuance of shares hereunder.

h. This Option Agreement may be executed in counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement. This Option Agreement and the Notice of Stock Option Exercise Agreement may be executed and delivered by facsimile or PDF copy and, upon such delivery, be deemed effective.

BY SIGNING BELOW AND AGREEING TO THIS STOCK OPTION AWARD AGREEMENT, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED HEREIN AND IN THE PLAN. YOU ALSO ACKNOWLEDGE RECEIPT OF A COPY OF THE PLAN.

CUE HEALTH INC.

By: _____

Ayub Khattak, President

_____

AwardName, Optionee

EXHIBIT A

CUE HEALTH, INC.
NOTICE OF STOCK OPTION EXERCISE

Your completed form should be delivered to: _____, _____. *Phone:* _____
Fax: _____.
Incomplete forms may cause a delay in processing your option exercise.

OPTIONEE INFORMATION

Please complete the following. PLEASE WRITE YOUR FULL LEGAL NAME SINCE THIS NAME MAY BE ON YOUR STOCK CERTIFICATE.

Name:_____

Street Address: _____

City: _____ State:_____ Zip Code:_____

Work Phone #: (_____) - _____- _____ Home Phone #: (_____) - _____- _____

Social Security #: _____ - _____ - _____

DESCRIPTION OF OPTION(S) BEING EXERCISED

Please complete the following for each option that you wish to exercise.

Grant Date	Type of Option (specify ISO or NQSO)	Exercise Price Per Share	Number of Option Shares Being Purchased*	Total Exercise Price (multiply Exercise Price Per Share by Number of Option Shares Being Purchased)
		$		$
			Aggregate Exercise Price	$

*Must be a whole number only. Exercise of fractional Option Shares is not permitted.

METHOD OF PAYMENT OF OPTION EXERCISE PRICE

Please select only one:

- ❑ Cash Exercise. I am enclosing a check or money order payable to "**Cue Health Inc.**" for the Aggregate Exercise Price.

- ❑ Cancellation of Indebtedness. Currently owed and payable to me in the amount of $_____.

CERTIFICATE INSTRUCTIONS

Please select only one.

Name(s) in which the certificate for the purchased shares will be issued:

- ❑ In my name only
- ❑ In the names of my spouse and myself as community property
- ❑ In the names of my spouse and myself as joint tenants with the rights of survivorship

Spouse's name (if applicable): _____

The certificate for the purchased shares should be sent to the following address (*complete only if to be sent to a different address than specified in Part 1*):

Street Address: _____

City: _____ State:_____ Zip Code:_____

METHOD OF SATISFYING TAX WITHHOLDING OBLIGATION

Please select only one. You do not need to complete this Part if you are exercising only incentive stock options (ISOs) or if you are a non-employee director or consultant.

- ❑ Cash. I am enclosing a check or money order payable to "**Cue Health Inc.**" for the withholding tax amount.

- ❑ Tax Amount Request. Please notify me of the amount of withholding taxes that will be due as a result of this option exercise. I understand that, after receiving notification of the withholding tax amount, I must immediately remit to the Company a check or money order payable to "**Cue Health Inc.**" for that amount. I understand that the Company will not process my option exercise until it receives the check or money order covering the withholding tax amount due.

- ❑ I am not an employee.

ACKNOWLEDGEMENT AND SIGNATURE

Prior to receipt of the Shares exercised in accordance with this Notice, I acknowledge that I have delivered an executed Investment Representation Statement to _____.

Signature: _____ Date: _____

FOR COMPANY USE ONLY:

Received by the Company on _____.

EXHIBIT B

CUE HEALTH INC.
INVESTMENT REPRESENTATION STATEMENT

OPTIONEE:	[Optionee Name, a resident of State of Residence ("Optionee")]
ISSUER:	Cue Health Inc., a Delaware corporation
SECURITY:	[_____ shares of Common Stock (the "Shares")]
DATE:	[_____ __, 20__]

In connection with the exercise of any or all options under that certain Stock Option Award Agreement, dated [_____ ___, 20__], between Optionee and Issuer, Issuer issued the Shares to Optionee and, therefore, Optionee represents to the Issuer the following:

1. Optionee confirms that the Shares are being acquired by the Optionee for the Optionee's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that Optionee has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, Optionee further represents that Optionee does not presently have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participations to such Person or to any third Person, with respect to any of the Shares.

2. Optionee has received a copy of the Cue Health Inc. Amended and Restated 2014 Equity Incentive Plan (the "Plan"), and understands that the Shares when issued will continue to be subject to the Plan.

3. Optionee understands that the Shares remain subject to the provisions of the Stock Option Award Agreement between the Company and the Optionee, including, but not limited to the Company's Right of First Refusal with respect to the Shares.

4. Optionee has had an opportunity to discuss the Issuer's business, management, financial affairs and the terms and conditions of the offering of the Shares with the Issuer's management and has had an opportunity to review the Issuer's facilities.

5. Optionee understands that the Shares have not been, and will not be, registered under the Securities Act of 1933, as amended ("Securities Act"), by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of Optionee's representations as expressed herein. Optionee understands that the Shares are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, Optionee must hold the Shares indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. Optionee acknowledges that the Issuer has no obligation to register or qualify the Shares for resale except as set forth in the Investors' Rights Agreement, if any, of the Issuer. Optionee further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Shares, and on requirements relating to the Issuer which are outside of the Optionee's control, and which the Issuer is under no obligation and may not be able to satisfy.

6. Optionee understands that no public market now exists for the Shares, and that the Issuer has made no assurances that a public market will ever exist for the Shares.

7. Optionee understands that the Shares and any securities issued in respect of or exchange for the Shares, may bear one or all of the following legends:

> "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH TRANSFER MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE ISSUER THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933."

8. Optionee is aware of the adoption of Rule 144 by the Securities and Exchange Commission, promulgated under the Securities Act, which permits limited public resale of shares acquired in a non-public offering subject to the satisfaction of certain conditions.

9. Optionee further acknowledges and understands that if the Issuer is not satisfying the current public information requirement of Rule 144 at the time Optionee wishes to sell the Shares, Optionee would be precluded from selling the Shares under Rule 144 even if the minimum holding period has been satisfied.

10. Optionee is fully aware of: (a) the highly speculative nature of the investment in the Shares; (b) the financial hazards involved; (c) the lack of liquidity of the Shares and the restrictions on transferability of the Shares (e.g., that Optionee may not be able to sell or dispose of the Shares or use them as collateral for loans); (d) the qualifications and backgrounds of the management of the Issuer; and (e) the tax consequences of investment in the Shares.

11. In addition, Optionee represents and warrants that:

a. At no time was Optionee presented with or solicited by any leaflet, public promotional meeting, circular, newspaper or magazine article, radio or television advertisement, or any other form of general advertising.

b. Optionee understands that, in transferring the Shares, the Issuer has relied upon the exemption from registration under the Securities Act contained in Section 4(2) and that, in an attempt to effect compliance with all the conditions thereof and the applicable state law exemption, the Issuer is relying in good faith upon all of the foregoing representations and warranties on the part of the undersigned.

Very truly yours,

By: _____

Optionee Name

3

Exhibit 10.4

CUE HEALTH, INC.
RESTRICTED STOCK UNIT AGREEMENT

Cue Health, Inc. (the "Company") hereby grants the following restricted stock units pursuant to its Amended and Restated 2014 Equity Incentive Plan. The terms and conditions attached hereto are also a part hereof.

Notice of Grant

Name of recipient (the "Participant"):	
Grant Date:	
Number of restricted stock units ("RSUs") granted:	
Number, if any, of RSUs that vest immediately on the grant date:	
RSUs that are subject to vesting schedule:	
Vesting Start Date:	

Vesting Schedule:

Vesting Date:	Number of RSUs that Vest:
[On the first anniversary of the Grant Date and on each of the three subsequent annual anniversaries thereof until the fourth anniversary of the Grant Date]	
All vesting is dependent on the Participant remaining an Eligible Participant, as provided herein.	

This grant of RSUs satisfies in full all commitments that the Company has to the Participant with respect to the issuance of stock, stock options or other equity securities.

CUE HEALTH, INC.

Signature of Participant

Street Address

City/State/Zip Code

By: _____
Name of Officer
Title:

Cue Health, Inc.

Restricted Stock Unit Agreement
Incorporated Terms and Conditions

1. Award of Restricted Stock Units. In consideration of services rendered and to be rendered to the Company by the Participant, the Company has granted to the Participant, subject to the terms and conditions set forth in this Restricted Stock Unit Agreement (this "Agreement") and in the Company's Amended and Restated 2014 Equity Incentive Plan (the "Plan"), an award with respect to the number of restricted stock units (the "RSUs") set forth in the Notice of Grant that forms part of this Agreement (the "Notice of Grant"). Each RSU represents the right to receive one share of common stock, no par value per share, of the Company (the "Common Stock") upon vesting of the RSU, subject to the terms and conditions set forth herein.

2. Vesting. The RSUs shall vest in accordance with the Vesting Schedule set forth in the Notice of Grant (the "Vesting Schedule"). Any fractional shares resulting from the application of any percentages used in the Vesting Schedule shall be rounded down to the nearest whole number of RSUs. Upon the vesting of the RSU, the Company will deliver to the Participant, for each RSU that becomes vested, one share of Common Stock, subject to the payment of any taxes pursuant to Section 7. The Common Stock will be delivered to the Participant as soon as practicable following each vesting date, but in any event within 30 days of such date.

3. Forfeiture of Unvested RSUs Upon Cessation of Service. In the event that the Participant ceases to be an Eligible Participant (as defined below) for any reason or no reason, with or without cause, all of the RSUs that are unvested as of the time of such cessation shall be forfeited immediately and automatically to the Company, without the payment of any consideration to the Participant, effective as of such cessation. The Participant shall have no further rights with respect to the unvested RSUs or any Common Stock that may have been issuable with respect thereto. The Participant shall be an "Eligible Participant" if he or she is an employee of the Company or any other entity the employees of which are eligible to receive awards of RSUs under the Plan.

4. Restrictions on Transfer. The Participant shall not sell, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of, by operation of law or otherwise (collectively "transfer") any RSUs, or any interest therein. The Company shall not be required to treat as the owner of any RSUs or issue any Common Stock to any transferee to whom such RSUs have been transferred in violation of any of the provisions of this Agreement.

5. Rights as a Stockholder. The Participant shall have no rights as a stockholder of the Company with respect to any shares of Common Stock that may be issuable with respect to the RSUs until the issuance of the shares of Common Stock to the Participant following the vesting of the RSUs.

6. Provisions of the Plan. This Agreement is subject to the provisions of the Plan, a copy of which is furnished to the Participant with this Agreement.

7. Right of First Refusal. The shares of Common Stock issued pursuant to this Agreement are subject to the right of first refusal set forth in Section 6.11, Restrictions on Transfer and Ownership of Common Stock of the Company, set forth in the Company's Bylaws.

8. Tax Matters.

(a) Acknowledgments; No Section 83(b) Election. The Participant acknowledges that he or she is responsible for obtaining the advice of the Participant's own tax advisors with respect to the award of RSUs and the Participant is relying solely on such advisors and not on any statements or representations of the Company or any of its agents with respect to the tax consequences relating to the RSUs. The Participant understands that the Participant (and not the Company) shall be responsible for the Participant's tax liability that may arise in connection with the acquisition, vesting and/or disposition of the RSUs. The Participant acknowledges that no election under Section 83(b) of the Internal Revenue Code of 1986, as amended, (the "Code") is available with respect to RSUs.

(b) Withholding. The Participant acknowledges and agrees that the Company has the right to deduct from payments of any kind otherwise due to the Participant any federal, state, local or other taxes of any kind required by law to be withheld with respect to the vesting of the RSUs. At such time as the Participant is not aware of any material nonpublic information about the Company or the Common Stock and is otherwise permitted to do so under the Company's insider trading policy, the Participant shall execute the instructions set forth in Schedule A attached hereto (the "Automatic Sale Instructions") as the means of satisfying such tax obligation. If the Participant does not execute the Automatic Sale Instructions prior to an applicable vesting date, then the Participant agrees that if under applicable law the Participant will owe taxes at such vesting date on the portion of the award then vested the Company shall be entitled to immediate payment from the Participant of the amount of any tax required to be withheld by the Company. The Company shall not deliver any shares of Common Stock to the Participant until it is satisfied that all required withholdings have been made.

9. Miscellaneous.

(a) Section 409A. The RSUs awarded pursuant to this Agreement are intended to be exempt from or comply with the requirements of Section 409A of the Code and the Treasury Regulations issued thereunder ("Section 409A"). The delivery of shares of Common Stock on the vesting of the RSUs may not be accelerated or deferred unless permitted or required by Section 409A. Notwithstanding the foregoing, the Company shall have no liability to the Participant nor to any other person if the RSUs awarded pursuant to this Agreement are not exempt from, or compliant with, Section 409A.

(b) Participant's Acknowledgements. The Participant acknowledges that he or she: (i) has read this Agreement; (ii) has been represented in the preparation, negotiation and execution of this Agreement by legal counsel of the Participant's own choice or has voluntarily declined to seek such counsel; (iii) understands the terms and consequences of this Agreement; (iv) is fully aware of the legal and binding effect of this Agreement; and (v) agrees that in accepting this award, he or she will be bound by any clawback policy that the Company may adopt in the future.

Schedule A

Automatic Sale Instructions

The undersigned hereby consents and agrees that any taxes due on a vesting date as a result of the vesting of RSUs on such date shall be paid through an automatic sale of shares as follows:

(a) Upon any vesting of RSUs pursuant to Section 2 hereof, the Company shall arrange for the sale of such number of shares of Common Stock issuable with respect to the RSUs that vest pursuant to Section 2 as is sufficient to generate net proceeds sufficient to satisfy the Company's minimum statutory withholding obligations with respect to the income recognized by the Participant upon the vesting of the RSUs (based on minimum statutory withholding rates for all tax purposes, including payroll and social security taxes, that are applicable to such income), and the net proceeds of such sale shall be delivered to the Company in satisfaction of such tax withholding obligations.

(b) The Participant hereby appoints the Chief Executive Officer or the designee of the Chief Executive Officer, and any of them acting alone and with full power of substitution, to serve as his or her attorneys in fact to arrange for the sale of the Participant's Common Stock in accordance with this Schedule A. The Participant agrees to execute and deliver such documents, instruments and certificates as may reasonably be required in connection with the sale of the shares pursuant to this Schedule A.

(c) The Participant represents to the Company that, as of the date hereof, he or she is not aware of any material nonpublic information about the Company or the Common Stock. The Participant and the Company have structured this Agreement, including this Schedule A, to constitute a "binding contract" relating to the sale of Common Stock, consistent with the affirmative defense to liability under Section 10(b) of the Securities Exchange Act of 1934 under Rule 10b5-1(c) promulgated under such Act.

The Company shall not deliver any shares of Common Stock to the Participant until it is satisfied that all required withholdings have been made.

Participant Name: _____

Date: _____

Exhibit 10.10

Cue Health Inc.

Director Compensation Policy

Effective upon the effective date (the "Effective Date") of the registration statement on Form S-1 for the initial public offering ("IPO") of Cue Health Inc. (the "Company"), the Company's non-employee directors shall receive the following compensation for their service as members of the Board of Directors (the "Board") of the Company.

Director Compensation

Our goal is to provide compensation for our non-employee directors in a manner that enables us to attract and retain outstanding director candidates and reflects the substantial time commitment necessary to oversee the Company's affairs. We also seek to align the interests of our directors and our stockholders and we have chosen to do so by compensating our non- employee directors with a mix of cash and equity-based compensation.

Cash Compensation

The fees that will be paid to our non-employee directors for service on the Board, and for service on each committee of the Board on which the director is then a member, and the fees that will be paid to the chairperson of the Board, if one is then appointed, and the chairperson of each committee of the Board will be as follows:

	1 Base	**2 Incremental– Non-Executive Board Chair or Committee Chair**	**3 Incremental – Non-Chair Committee Members**
Board of Directors	$ 50,000	$ 45,000	—
Audit Committee	—	$ 20,000	$ 8,000
Compensation Committee	—	$ 12,000	$ 5,000
Nominating and Corporate Governance Committee	—	$ 10,000	$ 4,000

The foregoing fees will be payable in arrears in four equal quarterly installments on the last day of each quarter, provided that the amount of such payment will be prorated for any portion of such quarter that the director is not serving on our Board, on such committee or in such position.

Equity Compensation

Initial Grants. Upon initial election to our Board, with respect to each non-employee director who is elected to our Board after the Effective Date, such non-employee director will be granted, automatically and without the need for any further action by the Board, an initial equity award of restricted stock units with a value of $300,000. The initial award will vest as to 34% of the shares of our common stock underlying the award on the first anniversary of the grant date and an additional 33% of the shares of our common stock underlying the award at the end of each successive 12-month period following the first anniversary of the grant date until the third anniversary of the grant date, subject to the non-employee director's continued service as a director. The vesting of the initial award shall accelerate in full upon a change in control of the Company. Each non-employee director who is elected to our Board between June 23, 2021 and the commencement of trading of shares of our common stock on the Nasdaq Stock Market following the effectiveness of the IPO shall be entitled to receive an initial grant in connection with such election, on the same terms and conditions set forth in this paragraph, provided that such grant shall be made, automatically and without the need for any further action by the Board, on the later of (i) the effective time of such director's election to our Board and (ii) immediately prior to and contingent upon the commencement of trading of shares of our common stock on the Nasdaq Stock Market.

Annual Grants. On the date of each annual meeting of our stockholders after the Effective Date, each non-employee director who is serving as a member of our Board will be granted, automatically and without the need for any further action by the Board, an equity award of restricted stock units with a value of $190,000. The annual award shall vest with respect to 100% of the shares of our common stock underlying the award on the first anniversary of the grant date, subject to the non-employee director's continued service as a director (unless otherwise provided at the time of grant). The vesting of the annual award shall accelerate in full upon a change in control of the Company.

The number of restricted stock units subject to an initial grant or an annual grant of restricted stock units granted to our non-employee directors to achieve the respective values of such grants will be determined in a manner consistent with our then-current practice for determining the number of restricted stock units granted to our employees.

The initial awards and the annual awards shall be subject to the terms and conditions of our 2021 Stock Incentive Plan, or any successor plan, and the terms of the restricted stock unit agreements entered into with each director in connection with such awards.

Expenses

Upon presentation of documentation of such expenses reasonably satisfactory to the Company, each non-employee director shall be reimbursed for his or her reasonable travel and other expenses incurred in connection with attending meetings of the Board and committees thereof or in connection with other business related to the Board, and each non-employee director shall also be reimbursed for his or her reasonable travel and other expenses authorized by the Board or a committee of the Board that are incurred in connection with attendance at various conferences or meetings with management of the Company, in accordance with the Company's travel policy, as it may be in effect from time to time.

Certain identified information has been excluded from the exhibit because it is both (i) not material and (ii) is the type of information that the registrant treats as private or confidential. Double asterisks denote omissions.

AWARD/CONTRACT	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING	PAGE OF PAGES 1 | 40
2. CONTRACT (*Proc. Inst. Indent.*) NO. W911NF2190001	3. EFFECTIVE DATE 13 Oct 2020	4. REQUISITION/PURCHASE REQUEST/PROJECT NO. 0011560601	

5. ISSUED BY CODE W911NF	6. ADMINISTERED BY (*if other than Item 5*) CODE S0514A
US ARMY ACC-APG-RTP W911NF 800 PARK OFFICE DRIVE SUITE 4229 RESEARCH TRIANGLE PARK NC 27709	DCMA SAN DIEGO 9174 SKY PARK CT, SUITE 100 SAN DIEGO CA 92123-4353

7. NAME AND ADDRESS OF CONTRACTOR (*No., street, county, State and ZIP Code*)	8. DELIVERY ☒ FOB ORIGIN ☐ Other (*See below*)
CUE INC. 11100 ROSELLE ST STE A SAN DIEGO CA 92121-1210	9. DISCOUNT FOR PROMPT PAYMENT
	10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN ▶ ITEM
CODE 7VPK0 FACILITY CODE	

11. SHIP TO/MARK FOR CODE W56XNH	12. PAYMENT WILL BE MADE BY CODE HQ0339
JPM MEDICAL JPM CBRN MEDICAL 1564 FREEDMAN DRIVE FORT DETRICK, MD 21702	DFAS COLUMB-WEST ENTITLEMENT OPERATIONS DFAS-CO/WEST ENTITLEMENT OPERATIONS PO BOX 182381 COLUMBUS OH 43218-2381

13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: ☐ 10 U.S.C. 2304(c) ( ) ☐ 41 U.S.C. 253(c) ( )	14. ACCOUNTING AND APPROPRIATION DATA **See Schedule**

15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
	SEE SCHEDULE				
				15G. TOTAL AMOUNT OF CONTRACT ▶	**$ 480,916,636.62**

16. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I – THE SCHEDULE				**PART II – CONTRACT CLAUSES**	
X	A	SOLICITATION/CONTRACT FORM	1		I	CONTRACT CLAUSES	
X	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2 – 3			**PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.**	
X	C	DESCRIPTION/SPECS./WORK STATEMENT	4 - 37		J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				**PART IV – REPRESENTATIONS AND INSTRUCTIONS**	
X	E	INSPECTION AND ACCEPTANCE	38		K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
X	F	DELIVERIES OR PERFORMANCE	39				
X	G	CONTRACT ADMINISTRATION DATA	40		L	INSTRS, CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

CONTRACTING OFFICER WILL COMPLETE ITEM 17 (SEALED-BID OR NEGOTIATED PROCUREMENT) OR 18 (SEALED-BID PROCUREMENT) AS APPLICABLE

17. ☒ CONTRACTOR'S NEGOTIATED AGREEMENT Contractor is required to sign this document and return 2 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications as are attached or incorporated by reference herein. *(Attachments are listed herein.)*

18. ☐ AWARD (Contractor is required to sign this document.) *Your bid on* Solicitation Number _____, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the terms listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's soliciation and your bid, and (b) this award/contract. No further contractual document is necessary. (Block 18 should be checked only when awarding a sealed-bid contract.)

19A. NAME AND TITLE OF SIGNER (*Type or print*)	20A. NAME OF CONTRACTING OFFICER
Ayub Khattak CEO	VONETTA GOODSON MCNEAL / CONTRACTING GRANTS OFFICER TEL: [**] EMAIL: [**]

19B. NAME OF CONTRACTOR	19C. DATE SIGNED	20B. UNITED STATES OF AMERICA	20C. DATE SIGNED
BY /s/ Ayub Khattak *(Signature of person authorized to sign)*	10/13/2020	BY /s/ Vonetta Goodson McNeal *(Signature of Contracting Officer)*	13-Oct-2020

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is NOT usable

STANDARD FORM 26 (REV. 5/2011)
Prescribed by GSA – FAR (48 CFR) 53.214(a)

Section B - Supplies or Services and Prices

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001		1	Lot	$184,576,636.62	$184,576,636.62
	Industrial Expansion (FFP)FFP INDUSTRIAL EXPANSION IN ACCORDANCE WITH AWARD SPECIFICATIONS FOB: Origin (Shipping Point) PURCHASE REQUEST NUMBER: 0011560601 PSC CD: AN14				
				NET AMT	$184,576,636.62
	ACRN AA CIN: GFEBS001156060100001				$184,576,636.62

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002		6,000,000	Each	$[**]	$[**]
	Test Cartridges (FFP)FFP COVID-19 TEST CARTRIDGES AS SPECIFIED IN AWARD NARRATIVE FOB: Orgin (Shipping Point) PURCHASE REQUEST NUMBER: 0011560601 PSC CD: AN14				
				NET AMT	$[**]
	ACRN AA CIN: GFEBS001156060100002				$[**]

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003		30,000	Each	$[**]	$[**]
	Monitoring Systems (FFP)FFP MONITORING SYSTEMS AS SPECIFIED IN AWARD NARRATIVE FOB: Origin (Shipping Point) PURCHASE REQUEST NUMBER: 0011560601 PSC CD: AN14				
				NET AMT	$[**]
	ACRN AA CIN: GFEBS001156060100003				$[**]

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004		60,000	Each	$[**]	$[**]
	Swab Packs (FFP)FFP SWAB PACKS AS SPECIFIED IN AWARD NARRATIVE FOB: Origin (Shipping Point) PURCHASE REQUEST NUMBER: 0011560601 PSC CD: AN14				
				NET AMT	$[**]
	ACRN AA CIN: GFEBS001156060100004				$[**]

Section C - Descriptions and Specifications

OTHER TRANSACTION AGREEMENT

OTHER TRANSACTION AUTHORITY FOR PROTOTYPE
AGREEMENT
BETWEEN

Cue Health, Inc. (Awardee)
And
Army Contracting Command - Aberdeen Proving Ground - Research Triangle Park, NC DIVISION
(Government)
800 Park Office Drive Research Triangle Park, NC 27529

Effective Date: October 13, 2020

Agreement No.: W911NF-21-9-0001

Total Amount of the Agreement: $480,916,636

Awardee Signature	**Government Signature**
Ayub Khattak	
Printed Name	**Printed Name**
CEO	**Agreements Officer**

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OTHER TRANSACTION AUTHORITY FOR PROTOTYPE AGREEMENT

This Other Transaction Authority for Prototype Agreement is entered into between the United States of America, hereinafter called the "Government", pursuant to and under U.S. Federal law and Cue Health Inc., a small business and non-traditional defense contractor, hereinafter called the "Awardee". The United States of America and Awardee are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, the Awardee is eligible for an Other Transaction Authority for Prototype Agreement in accordance with 10 USC § 2371b(d)(1)(A) as amended by the National Defense Authorization Act for Fiscal Year 2018 as they are non-traditional defense contractor, attesting to "An entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to the full coverage under the cost accounting standards prescribed pursuant to Section 1502 of title 41 and the regulations implementing such section";

WHEREAS, the DoD currently has authority under 10 U.S.C. § 2371b to award "other transactions" (OTs) in certain circumstances for prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the DoD, or to improve platforms, systems, components, or materials in use by the Armed Forces;

WHEREAS, a prototype can generally be described as a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a particular technology or process, concept, end item, or system;

WHEREAS, this Agreement meets the criteria for a prototype project;

NOW THEREFORE, the Parties have agreed as follows:

ARTICLE 1: BACKGROUND, DEFINITIONS AND SCOPE OF THE AGREEMENT

A. Background

The Department of Health and Human Services through DoD requires the ability to procure reliable point of care testing assays and devices in sufficient quantities to meet the demand to respond to the on-going COVID-19 Pandemic. The unprecedented demand for rapid and accurate molecular diagnostic testing continues to exceed national testing capacity. Awardee, through funding provided by HHS, has already developed and received Emergency Use Authorization (EUA) from the U.S. Food and Drug Administration (FDA) for a rapid, portable, point of care COVID-19 test capable of detecting SARS-CoV-2, the virus that causes COVID-19. The ability to deploy substantial quantities of the Cue POC COVID-19 test will not only increase national test capacity, but significantly reduce the time to inform patients of their result. The Cue Health test is anticipated to be used primarily in particular settings of concern, such as nursing homes, long term care facilities and schools. It will also be beneficial to the armed services and the US population at large, at other locations where a laboratory capability is not readily accessible. The Cue COVID-19 Test consists of: 1.) the Cue COVID-19 Test Cartridge pack which includes a single use test cartridge and a single use Sample Wand (swab); 2.) The Cue Health Monitoring System (reader); The Cue COVID-19 External Control Swabs Pack. Hereafter, the components of the test as necessary for a single use are collectively referred to as a "COVID-19 Test".

B. Definitions

Agreement Invention: Any invention conceived or first actually reduced to practice in the performance of the Prototype Project under this Agreement.

Agreements Officer or AO: Warranted contracting officer authorized to sign the final OTA for the Government.

Agreement's Officer's Representative or AOR: The individual designated by the Government to monitor all technical aspects and assist in agreement administration of the Prototype Project. The AOR shall only assist in agreement administration of the Prototype Project to the extent delegated such administration authority in writing in the AOR delegation letter by the responsible Agreements Officer.

Background Invention: Background Invention means any Invention, or improvement to any Invention, other than an Agreement Invention, that was conceived, designed, developed, produced, and/or reduced to practice prior to performance of this Agreement, or outside the scope of work performed under this Agreement.

Cause: An event or issue that has been discovered that the Government believes may impact successful performance of the OTA.

Date of Completion: The date on which all work is completed or the date on which the period of performance ends.

- **Deliverable(s):** Any documentation (e.g. report, Executive Summary, Letter) given to the Government by the Awardee as described in the second column of Table 1 in Article I, Section C.7 under the heading "Deliverable."
- **Effective Date:** The date of execution of this Agreement by the Parties.
- **Field:** COVID-19 Diagnostic testing.
- **Government:** The United States of America, as represented by The Department of Defense and the Department of Health and Human Services.
- **Government Purpose Rights:** As defined in DFARS 252.227-7013(a)(13).

- **Invention:** Any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
- **Know-How:** Information, practical knowledge, techniques, and skill development by Awardee in the performance of the Prototype Project and which is necessary for the Practical Application of an Agreement Invention within the Field.
- **Limited Rights:** As defined in DFARS 252.227-7013(a)(14).
- **Party:** Each of the Government and Awardee. (collectively, “Parties”).
- **Practical Application:** With respect to an Agreement Invention, to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions so as to establish that the Agreement Invention is capable of being utilized.
- **Program:** Prototype efforts being conducted by the Parties pursuant to this Agreement.
- **Prototype Project:** Has the meaning given in Article 1.C.
- **Project Coordination Team or PCT:** Agreements Officer, Agreements Officer’s Representative, Subject Matter Experts and Team Leader(s) acting in support of Operation Warp Speed and responsible for periodic and ad-hoc reporting to Operation Warp Speed Leadership.
- **Property:** Any tangible personal property other than property actually consumed during the execution of work under this Agreement.
- **Under this Agreement:** When used, for example but without limitation, in the definitions of Data, Know-How, Property, and Agreement Inventions, means activities conducted pursuant to this Agreement that are Government funded.

Scope of the Agreement

1. **Prototype Project:** The prototype project under this Agreement is the demonstration by Awardee of the rapid, large scale supply and logistics capability to manufacture and deliver to the Government within 5 months of the effective date of this Agreement 6 million Cue COVID-19 Assay Cartridges, 60,000 COVID-19 Control Swab Packs, and 30,000 Monitoring Systems by achieving a sustained average per day production rate of at least 100,000 EUA or 510(k) cleared Cue COVID-19 Assay Cartridges over the last 7 days of the 5 month delivery period. The expansion of Awardee’s manufacturing capability will likely entail several actions. The company will increase their overall output of assay cartridges by installing additional high capacity automated lines. Additionally the Awardee will upgrade their bio production capability to ensure enough reagent materials are available to meet end-state test cartridge manufacturing goals. In addition Awardee will perform activities required to onshore Monitoring System manufacturing to be performed either in-house, with a US-based contract manufacturing organization or both. The demonstrated manufacturing capability will be in compliance with ISO 13485 standards as well as the Quality System Regulations at 21 CFR Part 820.

In order to ensure the successful and expeditious completion of this prototype project, Awardee agrees and represents that, commencing on the effective date of this Agreement, the Government will be the exclusive purchaser of the entire production of Awardee's COVID-19 Test until the prototype project has been successfully completed. This exclusive purchaser condition is waived under the following circumstances: 1) Awardee may honor contractual commitments executed before the effective date of this Agreement and 2) Awardee may request a waiver from the Government to respond to other than U.S. Federal Government urgent diagnostic testing requirements and 3) Awardee may use a reasonable number of tests for internal workforce testing and diagnostic purposes and for marketing, demonstration and evaluation and business development. The prototype project will be successfully completed when Awardee has achieved a sustained average per day production rate of at least 100,000 EUA or 510(k) cleared COVID-19 Assay Cartridges over a 7 day period, and has delivered a total of 6 million Cue COVID-19 Assay Cartridges, 30,000 monitoring systems, and 60,000 control swab packs.

2. **Associated Production:** It is the intention of the Parties to enter into a separate, but associated, sole-source FAR-based contract for the continued production of COVID-19 Tests. Subject to applicable law and regulation, the Parties shall take all steps necessary to negotiate and enter into such a FAR-based contract in good faith with the intent of promptly signing such FAR-based contract as soon as possible after this Agreement. Follow- on production pursuant to 10 USC 2371b is not anticipated for this project. In recognition of, and in consideration for, the Government's significant funding for the development of Awardee's enhanced manufacturing capability, the U.S. Government shall be entitled to purchase Awardee's EUA or 510(k) cleared COVID-19 Test under a future FAR-based contract, in quantities not to exceed [**] percent ([**]%), measured on a quarterly basis, of Awardee's COVID-19 Tests produced from the capacity as provided hereunder, at pricing that shall not exceed [**] percent ([**]%) below the lowest price then offered by Awardee to a commercial customer as of the date of the relevant order, for the same products, for equivalent quantities and under comparable delivery schedules and other terms of sale, provided, however, that Awardee shall have no obligation to accept any such discounted price less than $[**] per COVID-19 Test. Additionally, Awardee shall grant the Government the right to place such orders as Priority Orders (as defined below) for which Government purchase orders will be prioritized by Awardee as if they were "rated orders" subject to 15 CFR § 700.14, subject to the priority afforded to orders that are expressly identified as HRPAS or DPAS rated orders.

3. **Manufacturing Equipment Purchased With Government Funds**: In recognition of, and in consideration for, the Government's significant funding for the development of Awardee's enhanced manufacturing capability, the Awardee agrees to never re-locate outside of the United States or its Territories any of the Automated Assembly Line equipment purchased with Government funds under this Agreement.

4. **Performance by Affiliates:** The Government acknowledges and agrees that Awardee may perform its obligations under this Agreement through one or more of its affiliates and/or subcontractors, provided that Awardee will be responsible for the full and timely performance as and when due under, and observance of, all the covenants, terms, conditions and agreements set forth in this Agreement by its affiliates and/or subcontractors**.**

5. **Audits:** Until such time as all tests, Monitoring Systems and control packs have been delivered under this Agreement, and in no event after expiration of the Period of Performance, audits under this Prototype Agreement may include Government Quality Assurance audits - periodic, *ad hoc* or for cause - of Awardee's or sub-agreement holders' facilities included in the supply chain. The Government will provide notification of a periodic or *ad hoc* audit at least [**] prior to the intended audit date and both parties will work in good faith to accommodate the audit and determine scheduling. In all audits, the Government will comply with the Person in Plant requirements set forth in Article 1.C.7.

6. **Person in Plant:** The Government may request to have a government representative in place at Awardee's facility, with no fewer than [**] advance notice of the desired date for that person to be in place. The name, role, scope and duration will be mutually agreed between the Parties in writing in advance. The Government representative will adhere to the agreed scope and to the Awardee's policies, procedures and instructions at all times. As determined by federal law, no Government representative shall publish, divulge, disclose, or make known in any manner, or to any extent not authorized by law, any information coming to him in the course of employment or official duties, while stationed in a Awardee plant.

   If considered for cause, the Government may place representatives in place at Awardee's facility, with no fewer than [**] advance notice of the desired date for the person(s) to be in place, subject to applicable COVID protocols. The names, roles, scope, and duration will be provided to the Awardee in advance. The Government representative will adhere to the Awardee's policies, procedures and instructions regarding facility regulations at all times. As determined by federal law, no Government representative shall publish, divulge, disclose, or make known in any manner, or to any extent not authorized by law, any information coming to him in the course of employment or official duties, while stationed in a Awardee plant.

7. **Deliverables:** Deliverables under this Agreement are listed in Table 1.
   Variances: Awardee shall promptly notify the Government of any anticipated shortage in quantity or deviation from any delivery date specified herein. The Government and the Awardee shall cooperate in good faith to adjust Table 1 to reflect reasonable variations in the delivery schedule, provided that the total scheduled quantities are delivered and Awardee demonstrates a production capacity of 100,000 units per day within not more than [**] after award.

Table 1: Deliverables

Item	**[**]**	**[**]**	**[**]**	**[**]**	**[**]**	**[**]**	**[**]**	**[**]**	**[**]**	**[**]**	**[**]**
COVID-19 Test Cartridges	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
Health Monitoring Systems	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
COVID-19 External Control Swab Packs	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]

* Delivery dates and quantities subject to adjustment as provided herein.

Deliverable	**Delivery Date**	**Method for Acceptance**
Increase Industrial Base Manufacturing Capability to 100K Cue COVID-19 Test cartridges per day	**6 Million EUA or 510(k) cleared COVID-19 Test Cartridges (per delivery schedule above)** **30K Health Monitoring Systems (per delivery schedule above)** **60K COVID-19 External Control Swab Packs (per delivery schedule above)**	**Periodic Inspection & Random Sampling (DCMA and AOR)**
Monthly Progress Reports	**[**] of the month, every month during PoP**	**Progress Report (AOR)**
Weekly Progress Meetings	**Weekly, as agreed upon**	**Progress Meeting (AOR)**
Quarterly In Process Review	**Every 90 days**	**Progress Meeting (AOR)**
Final Report	**[**] after last scheduled delivery**	**Progress Report (AOR)**
Subcontractor Supply Chain Plans	**[**] after award**	**Progress Report (AOR)**
Manufacturing Plan	**[**] after award**	**Progress Report (AOR)**
Distribution Plan	**[**] after award**	**Progress Report (AOR)**
Quality Management Plan	**[**] after award**	**Progress Report (AOR)**

Monthly Progress Reports. The Awardee shall submit monthly progress reports no later than the [**] of the month. Awardee format acceptable. Electronic submission acceptable in MS Office or PDF format. Financial information shall be MS Excel format. Monthly reports shall NOT be marked proprietary, and shall have Distribution Statement C (US Government and their contractors). Each monthly report shall, at a minimum, contain the following:

- Summary of monthly progress for each of the Awardee's facilities/capabilities associated with this effort.
- Summary of progress towards established milestones for each facility/capability.
- Identification of any milestone that is slipping or missed, and discussion of path forward to bring milestone back to schedule, and impact on other milestones.

- Summary of risks, discussion of potential impacts and efforts to mitigate.
- Summary of overall schedule and changes from previous month.
- Status updates from Manufacturing plan
- Status updates from Distribution plan
- Report any customer complaints
- Report any known deficiencies of the materials and/or products
- Financial summary of Awardee deliveries month to date, invoices submitted, and Government payments made.

To the extent trade secret or other proprietary information is relevant to a monthly report, an appropriately marked supplement may be provided.

Manufacturing Plan. The Awardee shall provide a detailed plan of action (contractor format acceptable) to increase cartridge-manufacturing capability to meet the government's delivery schedule (i.e. ramp up to 100K cartridges per day) and associated on-shoring component manufacturing within [**] of contract award. The Awardee's plan of action shall at a minimum, include the following:

a. Timeline, materials required and strategy to set up and begin V2.0 manufacturing lines to manufacture the cartridges;

b. Timeline, materials required and strategy to upgrade the bioproduction capability to manufacture sufficient cartridge reagents;

c. Timeline, materials required and strategy to onshore manufacturing of reagents and cartridge subcomponents;

d. Information on the US based manufacturing organization to replace existing organization;

e. Current GMP manufacturing status and plan to achieve GMP manufacturing, if not currently GMP;

f. Quality Assurance plan and Acceptance metrics;

g. Plan to comply with FDA EUA Letter of Authorization.

Quality Management Plan. Cue Health, Inc. will, in the level of detail and format that Cue Health, Inc. solely elects (provided such format provides a reasonable and industry-standard level of detail), provide a quality management plan for manufacturing efforts that conform to ISO 13485 standards as well as the Quality System Regulations at 21 CFR Part 820 which may include, but is not limited to, the quality policy and objectives, management review, competencies and training, process document control, feedback, evaluation, corrective action and preventive action, process improvement, measurement, and data analysis processes. The framework is normally divided into infrastructure, senior management responsibility, resource management, lifecycle management, and quality management system evaluation.

Distribution Plan. Cue Health, Inc. will, in the level of detail and format that Cue Health, Inc. solely elects (provided such format provides a reasonable and industry-standard level of detail), provide a Distribution Plan within [**] of contract award, which shall provide a detailed distribution plan for how all Test Cartridge Packs, Monitoring Systems and External Control Swabs Packs will be shipped and delivered to required delivery locations within the United States and its Territories. The Awardee's distribution plan shall at a minimum, include the following:

a. Current distribution processes;
b. Timeline and strategy to increase distribution process and shipping to handle the increase in number and volume of shipments.

Subcontractor Supply Chain Plans. Cue Health Inc. will provide plans from key US subcontractors (swab manufacturer, fluid transfer automation, etc) describing how they plan to expand their production capacities in support of the Awardee. Cue Health Inc. will describe the source of capital such subcontractors expect to be utilized to increase their production rates.

Final Report. Final Report shall NOT be marked proprietary, and shall have Distribution Statement C.

Contractor format acceptable. Electronic submission acceptable in MS Office or PDF format. Financial information shall be MS Excel format. Final report summarizing stated objectives and the progress that was achieved in meeting those objectives; summary of risks incurred, impacts and mitigation; quantitative discussion of production throughput improvements achieved; financial summary of project; schedule summary for project, comparing original schedule to final schedule; lessons learned for future similar endeavors, and recommendations for path forward as applicable.

8. **Milestones:** Payable milestones under this Agreement are listed in Table 2a and 2b.

Payable Milestones

Table 2a Industrial Expansion Milestones

Milestone #	Milestone Description	Due Date	Demonstration of Milestone	Total Funds
1	Advance payment for upfront Industrial Expansion costs	Upon award	Award	$184,576,636

Table 2b COVID-19 Test Delivery Milestones*

	[**]		**[**]**		**[**]**		**[**]**		**[**]**		**[**]**	
Item	**Qty**	**Payment**	**Qty**	**Payment**	**Qty**	**Payment**	**Qty**	**Payment**	**Qty**	**Payment**	**Qty**	**Payment**
COVID-19 Test Cartridges	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
Health Monitoring Systems	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
COVID-19 External Control Swab Packs	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]

	[**]		[**]		[**]		[**]		[**]	
Item	**Qty**	**Payment**	**Qty**	**Payment**	**Qty**	**Payment**	**Qty**	**Payment**	**Qty**	**Payment**
COVID-19 Test Cartridges	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
Health Monitoring Systems	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
COVID-19 External Control Swab Packs	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]

ARTICLE 2: TERM AND TERMINATION

A. Term of this Agreement

The Term of this Agreement commences upon the Effective Date and extends through final payment. This Agreement is anticipated to end 5 months after the Effective Date, subject to mutually agreed extensions pursuant to paragraph 2.D to facilitate the completion of the project(s). A transaction for a prototype project is complete upon the written determination of the appropriate official for the matter in question that efforts conducted under a Prototype OT: (1) met the key technical goals of a project, or (2) accomplished a particularly favorable or unexpected result that justifies the completion of the prototype.

B. Rights of Termination

- In the event that Awardee notifies the Government that, as a result of emerging safety or efficacy data, no further efforts will be undertaken towards the development of the COVID-19 Test manufacturing and delivery, then, either Party may notify the other Party of its intent to terminate this Agreement, which termination shall be effective thirty (30) days after the date of such notice.

- Awardee shall have no liability to repay the Government for milestone payments made prior to the notification of termination, except as otherwise provided for under Article 14 or Termination for Cause below. With respect to milestones which have not been completed, Awardee shall be entitled to payment based on a percentage of the work performed toward said milestones, plus reasonable charges the Awardee can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. By way of example, these costs may include, but are not necessarily limited to, costs associated with non-cancellable agreements with vendors to obtain manufacturing capacity or supplies in the performance of this prototype project agreement. Awardee shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit Awardee’s records. Awardee shall not be paid for any work performed which reasonably could have been avoided.

- From and after the effective date of any such termination, Awardee shall have no further obligation to deliver any test cartridges, Monitoring Systems or external controls, and the Government shall have no further obligation to accept any such deliverables.

- The Government and the Awardee will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination, including disposition of materials acquired for research use. Failure of the Parties to agree to a reasonable adjustment will be resolved pursuant to Article 7, Disputes. In the event of termination, the Parties shall negotiate in good faith a reasonable wind-down plan and neither Party shall have any continuing obligations to perform under the Program except as otherwise specified herein.

Termination for Convenience: The Government may terminate this Agreement for any or no reason by providing at least thirty (30) calendar days' prior written notice to the Awardee. The Government and Awardee will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination by the Government for convenience, provided that Awardee shall retain all payments for work performed prior to the effective date of the termination consistent with the terms of this Agreement, subject to the Government retaining the right to place Priority Orders for up to [**] after the date of such termination, as defined in Article 1, Paragraph C., subparagraph 2., for other diagnostic tests manufactured using the manufacturing equipment purchased with Government funds under this Agreement.

Termination for Cause: If the Awardee materially fails to comply with the provisions of this Agreement, including unjustifiably failing to maintain EUA or advance to 510(k) clearance for Awardee's COVID-19 Test, the Other Transaction Agreement Officer (OTAO), after issuance of a cure notice and failure of the Awardee to cure the defect within [**] or the time allowed by the OTAO after Awardee's receipt of the cure notice, whichever is longer, may take one or more of the following actions as appropriate:

(i) temporarily withhold payments pending correction of the deficiency,
(ii) disallow all or part of the price attributable to the activity or action not in compliance,
(iii) wholly or partly suspend or terminate this Agreement,
(iv) withhold further funding, or
(v) take any other legally available remedies.

If this Agreement is terminated for Cause, Awardee will grant the Government a non-exclusive, paid up, perpetual license to the Awardee and subawardee patents and documentation necessary for the purpose of developing the Prototype. The Awardee shall provide the Government or its designee with a non-exclusive, paid up, license to any patent, copyright, technical data or regulatory information held by the Awardee that relates to the technology to permit the Government to pursue commercialization of the technology with a third party, on terms to be agreed between the Parties and subject to rights granted or held by third parties. The terms of this section and the obligations herein will be included in any exclusive license given by the Awardee to a third party for any intellectual property covered by this Agreement, on terms to be agreed between Awardee and such third party. This clause will survive the acquisition or merger of the Awardee by or with a third party.

In addition to the Government's remedies prescribed in this Article 2.B, Termination for Cause, after the finalization of a termination for default hereunder, where defaulted Awardee has exited or abandoned its business in the Field or has unreasonably abandoned its efforts to maintain EUA or advance to 510(k) clearance for Awardee's COVID-19 Test, the Government may upon [**] written notice to Awardee, take possession of and title to all manufacturing equipment purchased using Government funds provided under this Agreement.

C. Survival

In the event of Termination, all rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Agreement, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of Intellectual Property and Proprietary Information), and product support obligations shall survive the expiration or termination of this Agreement.

D. Stop Work Orders

- Except as required by applicable law or regulation, or judicial or administrative order, the Government shall not have the authority to issue a stop work order to halt the work contemplated under the Statement of Work.

E. Extension of Term

The Parties may extend by mutual written agreement the Period of Performance if funding availability and research and development or prototype demonstration opportunities reasonably warrant.

ARTICLE 3: PROJECT MANAGEMENT AND MODIFICATIONS

Technical and project management of the prototype project and associated scope within the Statement of Work shall be managed as detailed in this Article.

A. **Project Governance.** Awardee is responsible for the overall management of the Prototype Project and related decisions. The Government and Awardee are bound to each other by a duty of good faith in achieving the Prototype Project as defined in Article 1. As such, the Government will have continuous involvement with Awardee shall provide project results in accordance with the Deliverables schedule identified in Table 1.

B. **Project Management.** Awardee and the Government will each designate an individual responsible for facilitating the communications, reporting, and meetings between the Parties. For Awardee the individual will serve as PM, and for the Government the individual will be the AOR.

C. **Project Reviews.** Awardee and the Government will hold periodic project review meetings as determined by the Awardee Project Manager and AOR, however, these meetings shall not occur more frequently than every [**].

D. **Reviews Resulting in Modifications.** During the performance of this Prototype Agreement, as described above, it may be necessary to modify the scope of the Prototype Project or delivery timeframes. No communications, whether oral or in writing, that purport to change this Agreement are valid unless and until a modification is issued by the AO. The Parties hereby agree that any mutually agreed upon written request for modification shall be executed in an expedited timeframe. Modifications to subawards and/or new subcontracts under this Agreement that could reasonably impact the technical approach proposed and accepted by the Government require the approval of the AOR prior to being executed.

E. **Bilateral Modifications.** Awardee or the Government may propose modifications to this Agreement. A modification that materially changes the obligations of either the Government or Awardee must be in writing and signed by the AO and Awardee authorized official. Awardee requests for modifications shall detail the technical, chronological and financial impact of the proposed change on the Statement of Work or delivery timeframes.

F. **Unilateral Modifications.** The AO may ONLY issue minor or administrative modifications, which do not change the obligations of Awardee in any adverse manner, such as changes to the paying office or appropriations data, or changes to Government personnel identified in the Agreement. Unilateral modifications will only be signed by the AO.

G. The AO has assigned an Agreements Officer's Representative (AOR) for this agreement. The Awardee will receive a copy of the written designation outlining the roles and responsibilities of the AOR and specifying the extent of the AOR's authority to act on behalf of the OTA. The AOR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

H. **Agreement Administration**

In no event shall any understanding or agreement, modification, change order, or other matter in deviation from the terms of this Agreement between the Awardee and a person other than the AO be effective or binding upon the Government. All such actions must be formalized by a proper contractual document executed by the AO.

Government Points of Contact:

Agreements Officer (AO)

NAME: Vonetta G. McNeal
MAILING ADDRESS: 800 Park Office Drive, Research Triangle Park (RTP), NC 27529

EMAIL: [**]
PHONE: [**]
AGENCY NAME/DIVISION/SECTION: Army Contracting Command - Aberdeen Proving Ground - RTP Division

Agreements Officer Representative (AOR)

NAME: [**]
MAILING ADDRESS: [**]
EMAIL: [**]
PHONE: [**]

Cue Health, Inc. Points of Contact:

Project Manager (PM)

NAME:
MAILING ADDRESS:
EMAIL:
PHONE:

(will be provided within [**] after award)

ARTICLE 4: MANAGEMENT OF THE PROJECT

A. Document Review

- The Awardee shall provide the PCT sufficient opportunity to review study protocols, reports, and project plans. PCT's comments on these documents will be viewed as advisory in nature.

B. Sub-agreement Holders

- 1. The Government acknowledges that, in order to combat the global pandemic and provide the test cartridges, Monitoring Systems and external controls as quickly as possible, Awardee has entered into a number of contracts prior to the Execution Date, and the Government agrees that it will not require these contracts to be renegotiated. Therefore, except as otherwise expressly set forth in this Article 4.B, any provision requiring Awardee to flow-down an obligation to its sub-agreement holders will apply only to sub-agreements executed by Awardee following the Execution Date of this Agreement.

- 2. For clarity, as detailed within the Articles themselves, the following Articles require flow-down to sub-agreements/contracts executed after the Execution Date:

- (i) Article 8: Confidential Information.

- (ii) Article 13.E: Subawards where the sub-agreement holder may propose publishing the results of its work under the subaward.

- (iii) The Awardee will flow-down the provisions of Article 19 (Prohibition on the Use of Certain Telecommunications and Video Surveillance Services or Equipment) to all of its sub-agreements/contracts as provided in Article 19.

ARTICLE 5: "PREP ACT" COVERAGE

In accordance with the Public Readiness and Emergency Preparedness Act ("PREP Act"), Pub. L. No. 109-148, Division C, Section 2, as amended (codified at 42 U.S.C. § 247d-6d and 42 U.S.C. § 247d-6e), as well as the Secretary of Health and Human Service's ("HHS") Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19, 85 Fed. Reg. 15198 (Mar. 17, 2020, effective Feb. 4, 2020), and amended on April 15, 2020, 85 Fed. Reg. 21012, and on June 8, 2020, 85 Fed. Reg. 34740 (together, the "Prep Act Declaration"):

(i) This Agreement is being entered into for purposes of facilitating the manufacture, testing, development, distribution, administration, and use of "Covered Countermeasures" for responding to the COVID-19 public health emergency, in accordance with Section VI of the PREP Act Declaration;

(ii) Awardee performance of this Agreement falls within the scope of the "Recommended Activities" for responding to the COVID-19 public health emergency in accordance with Section III of the PREP Act Declaration; and

(iii) Awardee is a "Covered Person" per Section V of the PREP Act Declaration.

Therefore, in accordance with Sections IV and VII of the PREP Act Declaration, as well as the PREP Act (42 U.S.C. § 247d-6d), the Department of Defense contracting via assisted acquisition on behalf of the HHS, expressly acknowledges and agrees that the HHS Declaration cited above, specifically its language providing immunity from suit and liability is applicable to this Agreement, as long as Awardee activities fall within the terms and conditions of the PREP Act and the PREP Act Declaration.

The Government may not use, or authorize the use of, any products or materials provided under this Agreement, unless such use occurs in the United States (or a U.S. territory where U.S. law applies including, but not limited to, embassies, military installations and NATO installations) and is protected from liability under a declaration issued under the PREP Act, or a successor COVID-19 PREP Act Declaration of equal or greater scope. Any use where the application of the PREP Act is in question will be discussed with Awardee prior to use and, if the Parties disagree on such use, the dispute will be resolved according to Article 7, "Disputes."

ARTICLE 6: FINANCIAL MATTERS - OBLIGATION AND PAYMENT

This Agreement is fixed-price type Other Transaction Authority agreement. The payments provided under this Agreement are intended to compensate the Awardee on a fixed price basis for performance under this Agreement.

A. Obligation

Except as specified in Article 7: Disputes, the Government's liability to make payments to the Awardee is limited only to those funds obligated under this Agreement or by modification to the Agreement. The ACC-APG Contracting Activity may incrementally fund this Agreement. If modification becomes necessary in performance of this Agreement, pursuant to Article 3 of this Agreement, the AO and the Awardee shall establish and execute a mutually agreed upon revised Schedule of Payable Milestones consistent with the current SOW.

B. Payments

1. With the exception of test cartridges, Monitoring Systems and external control packs delivered either to Vendor-managed Inventory and/or Government distribution sites for which Government acceptance is detailed in Article 16, Awardee will provide AOR and AO notification of milestone success and any documentation that supports successful completion of the milestone. Within [**] of receipt, the AO will either, 1) confirm milestone completion and authorize the Awardee to invoice against the completed milestone or, 2) notify the Awardee of any deficiencies, additional documentation or clarifications reasonably needed by the Government to complete its review of the milestone. The Parties agree that payments will be made upon the AOR's acceptance of completed milestones. These payments reflect value received by the Government toward the accomplishment of the Prototype Project goals.

   Payments are based on amounts generated from the Awardee's financial or cost records. The Awardee shall be reimbursed for each element identified in the awarded cost proposal, executed and accomplished in accordance with the performance schedule.

2. After accomplishment of each milestone, the Awardee will submit the corresponding invoice through a Government provided invoicing and payment system, as detailed in Article 18.

3. Except as set forth in Article 7, Disputes, in no case shall the Government's financial liability exceed the amount obligated under this Agreement.

4. Payments will be made by the cognizant Defense Finance and Accounting Services office, as indicated below, in accordance with the Prompt Payment Act. Article 18 details how to submit and process invoices.

5. Payments shall be made in the amounts set forth in the SOW, provided the AOR has verified the completion of the applicable milestones. The Government will pay Awardee in US dollars.

6. The amounts payable by the Government to the Awardee pursuant to this Agreement shall not be reduced on account of any Taxes unless required by applicable law. The Awardee alone shall be responsible for paying any and all Taxes (other than withholding Taxes required to be paid by the Government under applicable law) levied on account of, or measured in whole or in part by reference to, any payments it receives. If the Awardee is entitled under any applicable Tax treaty to a reduction of rate of, or the elimination of, or recovery of, applicable withholding Tax, it shall deliver to the Government or the appropriate governmental authority (with the assistance of the Government to the extent that this is reasonably required and is expressly requested in writing) the prescribed forms necessary to reduce the applicable rate of withholding or to relieve the Government of its obligation to withhold Tax, and the Government shall apply the reduced rate of withholding, or dispense with the withholding, as the case may be, to the extent it complies with the applicable Tax treaty. If, in accordance with the foregoing, the Government withholds any amount, it shall make timely payment to the proper Taxing Authority of the withheld amount, and send to the Awardee proof of such payment within 90 days following that payment.

As used herein: Taxes means all taxes of any kind, and all charges, fees, customs, levies, duties, imposts, required deposits or other assessments, including all federal, state, local or foreign net income, capital gains, gross income, gross receipt, property, franchise, sales, use, excise, withholding, payroll, employment, social security, worker's compensation, unemployment, occupation, capital stock, transfer, gains, windfall profits, net worth, asset, transaction and other taxes, and any interest, penalties or additions to tax with respect thereto, imposed upon any person by any Taxing Authority or other governmental authority under applicable law, whether disputed or not, and including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other person by law, by contract or otherwise. **Taxing Authorit**y means any governmental authority or any subdivision, agency, commission or authority thereof or any quasi-governmental body exercising tax regulatory authority.

7. The Awardee shall maintain adequate records to account for all funding under this Agreement. Neither the Cost Accounting Standards nor any other aspect of the Federal Acquisition Regulation or its supplements apply to Awardee's accounting of costs under this Agreement. Cost shall be accounted for in accordance with Awardee's commercial accounting practices. Awardee has an established and agrees to maintain an established accounting system which complies with Financial Reporting Standards and the requirements of this Agreement, and shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds. An acceptable accounting system is one in which all costs, cash receipts and disbursements for which Awardee is entitled to reimbursement under Article 6 are controlled and documented properly.

A. Obligation. Under no circumstances shall the Government's financial obligation exceed the amount obligated in this Agreement or by amendment to the Agreement. The amount of Government funds obligated by this Agreement and available for Payment is set forth on page 1, Line of Accounting and Appropriation. The Government may incrementally fund this agreement.

B. The Government is not obligated to provide payment to the Awardee for amounts in excess of the amount of obligated funds allotted by the Government.

C. The Government shall pay the Awardee, upon submission of proper invoices, the costs stipulated in this Agreement for work delivered or rendered and accepted, less any deductions provided in this Agreement. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the Agreement. Payments will be made within [**] of receipt of a request for payment.

D. Prior written approval by the AO, or the AOR, is required for all travel directly and identifiably funded by the Government under this agreement. The Awardee shall present to the AO or AOR, an itinerary for each planned trip, showing the name of the traveler, purpose of the trip, origin/destination, dates of travel, and estimated cost broken down by line item as far in advanced of the proposed travel as possible, but no less than [**] before travel is planned to commence. In the event that emergency travel is required (e.g. in the event of an outbreak) that would make two weeks' notice impractical, travel requests may be submitted to the Government for an expedited review. Emergency travel requests shall be labelled as such and shall include a brief summary of the emergency situation and rationale for expedited review.

E. WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (MAY 2013)

(a) Definitions. As used in this clause-

Department of Defense Activity Address Code (DoDAAC) is a six position code that uniquely identifies a unit, activity, or organization.

Document type means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

Local processing office (LPO) is the office responsible for payment certification when payment certification is done external to the entitlement system.

(b) Electronic invoicing. The WAWF system is the method to electronically process vendor payment requests and receiving reports, as authorized by DFARS 252.232-7003, Electronic Submission of Payment requests and Receiving Reports.

(c) WAWF access. To access WAWF, the Awardee shall (i) have a designated electronic business point of contact in the System for Award Management at https://www.acquisition.gov; and (ii) be registered to use WAWF at https://wawf.eb.mil/ following the step-by-step procedures for self-registration available at this website.

(d) WAWF training. The Awardee should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the "Web Based Training" link on the WAWF home page at https://wawf.eb.mil/.

(e) WAWF methods of document submission. Document submissions may be via Web entry, Electronic Data Interchange, or File Transfer Protocol.

(f) WAWF payment instructions. The Awardee must use the following information when submitting payment requests and receiving reports in WAWF for this Agreement:

(1) Document type. The Awardee shall use the following document type: Voucher

(2) Inspection/acceptance location. The Awardee shall select the following inspection/acceptance location(s) in WAWF, as specified by the contracting officer.

(3) Document routing. The Awardee shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table

Field Name in WAWF	***Data to be entered in WAWF***
Pay Official DoDAAC	**HQ0339**
Issue By DoDAAC	**W911NF**
Admin DoDAAC	**S0514A**
Inspect By DoDAAC	**W56XNH**

(4) Payment request and supporting documentation. The Awardee shall ensure a payment request includes appropriate contract line item and subline item descriptions of the work performed or supplies delivered, costs, fee (if applicable), and all relevant back-up documentation In support of each payment request.

(5) WAWF email notifications. The Awardee shall enter the email address identified below in the “Send Additional Email Notifications” field of WAWF once a document is submitted in the system.

AO: [**]
AOR: [**]

(g) WAWF point of contact.

(1) The Awardee may obtain clarification regarding invoicing in WAWF from the following contracting activity’s WAWF point of contact.

(2) For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.
(End of Clause)

1. The AOR identified in Supplement 4, “Agreement Administration” shall continue to formally inspect and accept the deliverables/milestones. To the maximum extent practicable, the AOR shall review the deliverable(s) milestone report(s) and either:

i. provide a written notice of rejection to the Awardee which includes feedback regarding deficiencies requiring correction or

ii. written notice of acceptance to the AO, and acceptance in the WAWF system.

2. Acceptance within the WAWF system shall be performed by the AOR.

Note for DFAS: The Agreement shall be entered into the DFAS system by CLIN - Milestone association (MS)/ACRN as delineated in Section B of the Award. The Agreement is to be paid out by CLIN (MS)/ACRN. Payments shall be made using the CLIN (MS)/ACRN association as delineated at Section B of this Award.

Awardee Information: As identified at Central Contractor Registration, i.e., Commercial and Government Entity (CAGE) Code, Dun & Bradstreet number (DUNS), and Tax Identification Number (TIN). Payments shall be made in the amounts set forth in the SOW, provided the AOR has verified the completion of the milestones.

F. Comptroller General Access to Records: To the extent that the total Government payments under this Agreement exceed $5,000,000, the Comptroller General, at its discretion, shall have access to and the right to examine records of any Party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain to, and involve transactions relating to, the Agreement for a period of three (3) years after final payment is made. This requirement shall not apply with respect to any Party to this Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such Party or entity, that has not entered into any other agreement (contract, grant, cooperative agreement, or "other transaction") that provides for audit access by a government entity in the year prior to the date of this Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in all sub-agreements to the Agreement other than sub-agreements with a component of the U.S. Government. The Comptroller General may not examine records pursuant to a clause included in an agreement more than three years after the final payment is made by the United States under the agreement.

C. Comptroller Access Financial Records and Reports:

Awardee shall maintain adequate records to account for Federal funds received under this Agreement and shall maintain adequate records to account for funding provided under this Agreement. Awardee relevant financial records are subject to examination or audit by or on behalf of the Comptroller General, Contracting Activity AO, or other Government Official for a period not to exceed three (3) years after expiration of the term of the Agreement. The Comptroller General, AO or designee shall have direct access to sufficient records and information of any party to this agreement or any entity that participates in the performance of this agreement to ensure full accountability for all funding under this Agreement. Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party. Any audit required during the course of the program may be conducted by the Comptroller General or other Government Official using Government auditors or, at the request of Awardee's external CPA accounting firm at the expense of the Awardee.

1. Lower Tier Agreements

The Performer shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier agreements entered into solely in connection with this Agreement.

ARTICLE 7: DISPUTES

A. General

The Parties shall communicate with one another in good faith and in a timely, responsive, and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

1. Any claim or dispute between the Government and Awardee concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, shall be raised and resolved under this Article.

2. Whenever legal disputes or claims arise, the Parties shall attempt to resolve the issue(s) by discussion and come to mutual agreement on a resolution as soon as practicable. In no event shall a dispute, disagreement or misunderstanding of which the aggrieved Party became aware more than [**] prior to the notification made under sub-section B.3 of this Article constitute the basis for relief under this Article unless one level above the AO, in the interests of justice, waives this requirement.

3. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the AO Awardee s POC, as the case may be) in writing of the relevant facts, identifying unresolved issues, and specifying the clarification or remedy sought. Within [**] after providing notice to the other Party, the aggrieved Party may, in writing, request a joint decision by the ACC-APG Division Chief for and senior executive appointed by Awardee The other Party shall submit a written response on the matter(s) in dispute within [**] after being notified that a decision has been requested. The Division Chief and the Awardee senior executive shall conduct a review of the matter(s) in dispute and attempt to render a mutually agreeable decision in writing within [**] of receipt of such written position. Any such joint decision is final and binding.

4. In the absence of a joint decision, upon written request to the ACC-APG Associate Director made within [**] of the expiration of the time for a decision under sub-section B.3 above, the dispute shall be further reviewed. The Associate Director may elect to conduct this review personally or through a designee or jointly with a senior executive appointed by Awardee Following the review, the Associate Director or designee will resolve the issue(s) and notify the Parties in writing. This decision may be appealed to any federal court of competent jurisdiction.

5. Notwithstanding any other provisions of this Article, the Parties agree that Awardee shall have the right to pursue any contract dispute arising under this Agreement in any federal court of competent jurisdiction, including the appropriate Court of Appeals, or the Supreme Court, at any time without any administrative exhaustion requirements, and the timing requirements described above will not limit any claim in such tribunals.

C. Limitation of Damages

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of Government funding obligated as of the time the dispute arises, except with respect to violations of Articles 5, 8, 9, or 10 of this Agreement.

ARTICLE 8: CONFIDENTIAL INFORMATION

A. **"Confidential Information,"** as used in this Article, means information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization.

B. The Agreements Officer and the Awardee may, by mutual consent, identify elsewhere in this Agreement specific information and/or categories of information which the Government will furnish to the Awardee or that the Awardee is expected to generate which is confidential. Similarly, the Agreements Officer and the Awardee may, by mutual consent, identify such Confidential Information from time to time during the Period of Performance. Failure to agree will be settled pursuant to the "Disputes" clause.

C. If it is established elsewhere in this Agreement that information to be utilized under this Agreement, or a portion thereof, is subject to the Privacy Act, the Awardee will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. § 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

D. The Receiving Party shall not directly or indirectly, divulge or reveal to any person or entity any Confidential Information of another Party without the Disclosing Party's prior written consent, or use such Confidential Information except as permitted under this Agreement. Confidential Information shall be subject to the same prohibitions on disclosure as provided for under FAR Part 24.202. Further, any reproduction of Confidential Information or portions thereof that is disseminated within the Government, CMF, or Awardee, shall be shared strictly on a need to know basis for the purposes of this Agreement and is subject to the restrictions of this provision. In addition to the above, Confidential Information is subject to the protections of the Trade Secrets Act as well as any other remedies available under this Agreement or the law.

E. Such obligation of confidentiality shall not apply to information which the Receiving Party can demonstrate through competent evidence: (i) was at the time of disclosure in the public domain; (ii) has come into the public domain after disclosure through no breach of this contract; (iii) was known to the Receiving Party prior to disclosure thereof by the Disclosing Party; (iv) was lawfully disclosed to the Receiving Party by a Third Party which was not under an obligation of confidence to the Disclosing Party with respect thereto; or (v) was approved for public release by prior written permission of the Disclosing Party.

F. Whenever the Awardee is uncertain with regard to the proper handling of material under the Agreement, or if the material in question is subject to the Privacy Act or is Confidential Information subject to the provisions of this Article, the Awardee shall obtain a written determination from the Agreements Officer prior to any release, disclosure, dissemination, or publication.

G. Agreements Officer Determinations will reflect the result of internal coordination with appropriate program and legal officials.

H. The provisions of paragraph (D) of this Article shall not supersede conflicting or overlapping provisions applicable Federal, State or local laws.

I. The obligations of the Receiving Party under this Article shall continue for a period of [**] from conveyance of the Confidential Information.

Subject to Article 4.B, all above requirements MUST be passed to all Sub-awards.

ARTICLE 9: INTELLECTUAL PROPERTY RIGHTS

A. Awardee represents that, to its knowledge, the intellectual property license(s) and other rights held by or granted to Awardee, are sufficient to enable Awardee to perform its obligations under this Agreement.

B. **Background IP and Materials.** Awardee and the Government each retain any intellectual property (IP) rights to their own materials, technical data (as defined in 48 DFARS 252.227-7013), technology, information, documents, or Know-How—or potential rights, such as issued patents, patent applications, invention disclosures, copyrighted works, or other written documentation—that exist prior to execution of this Agreement or are developed outside the scope of this Agreement ("Background IP"). For avoidance of confusion, Background IP includes but is not limited to Background Inventions. Awardee agrees to provide, within [**] of the effective date of this Agreement, a list of all Background Inventions relevant to Awardee's performance of the prototype project. Any material defect identified in the Background Invention disclosure that could materially negatively impact performance of the prototype project, will be addressed between the AOR and the Awardee's designee.

C. **Government's Background IP.** The Government has Background IP as constituted under contract number HHSO100201800016C, including all executed modifications.

D. **Agreement Inventions.** In the unlikely event that an invention is conceived or first actually reduced to practice in the performance of this Agreement ("Agreement Invention"), ownership of any Agreement Invention, regardless of whether it is not patentable, or is patentable under U.S. patent law that is conceived or first reduced to practice under this Agreement will follow inventorship in accordance with U.S. patent law. Neither the Government nor Awardee anticipate the conception or reduction to practice of any Agreement Invention. The Government acknowledges that in the absence of any Agreement Invention, the Bayh-Dole Act (35 U.S.C. §§ 200-212) does not apply to, nor govern, this Agreement. Since, in the absence of any Agreement Invention, the Bayh-Dole Act, does not apply to this Agreement, as such, title to Agreement Invention will accrue to the inventor or inventor-organization. In the absence of any Agreement Invention, the Government shall not have any rights to "march-in," as that term is defined in 35 U.S.C. § 203, and Awardee is not subject to the manufacturing requirements of 35 U.S.C. § 204.

In the event an Agreement Invention arises, the Parties represent and warrant that each inventor will assign his or her rights in any such Agreement Inventions to his or her employing organization. If an Agreement Invention is made either by a Awardee employee ("**Sole Recipient Agreement Invention**") or made by a Government employee ("**Sole Government Agreement Invention**") the entire rights to that sole Awardee Agreement Invention or Sole Government Agreement Invention will be respectively assigned to the Awardee or to the Government. If an Awardee employee and a Government employee jointly make an Agreement invention ("**Joint Agreement Invention**"), it will be owned jointly by the Awardee and the Government. Ownership of inventions made in whole or in part with sub-Awardee or collaborator employees, including employees of other components of the Government, will be determined solely pursuant to an agreement between the Awardee and the applicable sub-Awardee or collaborator. Notwithstanding the foregoing, neither the Government nor Awardee anticipate the Government making a Sole Government Agreement Invention, nor the Parties jointly making a Joint Agreement Invention, as Awardee employees are solely responsible, as between the Parties, for performing the Prototype Project under this Agreement.

E. **Patent Applications.** Each Party shall report any Agreement Inventions to the other Party within [**] of the time the inventor discloses it in writing to its personnel responsible for patent matters. The Parties will respectively have the option, in their discretion, to file a patent application claiming any Agreement Invention made solely by their respective employees (but, for clarity, are not obligated to file patent applications claiming any Agreement Invention, and will not forfeit title by electing to hold an Agreement Invention as a trade secret). The Parties will consult with each other regarding the options for filing a patent application claiming a joint Agreement Invention. Within [**] of being notified of the discovery of an Agreement Invention, each Party will provide notice of any filing of a patent application to the other Party. The Parties will reasonably cooperate with each other in the preparation, filing, and prosecution of any patent application claiming a Joint Agreement Invention. Any Party filing a patent application will bear expenses associated with filing and prosecuting the application, as well as maintaining any patents that issue from the application, unless otherwise agreed by the Parties. Executive Order No. 9424 of 18 February 1944 requires all executive Departments and agencies of the Government to forward through appropriate channels to the Commissioner of Patents and Trademarks, for recording, all Government interests in patents or applications for patents.

F. **Patent Prosecution.** Awardee agrees to take responsibility for the preparation, filing, prosecution, and maintenance of any and all patents and patent applications that are relevant to the work performed under this Agreement. Awardee shall keep the Government reasonably advised on the status of Awardee Background IP by providing an annual report on the status of Awardee Background IP. With respect to a Sole Awardee Agreement Invention or a Joint Agreement Invention, prior to acting on a decision by Awardee to abandon or not file in any country a patent or patent application covering a Sole Awardee Agreement Invention or a Joint Agreement Invention, Awardee shall so inform the Government in a timely manner to allow Awardee to thoughtfully consider the Government's comments regarding such a proposed decision.

If the Licensor shall continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a Joint Agreement Invention on behalf of Awardee, Awardee shall notify the Government within [**]. If the Licensor notifies Awardee that it declines to continue prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a Joint Agreement Invention, Awardee shall notify the Government within [**] after receipt of such notice.

G. **Patent Enforcement.** Awardee will have the first option to enforce any patent rights covering a Joint Agreement Invention at Awardee's expense. If Awardee chooses not to exercise this option, the Government may enforce patent rights covering a Joint Agreement Invention.

H. **Licenses.**

Background IP. The Government has the rights in Background IP constituted under contract number HHSO100201800016C, including all executed modifications.

Agreement Inventions. Any Sole Awardee Agreement Invention is subject to a nonexclusive, nontransferable, irrevocable, paid-up license for the Government, to practice and have practiced the Agreement Invention on behalf of the Government. For any Sole Government Agreement Invention, upon the Awardee's request, the Government agrees to enter into good faith negotiations with the Awardee regarding the Awardee's receipt of a nonexclusive commercialization license covering the Government's interest in any Sole Government Agreement Invention.

ARTICLE 10: DATA RIGHTS

A. **Background Data.** "Background Data" shall mean all data, that exists prior to execution of this Agreement, or are developed outside the scope of this Agreement. Awardee's Background Data includes, but is not limited to, the following technical data, to the extent such data exists prior to execution of this Agreement or is developed outside the scope of this Agreement:

1. Technical data as defined at DFARS 252.227-7013 ("Technical Data"),
2. All data relating to the development, commercialization, manufacture of the test kits,
3. All data relating to the manufacturing, quality control testing (including in-process, release and stability testing), processing, releasing, or packaging of the test kits; and
4. Any and all data relating to preparatory work for distributing, importing, exporting, selling, offering for sale, supplying, offering for supply or otherwise exploiting the Awardee COVID 19 tests.

All Background Data shall be owned by the Awardee, subject to the Government's rights in Background Data developed or produced in the performance of contract number HHSO100201800016C, including all executed modifications thereto. Awardee hereby grants the Government a non-exclusive license subject to the limitations specified in Article 10.C to use any Background Data, other than clinical data, or financial, administrative, cost, pricing or management information, solely to the extent necessary for the Government to perform its obligations under this Agreement and meet its objective of facilitating administration of the COVID-19 Tests delivered under this Agreement in accordance with FDA and other applicable regulations.

B. **Subject Data.** "Subject Data" is defined as all Technical Data generated by or on behalf of Awardee in the performance of this Agreement. Subject Data shall be owned by the Awardee. The Government shall obtain "Unlimited rights", as this term is defined in DFARS 252.227-7013(a)(16) in Subject Data specified for delivery under this Agreement and Government Purpose Rights, as the term is defined in DFARS 252.227-7013(a)(13), in Subject Data not specified for delivery under this Agreement. . The Awardee agrees to retain and maintain in a clear and readable manner, until [**] after completion or termination of this Agreement, all Subject Data.

C. **Restrictions on Government License Rights.** Subject to the Government's pre-existing rights under contract HHSO100201800016C as modified:

a. Background Data other than computer software in which the Government has rights under Article 10. A shall be received by the Government subject to Limited Rights as defined at DFARS 252.227-7013.

b. Background Data that is computer software in which the Government has rights under Article 10.A shall be received by Government subject to Restricted Rights as defined at DFARS 252.227-7014, except that the Government shall instead receive commercial software license rights in such software that is a commercial item as defined at FAR 2.101.

D. **Marking of Data.** The Awardee will mark any Data delivered under this Agreement with the following legend:

"Use, duplication, or disclosure is subject to the restrictions as stated in Agreement No. W911NF-21-9-0001 between the Government and the Awardee."

The Awardee may further mark Data furnished with the rights specified in Article 10.C as "Limited Rights Data," "Restricted Rights Software," or "Commercial-Rights Software," as appropriate. Any rights that the Awardee or the Government may have in Data delivered under this Agreement, whether arising under this Agreement or otherwise, will not be affected by Awardee's failure to mark Data pursuant to this Article.

All Subject Data, Technical Data and Software (each term as defined under DFARS 252.227-7013) which shall be delivered under this Agreement with less than Unlimited Rights shall be identified in reasonable specificity and particular rights granted (Government Purpose, Limited or Restricted (all as defined in DFARS 252.227-7013)). If the data is marked "Limited Rights", the Awardee shall provide, upon request by the Government, an explanation to the Government as to why the data does not fall within the deliverables, and thus should not be accorded Unlimited Rights status.

ARTICLE 11: REGULATORY RIGHTS

The Awardee shall provide the Government with all material communications and summaries thereof, both formal and informal, to or from FDA, regarding the Awardee's EUA for its COVID-19 Test or the prototype project within [**], and make best efforts to ensure that the Government representatives are invited to participate in any formal or informal meetings with FDA. Awardee shall (1) ensure that the Government representatives are consulted and are invited to participate in any formal or informal meetings with FDA related to Awardee's COVID-19 Test and the prototype project; and (2) notify the FDA that the Government has the right to discuss with FDA any development efforts regarding the prototype project. In addition to the foregoing, Awardee shall use diligent efforts to notify the Government within [**] of any event, risk, formal or informal FDA communication, or other issue that would be reasonably expected to materially impact the Awardee's EUA For the COIVD-19 Test or ability to advance to final 510(k) clearance of the Awardee's COVID-19 Test.

ARTICLE 12: FOREIGN ACCESS TO DATA

A. The Parties will comply with any applicable U.S. export control statutes and regulations in performing this Agreement.

ARTICLE 13: SCIENTIFIC PUBLICATIONS AND PRESS RELEASES

A. Neither Awardee nor the Government shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this Agreement, the transactions contemplated by it, or the relationship between the Awardee and the Government hereunder, without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

B. Notwithstanding the foregoing, Awardee and (its upstream licensor) retains the right, but not the obligation, to prepare and submit scientific publications and release information to the public about its COVID-19 development program, without the Government's consent or involvement. The Awardee shall inform the AOR when any abstract article or other publication is published, and furnish a copy of it as finally published.

C. Unless authorized in writing by the AO, the Awardee shall not display Government logos including Operating Division or Staff Division logos on any publications.

D. The Awardee shall not reference the products(s) or services(s) awarded under this contract in commercial advertising, as defined in FAR 31.205-1, in any manner which states or implies Government approval or endorsement of the product(s) or service(s) provided.

E. Subject to Article 4.B, the Awardee shall include this clause, including this section (d) in all subawards where the sub-agreement holder may propose publishing the results of its work under the subaward. The Awardee shall acknowledge the support of the Government whenever publicizing the work under this Agreement in any written media by including an acknowledgement substantially as follows:

"This project has been funded in whole or in part by the U.S. Government under Agreement No. W911NF-21-9-00XX. The US Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

ARTICLE 14: ENSURING SUFFICIENT SUPPLY OF THE PRODUCT

A. In recognition of the Government's significant funding for the development and manufacturing of the COVID- 19 Test and the Government's need to provide sufficient quantities of a COVID-19 tests to protect the United States population, the Government shall have the remedy described in this section to ensure sufficient supply of test kits to meet the needs of the public health or national security. This remedy is not available to the Government unless and until any of the following conditions is met, and is not available as a result of a termination under Article 2(B) of this Agreement:

i. Awardee gives notice, required to be submitted to the Government no later than [**], following any formal management decision to terminate the product development effort, including a decision not to maintain EUA or proceed to 510(k) clearance during the term of this Agreement or [**] thereafter;

ii. Awardee gives written notice, required to be submitted to the Government no later than [**], of any filing that anticipates Federal bankruptcy protection during the term of this Agreement or [**] thereafter.

B. If one or more of the conditions listed in Section 14.A occurs, Awardee, upon the request of the Government, subject to the terms of the pre-existing agreement with Licensor, shall provide the following items necessary for the Government to pursue licensure/authorization and manufacturing of the Technology with a third party for exclusive sale to the U.S. Government:

i. a writing evidencing a non-exclusive, nontransferable, irrevocable (except for cause), royalty-free paid-up license to practice or have practiced for or on behalf of the U.S. Government any Awardee Background IP and Background Data, as those terms are defined in of this Agreement, necessary to manufacture or have manufactured the Technology;

ii. any outstanding Deliverables contemplated or materials and possession of and title to manufacturing equipment purchased with Government funds under this Agreement.

C. This Article will survive the acquisition or merger of the Awardee by or with a third party. This Article will survive the expiration of this agreement.

ARTICLE 15: ARTICLE 15: INSPECTION AND ACCEPTANCE

A. **Delivery and Acceptance.** Awardee shall notify the AO and AOR at least [**] prior to initial delivery of first shipment of test kits. Exceptions are permitted if approved by the AO. Upon notification, the AOR will instruct the Awardee to deliver kits to either up to three centralized Government-designated distribution sites within the continental United States or up to three additional specific individual final destinations within the continental United States. Upon delivery of product, notification of delivery quantities shall be made to the AOR.

Upon receipt of the provided certificates and any inspection of product at the origin or destination site(s) that was timely requested (physical or representative, i.e., pictures), the AOR will review and recommend acceptance or rejection. The Government shall accept product that conforms to contract requirements based on Certificates of Analysis and certificate(s) of cGMP conformity provided by Awardee and review of temperature monitoring data. The AO will correspondingly notify Awardee of acceptance or rejection. However, the Government's acceptance of product will be deemed to have occurred if the Government does not provide written notice of acceptance or rejection within [**] of Awardee's provision of all applicable certificates.

A. Inspection: The Government has the right to inspect and test all work called for by this Agreement, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the premises of the Awardee. The Government shall perform inspections and tests in a manner that will not unduly delay the work. If the Government performs any inspection or test on the premises of the Awardee, the Awardee shall furnish, at no increase in price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the Agreement, the Government shall bear the expense of Government inspections or tests made at other than the Awardee's premises.

B. The Government shall inspect/accept or reject the work as promptly as practicable after completion/delivery, unless otherwise specified in the Agreement. Government failure to inspect and accept or reject the work shall not relieve the Awardee from responsibility, nor impose liability on the Government, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with Agreement requirements. The Government has the right to reject nonconforming work. Inspection/Acceptance of the Prototype performed should not exceed [**] after completion.

B. **Vendor-managed Inventory.** Product to be stored as VMI will be shipped to Awardee's own warehouse locations or its third party vendor's site, and may be stored for a period not longer than [**]. Prior to expiration of this [**] period, the Government must either (a) provide Awardee with disposition instructions in sufficient time to transfer and take possession of physical material from Awardee, (b) bilaterally modify this agreement to extend the period of vendor management of storage, or (c) bilaterally modify this Agreement to include destruction of remaining doses.

When held in VMI, these materials will be maintained in Awardee's or its designated representative's quality and inventory systems. Product held in VMI is subject to the following requirements:

i. Provide temperature controlled storage at the manufacturer's site approved by the Government, according to cGMP and product specifications.
ii. Where possible, store Project Agreement products physically segregated from other products. If physical separation is not possible, separation of Project Agreement products must be controlled by a logical warehouse management system (WMS) at the case and pallet level.
iii. Ensure proper labeling of stored materials as USG property.
iv. Provide the Government access to review the security systems in place and request updates as needed in accordance with the Security Plan.
v. Make appropriate updates to the regulatory documentation supporting the continued use of the stored material for pandemic response.
vi. If using a storage site, provide the quality agreement, specify the location and terms of the storage contract and receive approval by the Government.

For accepted product in VMI, Awardee must notify the AOR of any proposed movement of the product. Any deviations, out of specification ("**OOS**") results, or other product issues, shall be reported to the USG within [**] of Awardee identification.

C. **Government Sites.** Product to be shipped to Government Sites shall be shipped trackable by GPS. Awardee will include the following information on the packing lists provided with bulk shipments to the centralized depots:

i. Transaction Information (TI)
ii. Transaction History (TH)
iii. Transaction Statement (TS)

D. **Title and Physical Risk of Loss.** Risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon delivery of the supplies to the Government at the destination specified in the contract, i.e., F.O.B. Destination.

Awardee will notify the AO and AOR of any storage or quality deviation for product held in VMI, within [**]. To the extent that Awardee is responsible for the correction, repair or replacement of Government property held in VMI and replacement upon loss or damage is feasible, the Government will accept replacement of such property. The Government understands that storage costs identified in this contract include insurance costs applicable to material that will become Government property, including product stored as VMI.

The AO and/or the AOR may perform inspection of materials and services. Inspections of material created under this Project Agreement may be made by a duly authorized Government representative, and with reasonable notice.

E. **Risk of Loss Due to Expiry.** Both parties acknowledge that risk of loss due to expiry is retained by the Government for all product accepted under this Agreement. In order to mitigate this risk, the Awardee will make kits available for delivery to VMI or Government distribution sites within [**] of the date of manufacture. Provided this condition is met, the Awardee will have no obligation to replace product that has been accepted by the Government and expires prior to use.

ARTICLE 16: ARTICLE 16: REPORTING REQUIREMENTS

The Government will have continuous involvement with Awardee throughout the duration of the Period of Performance and is entitled to periodic reports as outlined below. Required components and frequency of such reporting is as follows:

A. **Weekly Progress Meetings:** Scheduled on a weekly basis, virtual format (either telephone or videoconference), between the Contractor and the Government. Duration: [**] max. Review of previous weeks activities. Informative in nature to keep the USG apprised of project progress and to discuss issues that may require joint resolution, such as milestone changes, political impacts on objectives, schedule, funding and deliverables.

On a quarterly basis, at the request of the AOR, the Weekly Teleconference may be expanded in scope to allow for a progress review of the preceding three months and planning for the remainder of the period of performance.

B. **Daily and Ad hoc check-in, as requested by the PCT:** A program specific designee of the Awardee will hold a daily check-in with the AOR or AOR designee to discuss the performance of the Agreement. No agenda, presentation, or official minutes need to be maintained for the regular meeting. The AOR may cancel the daily check-in or substitute a technical or program specific meeting as a replacement. Daily check-ins are expected only on business days during normal business hours.

C. **Confirmed, critical programmatic concerns, issues or probable risks that are likely to impact project schedule/cost/performance:** The Awardee will communicate and document all confirmed programmatic risks to the AOR within [**] of Awardee's awareness. Awardee shall communicate via email or telephone. Following resolution, Awardee will provide all associated deviation reports and corrective and preventative action plans to the AOR within [**] of finalization.

In addition, the Awardee will report to the government any activity or incident that is in violation of established security standards or indicates the loss or theft of government products within [**] of Awardee's awareness of the activity or incident. Awardee will communicate via email, oral or written communication.

D. **Supply chain resiliency, including Awardee locations:** Within [**] of award, the Awardee will provide the AOR with a supply chain resiliency plan. For each of the Awardee locations - including sub-agreement holders, the Awardee will provide address, point(s) of contact and a summary of work performed at the location.

E. Quarterly Financial Status Report:

The Awardee shall submit a Quarterly Financial Status Report no later than [**] after the end of each quarter of performance. The Government will have

[**] to respond to the report with any comments and the Awardee will have an additional [**] to revise the deliverable or respond to those comments. Reports will cover work performed every three (3) months for the duration of the Period of Performance (PoP).

For the industrial expansion effort, the Quarterly Financial Status Report shall include quarterly expenditure forecasts with both the quarterly planned accrual and the cumulative total. Expenditure forecast submissions shall include analysis of the cost drivers for Estimate to Complete changes, if any, from the previous projection. The Awardee shall provide all submissions in Excel format, including all formulas.

ARTICLE 17: Miscellaneous Clauses.

A. No Consent. Nothing in the terms of this Agreement constitutes express or implied Government authorization and consent for Awardee or its subawardee(s) to utilize, manufacture or practice inventions covered by United States or foreign patents in the performance of work under this Agreement.

B. Patent Infringement. Each Party will advise the other Party promptly and in reasonable written detail, of each claim or lawsuit of patent infringement based on the performance of this Agreement. When requested by either Party, all evidence and information in possession of the Party pertaining to such claim or lawsuit will be provided to the other at no cost to the requesting Party.

C. Limitation of Liability. In no event will either Party be liable to the other Party or any third party claiming through such Party for any indirect, incidental, consequential or punitive damages, or claims for lost profits, arising under or relating to this Agreement, whether based in contract, tort or otherwise, even if the other Party has been advised of the possibility of such damages.

D. Disclosure of Information. Subject to Article 10, the Awardee shall not release to anyone outside the Awardee's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this Agreement or any program related to this Agreement, unless (i) the OTAO has given prior written approval or (ii) the information is otherwise in the public domain before the date of release. For purposes of this clause, Awardee's Organization includes entities identified as Collaborators in

E. Force Majeure. Neither Party will be liable to the other Party for failure or delay in performing its obligations hereunder if such failure or delay arises from circumstances beyond the control and without the fault or negligence of the Party (a Force Majeure event). Examples of such circumstances are: authorized acts of the government in either its sovereign or contractual capacity, war, insurrection, freight embargos, fire, flood, or strikes. The Party asserting Force Majeure as an excuse must take reasonable steps to minimize delay or damages caused by unforeseeable events.

F. Severability. If any provision of this Agreement, or the application of any such provision to any person or set of circumstances, is determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, will not be impaired or otherwise affected and will continue to be valid and enforceable to the fullest extent permitted by law.

G. Choice of Law. This Agreement and the resolution of disputes hereunder will be governed, construed, and interpreted by the statutes, regulations, and/or legal precedent applicable to the Government of the United States of America. Unless explicitly stated, the Parties do not intend that this Agreement be subject to the Federal Acquisition Regulation either directly or indirectly or by operation of law. When a specific FAR requirement is incorporated by reference in this Agreement, the text of the clause alone will apply without application or incorporation of other provisions of these regulations.

H. Order of Precedence. In the event of a conflict between the terms of this Agreement and the attachments incorporated herein, the conflict shall be resolved by giving precedence in descending order as follows: (i) the Articles of this Agreement, and the Appendices to the Agreement.

ARTICLE 18: PROHIBITION ON THE USE OF CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

a) *Definitions.* As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network *(e.g.*, connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (*e.g.*, fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means-

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means-

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.*, connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (*e.g.*, voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or agreement, or extending or renewing a contract or agreement, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract or agreement.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract or agreement performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Agreements Officer, unless elsewhere in this contract or agreement are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at https://dibnet.dod.mil.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within [**] from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within [**] of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts, subagreements and other contractual instruments, including subcontracts for the acquisition of commercial items.

Appendix A Statement of Work

Statement of Work (SOW): Point-of-Care (POC) Tests and Diagnostics

C.1. General Objectives.

The U.S. Government (USG) requires additional POC diagnostic test capacity, as the level of demand for diagnostic resources during this COVID-19 Pandemic is unprecedented. There is a need to secure additional POC diagnostics to test the US population in response to the Pandemic. The Government seeks to expand the production capacity for Monitoring Systems and COVID-19 Test Cartridges. The end deliverable of this effort is to provide the capacity to manufacture 100,000 cartridges per day.

As part of this effort, there shall result in an increase to its industrial base manufacturing capability for COVID-19 Test Cartridges within the U.S., to include critical supply chain providers to 100,000 cartridges per day. The Awardee shall also onshore its cartridge and reader subcomponents manufacturing to the maximum extent possible, to further reduce supply chain risk. The Awardee shall also develop a distribution process and increase shipping capability in order to ship all materials directly to the customer location.

C.2. Prototype Delivery.

C.2.2. The Awardee shall increase its industrial base manufacturing capability to manufacture 100,000 cartridges per day.

C.2.2.1. The Awardee shall increase the manufacturing capability for the COVID-19 Test Cartridges to 100,000 cartridges per day.

C.2.2.2. The Awardee shall onshore its cartridge and reader subcomponents manufacturing.

C.2.2.3. The Awardee shall develop and expand its distribution process in order to ship all materials directly to the customer location within the United States and its Territories.

C.3. Demonstration of Prototype Delivery.

C.3.1. The Awardee shall deliver 6 million COVID-19 Test Cartridge Packs.

C.3.2. The Awardee shall deliver 30,000 Health Monitoring Systems.

C.3.3. The Awardee shall deliver 60,000 COVID-19 External Control Swabs Packs.

C.3.4. The Awardee shall ship all deliverables to locations (TBD) within the United States.

C.3.5. The Awardee shall ensure appropriate quality assurance certification is supplied with each shipment.

C.4. Overall Management Objectives.

C.4.1. The Awardee shall be responsible for overall management and oversight of the work necessary to achieve the objectives of this contract. The Contractor shall provide the overall management, integration, and coordination of all contractual activities, including a technical and administrative infrastructure to ensure the efficient planning, initiation, implementation, and direction of all contractual activities.

The Contractor shall establish project milestones for each manufacturing capability/capacity for which expansion is planned. The Awardee shall provide incremental progress against each milestone to the USG in accordance with established deliverables (see C.6 below). The Awardee shall report to the USG any changes or deviations planned or incurred by the Contractor in pursuing the objectives of this contract. While primary responsibility for management and execution of the effort resides with the Awardee, the USG shall have input to the milestone review process and any changes to the objectives of the agreement.

C.5. Risk Management Objectives.

The Awardee shall identify all anticipated project risks categorized as moderate or high and report them to the USG in accordance with reporting requirements (see C.6 below). The Awardee shall manage all project risks using its in- house risk management capabilities, and report to the USG changes to all identified risks as they occur/arise. The USG shall be permitted to participate in the risk management and mitigation processes associated with this project.

C.6. Status Reporting.

C.6.1. Monthly Progress Reports. The Awardee shall submit monthly progress reports no later than the [**] of the month. Awardee format acceptable. Electronic submission acceptable in MS Office or PDF format. Financial information shall be MS Excel format. Monthly reports shall NOT be marked proprietary, and shall have Distribution Statement C (US Government and their contractors). Each monthly report shall, at a minimum, contain the following:

- Summary of monthly progress for each of the Awardee’s facilities/capabilities associated with this effort.
- Summary of progress towards established milestones for each facility/capability.
- Identification of any milestone that is slipping or missed, and discussion of path forward to bring milestone back to schedule, and impact on other milestones.
- Summary of risks, discussion of potential impacts and efforts to mitigate.
- Summary of overall schedule and changes from previous month.
- Status updates from Manufacturing plan
- Status updates from Distribution plan
- Report any customer complaints
- Report any known deficiencies of the materials and/or products
- Financial summary of Awardee costs incurred by month to date, invoices submitted, and Government payments made.

C.6.2. Weekly Progress Meetings. Scheduled on a weekly basis, virtual format (either telephone or videoconference), between the Contractor and the Government. Duration: [**] max. Review of previous weeks activities. Informative in nature to keep the USG apprised of project progress and to discuss issues that may require joint resolution, such as milestone changes, political impacts on objectives, schedule, funding and deliverables. Meeting minutes provided by the Awardee delivered to the USG within [**] of the meeting.

C.6.3. Quarterly In Process Reviews. Scheduled as needed, generally not more frequently than quarterly, virtual format (either telephone or videoconference). Duration: [**] max. Review of previous quarter's activities. Informative in nature to keep the USG apprised of project progress and to discuss issues that may require joint resolution, such as milestone changes, political impacts on objectives, schedule, funding. An agenda for the meeting provided by the Awardee [**] prior to the scheduled meeting. Meeting minutes provided by the Awardee delivered to the USG within [**] of the meeting.

C.6.4. Final Report. Final Report shall NOT be marked proprietary, and shall have Distribution Statement C. Contractor format acceptable. Electronic submission acceptable in MS Office or PDF format. Financial information shall be MS Excel format. Final report summarizing stated objectives and the progress that was achieved in meeting those objectives; summary of risks incurred, impacts and mitigation; quantitative discussion of production throughput improvements achieved; financial summary of project; schedule summary for project, comparing original schedule to final schedule; recommendations for path forward as applicable. Final Report due [**] after the last scheduled delivery for prototype demonstration.

C.6.5. Manufacturing Plan. The Awardee shall provide a detailed plan of action (contractor format acceptable) to increase cartridge-manufacturing capability to meet the government's delivery schedule (i.e. ramp up to 100K cartridges per day) and associated on-shoring component manufacturing within [**] of contract award.

The Awardee's plan of action shall at a minimum, include the following:

a Timeline, materials required and strategy to set up and begin V2.0 manufacturing lines to manufacture the cartridges;
b Timeline, materials required and strategy to upgrade the bioproduction capability to manufacture sufficient cartridge reagents;

c Timeline, materials required and strategy to onshore manufacturing of reagents and cartridge subcomponents;
d Information on the US based manufacturing organization to replace existing organization;
e Current GMP manufacturing status and plan to achieve GMP manufacturing, if not currently GMP;
f Quality Assurance plan and Acceptance metrics;
g Plan to comply with FDA EUA Letter of Authorization.

C.6.6. Distribution Plan. The Awardee shall provide a detailed distribution plan for how all Test Cartridge Packs, Monitoring Systems and External Control Swabs Packs will be shipped and delivered to required delivery locations within the United States and its Territories within [**] of contract award.

The Awardee's distribution plan shall at a minimum, include the following: a Current distribution processes; b Timeline and strategy to increase distribution process and shipping to handle the increase in number and volume of shipments.

C.6.7 Quality Management Plan. The Awardee shall provide (contractor format acceptable) within [**] of contract award, a quality management plan for manufacturing efforts that conform to ISO 13485 standards as well as the Quality System Regulations at 21 CFR Part 820 which may include, but is not limited to, the quality policy and objectives, management review, competencies and training, process document control, feedback, evaluation, corrective action and preventive action, process improvement, measurement, and data analysis processes. The framework is normally divided into infrastructure, senior management responsibility, resource management, lifecycle management, and quality management system evaluation.

Appendix B
Project Schedule/Milestone Payment Schedule

The Government shall pay the Awardee, upon the submission of proper invoices or vouchers, the prices stipulated in this Agreement for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this Agreement.

For the industrial expansion, expenditures shall be submitted based on the awarded budget. Federal funds are to be used only for work that a reasonable and prudent person would incur in carrying out the prototype project. An invoice will be submitted through Wide Area Work Flow (WAWF) in accordance with agreement requirements. Final payment of the Agreement shall be determined upon mutual agreement and settlement of any outstanding deliverables.

The Awardee shall proceed with the performance in accordance with the terms and conditions of this Agreement and its Appendices. However, the Government may require the Awardee to cease performance at any time prior to the commencement of any milestone or task. Such notice to cease performance must be from the OTAO and be in writing, of which email is an acceptable form.

The Parties acknowledge that the nature of this Prototype Project requires flexibility and the ability to react to changing circumstances. Although the Statement of Work sets the scope for activities the Government may require under this Agreement, it is not intended to, and does not, prescribe with specificity each task that Awardee will perform. Instead, the Government shall direct Awardee to perform specific tasks under the framework established in Articles 3 and 8 of the Agreement, with Government-approved tasks, funding, and deadlines. Awardee shall not perform any tasks that have not been explicitly authorized by the Government.

Awardee will be responsible for submission of SOW's, quotes, and proposals for price, performance, and schedule for those efforts not already identified, priced or otherwise negotiated. Government approval will be required prior to commencing work.

Appendix C
Key Personnel

1. Awardee's Organization and Key Personnel.

a. The Awardee's organization shall be established with authority to effectively accomplish the objectives of the Statement of Work. This organization shall become effective upon award of the Agreement and its integrity shall be maintained for the duration of the effort.

b. The key personnel listed below are considered to be critical to the successful performance of this Agreement. Prior to replacing these key personnel, the Awardee shall obtain the written consent of the OTAO. In order to obtain such consent, the Awardee shall provide advance notice of the proposed changes and shall demonstrate that the qualifications of the proposed substitute personnel are generally equivalent to or better than the qualifications of the personnel being replaced.

c. Prior to permanently removing any of the specified individuals to other contracts, the Awardee shall provide the OTAO not less than [**] advance notice and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No reassignment shall be made by the Awardee without written consent of the OTAO. The "Key Personnel" list presented in Table 2 below may be amended from time to time during the course of the Agreement to either add or delete personnel, as appropriate.

Table 2: Key Personnel Summary

Appendix D
Government Property

Government Property: **"**Government Property" means any property (i) furnished by the Government and facilitating performance of this Agreement, (ii) acquired by the Awardee under cost reimbursement terms of this Agreement, or (iii) acquired by the Awardee under fixed price terms of this Agreement (FP-GP) if specifically identified in this Government Property Appendix. Except for commercial off the shelf software and licenses thereto, Government Property does not include intellectual property and software. The Government owns and holds title to all Government Property.

The Government shall deliver to the Awardee any Government Property required to be furnished as described in this Agreement together with related data and information needed for its intended use. The delivery and/or performance dates specified in this Agreement are based upon the expectation that the Government-furnished property will be suitable for performance and will be delivered to the Awardee by the dates stated in the Agreement. If not so suitable, the Awardee shall give timely written request to the OTAO who will advise the Awardee on a course of action to remedy the problem.

FPGP includes: [Mark N/A if none]:

N/A

The Awardee shall have, initiate and maintain a system of internal controls to manage, control, use, preserve, protect, repair, account for and maintain Government Property in its possession and shall initiate and maintain the processes, systems, procedures, records required control and maintain accountability of Government Property.

The Awardee shall include this clause in all subcontracts under which Government Property comes into the possession of any subawardee. Unless otherwise provided for in this Agreement or approved by the OTAO, the Awardee shall not: (i) use Government Property for any purpose other than to fulfill the requirements of this Agreement, or (ii) alter the Government Property.

The Awardee shall establish and implement property management plans, systems, and procedures regarding its acquisition of Government Property, its receipt of Government Property, in addition to, the status, dates furnished or acquired, identification, quantity, cost, marking, date placed in service, location, inventory and disposition of Government Property, to include a reporting process for all discrepancies, loss of Government Property, physical inventory results, audits and self-assessments, corrective actions, and other property related reports as directed by the OTAO.

Upon conclusion or termination of the Agreement, the Awardee shall submit a request in writing to the OTAO, for disposition/disposal instructions and shall store Government Property not to exceed [**] pending receipt of such instructions. Storage shall be at no additional cost to the Government unless otherwise noted in the Agreement. The Government, upon written notice to the Awardee, may abandon any Government Property in place, at which time all obligations of the Government regarding such Government Property shall cease.

Awardee Liability for Government Property. “Loss of Government Property” means the loss, damage or destruction to Government Property reducing the Government’s expected economic benefits of the property and includes loss of accountability but does not include planned and purposeful destructive testing, obsolescence, reasonable wear and tear or manufacturing defects. THE AWARDEE SHALL BE LIABLE FOR LOSS OF GOVERNMENT PROPERTY IN AWARDEE’S POSSESSION, EXCEPT WHEN ANY ONE OF THE FOLLOWING APPLIES: (I) OTAO GRANTS RELIEF OF RESPONSIBILITY AND LIABILITY FOR LOSS OF THE PARTICULAR GOVERNMENT PROPERTY; (II) GOVERNMENT PROPERTY IS DELIVERED OR SHIPPED UNDER THE GOVERNMENT’S INSTRUCTIONS AND SHIPPERS; OR (III) GOVERNMENT PROPERTY IS DISPOSED OF IN ACCORDANCE WITH THE GOVERNMENT’S DIRECTIONS.

Section E - Inspection and Acceptance

INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	N/A	N/A	N/A	Government
0002	N/A	N/A	N/A	Government
0003	N/A	N/A	N/A	Government
0004	N/A	N/A	N/A	Government

Section F - Deliveries or Performance

DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	DODAAC / CAGE
0001	08-APR-2021	1	JPM MEDICAL JPM CBRN MEDICAL 1564 FREEDMAN DRIVE FORT DETRICK, MD MD 21702 240-675-3192 FOB: Origin (Shipping Point)	W56XNH
0002	11-MAR-2021	6,000,000	(SAME AS PREVIOUS LOCATION) FOB: Origin (Shipping Point)	W56XNH
0003	11-MAR-2021	30,000	(SAME AS PREVIOUS LOCATION) FOB: Origin (Shipping Point)	W56XNH
0004	11-MAR-2021	60,000	(SAME AS PREVIOUS LOCATION) FOB: Origin (Shipping Point)	W56XNH

Section G - Contract Administration Data

ACCOUNTING AND APPROPRIATION DATA

AA: 021202020212040000066464325 5 S.0074658.5.22 6100.9000021001
COST CODE: A5XAH
AMOUNT: $480,916,636.62

ACRN	CLIN/SLIN	CIN	AMOUNT
AA	0001	GFEBS001156060100001	$184,576,636.62
	0002	GFEBS001156060100002	[**]
	0003	GFEBS001156060100003	[**]
	0004	GFEBS001156060100004	[**]

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
J-Firm Fixed Price	1 | 2

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
A00002	2020 DEC 28		

6. ISSUED BY	CODE	7. ADMINISTERED BY (If other than Item 6)	CODE
DCMA SAN DIEGO 9174 SKY PARK COURT SUITE 100 SAN DIEGO, CA 92123-4353 [**]	S0514A	DCMA SAN DIEGO 9174 SKY PARK COURT SUITE 100 SAN DIEGO, CA 92123-4353 [**]	S0514A

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)		9A. AMENDMENT OF SOLICITATION NO.
CUE INC. 11100 ROSELLE ST STE A SAN DIEGO, CA 92121-1210	(x)	9B. DATED (SEE ITEM 11)
	☒	10A. MODIFICATION OF CONTRACT/ORDER NO. W911NF2190001
CODE 7VPK0	FACILITY CODE	10B. DATED (SEE ITEM 13) 2020 OCT 13

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*

SEE CONTINUATION PAGE

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
☐	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
☒	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
☐	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
☐	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☒ is not, ☐ is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

SEE CONTINUATION PAGE

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER *(Type or print)*.		16A. NAME AND TITLE OF CONTRACTING OFFICER (*Type or print*) Lila J. Defensor	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE	16B. UNITED STATES OF AMERICA /s/ Lila J. Defensor Digitally signed by DEFENSOR.LILA.J Date: 2020.12.28 16:15:00 -08'00' (Signature of Contracting Officer)	16C. DATE SIGNED 2020.12.28

PURPOSE OF MODIFICATION:
This Unilateral Other Administrative Action Modification is issued pursuant to: FAR 42.302(a).

The purpose of this no-cost unilateral modification is to incorporate the approved Health Resources Priority and Allocations System (HRPAS) to aid in the procurement of supplies in support of Operation Warp Speed (OWS). The HRPAS Rating memo dated 22 December 2020 is attached herein.

Ship To location is changed as follows: from: W56XNH to: SW3100, [**], and SW3200, [**] for CLINS 0002, 0003, and 0004. Delivery quantities stated on Table 2B to each location are to be determined in advance of shipment by AOR [**].

CLOSING REMARKS:
The USD Cost Amount is USD 0.00.
The USD Fee Amount is USD 0.00.
The total funds obligated to this Contract equal USD 480,916,636.62.
The USD Total Contract Amount is USD 480,916,636.62.

As a result of this modification, the total obligated amount of this contract is unchanged.
The total contract amount of this contract is unchanged.

List of Attachments

CUE_HRPAS_Signed_Memo_122220.pdf	HRPAS Signed Memo 122220
Ship_To_Locations_email_122820.pdf	ShipTo Locations email

Except as provided by this contract modification, all terms and conditions of this contract remain unchanged and in full force and effect.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
J-Firm Fixed Price	1 | 2

2. AMENDMENT/MODIFICATION NO.	4. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
A00003	2021 FEB 03		

6. ISSUED BY	CODE	7. ADMINISTERED BY (If other than Item 6)	CODE
DCMA SAN DIEGO 9174 SKY PARK COURT SUITE 100 SAN DIEGO, CA 92123-4353 [**]	S0514A	DCMA SAN DIEGO 9174 SKY PARK COURT SUITE 100 SAN DIEGO, CA 92123-4353 [**]	S0514A

9. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)		
CUE INC. 11100 ROSELLE ST STE A SAN DIEGO, CA 92121-1210	(x)	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
	☒	10A. MODIFICATION OF CONTRACT/ORDER NO. W911NF2190001
		10B. DATED (SEE ITEM 13) 2020 OCT 13
CODE 7VPK0	FACILITY CODE	

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12. ACCOUNTING AND APPROPRIATION DATA *(If required)*

SEE CONTINUATION PAGE

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
☐	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
☒	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
☐	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
☐	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

SEE CONTINUATION PAGE

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print).		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
Ayub Khattak CEO		Lila J. Defensor	
15B. CONTRACTOR/OFFEROR	15C. DATE	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
/s/ Ayub Khattak (Signature of person authorized to sign)	2/11/2021	/s/ Lila J. Defensor Digitally signed by DEFENSOR.LILA.JO.1154402884 Date: 2021.02.11 16:41:20 -08'00' (Signature of Contracting Officer)	2021.02.11

PURPOSE OF MODIFICATION:

This Bilateral Other Administrative Action Modification is issued pursuant to:
FAR 42.302(a) The purpose of this bilateral modification is to make administrative revisions to this OTA as follows:

1. Remove Articles # 16 D AND 16 E as redundant or no longer required on this OTA.

   Article 16, D, Supply chain resiliency plan
   Article 16, E Quarterly Financial Status Report

2. This is a **DO-HR rated order** for the purpose of emergency preparedness and the Contractor shall follow all the provisions of the Health Resources Priorities and Allocations System regulation (45 CFR Part 101). If the contractor needs to utilize industrial resources to fulfill this rated order for a health resource, it is authorized pursuant to 45 CFR §101.35(b) to place the same priority rating and program identification symbol for health resources on its orders for industrial resources with its suppliers. The HRPAS Rating Memo dated 22 December 2020 authorized the rating of DO-HR to aid in the procurement of supplies in support of Operation Warp Speed (OWS). The priority rating must be included on each successive order placed to obtain items or services needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain."

CLOSING REMARKS:

The USD Cost Amount is USD 0.00.
The USD Fee Amount is USD 0.00.
The total funds obligated to this Contract equal USD 480,916,636.62.
The USD Total Contract Amount is USD 480,916,636.62.

As a result of this modification, the total obligated amount of this contract is unchanged.
The total contract amount of this contract is unchanged.
Except as provided by this contract modification, all terms and conditions of this contract remain unchanged and in full force and effect.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
J – FIRM FIXED PRICE	1 | 4

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
A00004	2021 MAR 03		

6. ISSUED BY	CODE	7. ADMINISTERED BY (If other than Item 6)	CODE
DCMA SAN DIEGO 9174 SKY PARK COURT SUITE 100 SAN DIEGO, CA 92123-4353 [**]	S0514A	DCMA SAN DIEGO 9174 SKY PARK COURT SUITE 100 SAN DIEGO, CA 92123-4353 [**]	S0514A

10. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)	(x)	9A. AMENDMENT OF SOLICITATION NO.
CUE INC. 11100 ROSELLE ST STE A SAN DIEGO, CA 92121-1210		9B. DATED (SEE ITEM 11)
	☒	10A. MODIFICATION OF CONTRACT/ORDER NO. W911NF2190001
		10B. DATED (SEE ITEM 13) 2020 OCT 13
CODE 7V9K0	FACILITY CODE	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
SEE CONTINUATION PAGE

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
☐	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
☒	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
☐	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR. 52.217-7, Option for Increased Quantity-Separately Price Line Item
☐	D. OTHER *(Specify type of modification and authority)*

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
SEE CONTINUATION PAGE

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print).		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
Ayub Khattak CEO		Lila J. Defensor	
15B. CONTRACTOR/OFFEROR	**15C. DATE SIGNED**	**16B. UNITED STATES OF AMERICA**	**16C. DATE SIGNED**
/s/ Ayub Khattak (Signature of person authorized to sign)	3/8/2021	/s/ Lila J. Defensor Digitally signed by DEFENSOR.LILA.JO.1154402884 Date: 2021.03.08 (Signature of Contracting Officer)	2021.03.08

PURPOSE OF MODIFICATION:
This Bilateral Other Administrative Action Modification is issued pursuant to:
In accordance with the coordinated agreement to benefit both the Government and the Awardee to expand Cue's shipping and distribution capability, this modification is to effect the following changes:

ARTICLE 15:

1.) From: "**A. Delivery and Acceptance.** Awardee shall notify the AO and AOR at least [**] prior to initial delivery of first shipment of test kits. Exceptions are permitted if approved by the AO. Upon notification, the AOR will instruct the Awardee to deliver kits to either up to [**] centralized Government designated distribution sites within the continental United States or up to [**] additional specific individual final destinations within the continental United States. Upon delivery of product, notification of delivery quantities shall be made to the AOR."

To: "**A. Delivery and Acceptance.** Awardee shall notify the AO and AOR at least [**] prior to initial delivery of first shipment of test kits. Exceptions are permitted if approved by the AO. Upon notification, the AOR will instruct the Awardee to deliver kits to up to [**] centralized Government-designated distribution sites within the continental United States and up to [**] additional specific individual final destinations within the continental United States. The AOR and Awardee shall agree on the locations prior to each delivery. For locations without a CAGE code or DODAAC, the Awardee shall Ship In Place and use the Awardee's own CAGE code to invoice in WAWF. Upon acceptance by DCMA on site, the Awardee shall fill out an 1149 form to verify delivery of the product to each location for all Ship In Place deliveries. For locations with a valid CAGE code or DODAAC, the Awardee shall Ship to Destination with the location's CAGE code or DODAAC to invoice in WAWF. Upon delivery of product, notification of delivery quantities shall be made to the AOR."

2.) From: "The Government shall accept product that conforms to contract requirements based on Certificates of Analysis and certificate(s) of cGMP conformity provided by Awardee and review of temperature monitoring data."

To: "The Government shall accept product that conforms to agreement requirements based on Certificates of Analysis and/or certificate(s) of conformity provided by Awardee and review of temperature monitoring data ."

ARTICLE 1 B.1

3.) From: "The prototype project under this Agreement is the demonstration by Awardee of the rapid, large scale supply and logistics capability to manufacture and deliver to the Government within 5 months of the effective date of this Agreement 6 million Cue COVID-19 Assay Cartridges, 60,000 COVID-19 Control Swab Packs, and 30,000 Monitoring Systems by achieving a sustained average per day production rate of at least 100,000 EUA or 510(k) cleared Cue COVID-19 Assay Cartridges over the last 7 days of the 5 month delivery period."

To: "The prototype project under this Agreement is the demonstration by Awardee of the rapid, large scale supply and logistics capability to manufacture and deliver to the Government within 12 months of the effective date of this Agreement at least 6 million Cue COVID-19 Assay Cartridges, 60,000 COVID-19 Control Swab Packs, and 30,000 Monitoring Systems by achieving a sustained average per day production rate of approximately 100,000 EUA or 510(k) cleared Cue COVID-19 Assay Cartridges over a consecutive 7 day period during the 12 month delivery period."

4.) From: "The prototype project will be successfully completed when Awardee has achieved a sustained average per day production rate of at least 100,000 EUA or 510(k) cleared COVID-19 Assay Cartridges over a 7 day period, and has delivered a total of 6 million Cue COVID-19 Assay Cartridges, 30,000 monitoring systems, and 60,000 control swab packs."

To: “The prototype project will be successfully completed when Awardee has achieved a sustained average per day production rate of approximately 100,000 EUA or 510(k) cleared COVID-19 Assay Cartridges over a consecutive 7-day period during the 12 month delivery period, and has delivered a total of at least 6 million Cue COVID-19 Assay Cartridges, 30,000 monitoring systems, and 60,000 control swab packs.”

Article 1. B.7

5.) From: “Deliverables: Deliverables under this Agreement are listed in Table 1.
Variances: Awardee shall promptly notify the Government of any anticipated shortage in quantity or deviation from any delivery date specified herein. The Government and the Awardee shall cooperate in good faith to adjust Table 1 to reflect reasonable variations in the delivery schedule, provided that the total scheduled quantities are delivered and Awardee demonstrates a production capacity of 100,000 units per day within not more than [**] after award.”

To: “Deliverables: Deliverables under this Agreement are listed in Table 1.
Variances: Awardee shall promptly notify the Government of any anticipated shortage in quantity or deviation from any delivery date specified herein. The Government and the Awardee shall cooperate in good faith to adjust Table 1 to reflect reasonable variations in the delivery schedule, provided that the total scheduled quantities are delivered and Awardee demonstrates a sustained average per day production rate over a consecutive 7-day period of approximately 100,000 EUA or 510(k) cleared units within not more than 12 months from the effective date of this agreement.”

Article 2.A.

6.) From: “The Term of this Agreement commences upon the Effective Date and extends through final payment. This Agreement is anticipated to end 5 months after the Effective Date, subject to mutually agreed extensions pursuant to paragraph 2.D to facilitate the completion of the project(s).”

To: “The Term of this Agreement commences upon the Effective Date and extends through final payment. This Agreement is anticipated to end 12 months after the Effective Date, subject to mutually agreed extensions pursuant to paragraph 2.E to facilitate the completion of the project(s).” The period of performance is hereby extended to October 12, 2021.

CLOSING REMARKS:
The USD Cost Amount is USD 0.00.
The USD Fee Amount is USD 0.00.
The total funds obligated to this Contract equal USD 480,916,636.62.
The USD Total Contract Amount is USD 480,916,636.62.

As a result of this modification, the total obligated amount of this contract is unchanged.
The total contract amount of this contract is unchanged.
Except as provided by this contract modification, all terms and conditions of this contract remain unchanged and in full force and effect.

DATE: April 19, 2021

TO: Vonetta Goodson McNeal
Agreements Officer
Division Chief, Army Contracting Command- Aberdeen Proving Ground

FROM: Michael F. Iademarco, MD, MPH
RADM, U.S. Public Health Service
U.S. Department of Health and Human Services

SUBJECT: Cue Health, Inc. Waiver Request Approval

According to the Cue Health, Inc. (Cue) Other Transaction Authority for Prototype Agreement (Agreement No. W911NF-21-9-0001) dated October 13, 2020, Article 1, Scope of the Agreement, para.1, the U.S. Government will be the exclusive purchaser of the entire production of the Awardee's COVID-19 Test until the prototype project has been successfully completed, provided that: (1) Awardee may honor contractual commitments executed before the effective date of the Agreement; (2) Awardee may request a waiver from the Government to respond to other than U.S. Federal Government urgent diagnostic testing requirements; and (3) Awardee may use a reasonable number of tests for internal workforce testing and diagnostic purposes and for marketing, demonstration and evaluation and business development.

Pursuant to clause (2) above, Cue submitted a request for a waiver to fulfill commercial orders as follows:

1. Awardee may distribute commercially to recipients outside of the U.S. Federal Government up to one-half (50%) of the entire production of the Awardee's COVID-19 Test, measured monthly in arrears on a calendar-month basis.

2. This waiver shall be effective as of May 1, 2021, applicable to the Awardee's production of COVID-19 Tests during April 2021, and shall remain in effect for the duration of the Agreement, except as modified pursuant to paragraph 3 below.

3. The Government may modify this waiver to reasonably accommodate changes in Government requirements, by written notice to Awardee specifying the increased or decreased percentage of the Awardee's COVID-19 Test production that may be distributed to non-U.S. Federal Government recipients and the effective date of the modification, which shall be no less than fourteen (14) days after Awardee's receipt of such notice.

As the requirements owner for the Cue OTA, I approve Cue's waiver request to fulfill commercial orders as submitted.

/s/ Michael F. Iademarco
Michael F. Iademarco, MD, MPH
RADM, USPHS

4/19/2021
Date

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of the Secretary

Office of the Assistant Secretary for Health
Washington, D.C. 20201

DATE: December 7, 2020

TO: Vonetta Goodson McNeal
Agreements Officer
Division Chief, Army Contracting Command- Aberdeen Proving Ground

FROM: Brett P. Giroir, M.D.
ADM, U.S. Public Health Service
U.S. Department of Health and Human Services, Assistant Secretary for Health
U.S. Representative, Executive Board, WHO

SUBJECT: Cue Health, Inc. Waiver Request Approval

According to the Cue Health, Inc. (Cue) Other Transaction Authority (OTA) agreement number W911NF2190001, Article 1: Scope of the Agreement, 1. Prototype Project, the U.S. Government will be the exclusive purchaser of the entire production of the Awardee's COVID-19 Test until the prototype project has been successfully completed, unless the Awardee requests a waiver to respond to other than the U.S. Government urgent diagnostic testing requirements.

As the requirements owner for the Cue OTA, I approve Cue's waiver requests to fulfill commercial orders as submitted:

November 30, 2020: [**], for [**] Cue COVID-19 Test Cartridges and [**] Cue Health Monitoring systems.

December 1, 2020: [**], for [**] Cue COVID-19 Test Cartridges and [**] Cue Health Monitoring systems.

12/7/2020

Brett P. Giroir, M.D.
ADM, USPHS

Date

[Type here]

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE	OF PAGES
J - Firm Fixed Price	1	3

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
A00005	2021 APR 08		

6. ISSUED BY CODE S0514A

DCMA SAN DIEGO
9174 SKY PARK COURT
SUITE 100
SAN DIEGO, CA 92123-4353
lila.j.defensor.civ@mail.mil/858-495-7498

7. ADMINISTERED BY (If other than Item 6) CODE S0514A

DCMA SAN DIEGO
9174 SKY PARK COURT
SUITE 100
SAN DIEGO, CA 92123-4353
DCMA.LEE.HQ.LIST.S0514A-CASD@MAIL.MIL/858-495-7401

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

CUE INC.
11100 ROSELLE ST STE A
SAN DIEGO, CA 92121-1210

CODE 7VPK0 FACILITY CODE

(X)	9A. AMENDMENT OF SOLICITATION NO.
	9B. DATED (SEE ITEM 11)
X	10A. MODIFICATION OF CONTRACT/ORDER NO. W911NF2190001
	10B. DATED (SEE ITEM 11) 2020 OCT 13

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted;

or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

SEE CONTINUATION PAGE

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
X	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR- 43.103(b)
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

SEE CONTINUATION PAGE

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	15B. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
Ayub Khattak CEO	Lila J. Defensor
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign) Ayub Khattak Signed by:	15C. DATE SIGNED 4/9/2021
16B. UNITED STATES OF AMERICA (Signature of Contracting Officer) DEFENSOR.LILA.JO.1154402884	16C. DATE SIGNED Digitally signed by DEFENSOR.LILA.JO.1154402884 Date: 2021.04.09 14:22:21 -07'00'

NSN 7540-01-152-8070
Previous edition unusable

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA FAR (48 CFR) 53.243

PURPOSE OF MODIFICATION:

This Bilateral Other Administrative Action Modification is issued pursuant to:
FAR 42.302(c) The purpose of this modification is to affect the following changes:

CLIN 0002
From: COVID-19 TEST CARTRIDGES AS SPECIFIED IN AWARD NARRATIVE
To: COVID-19 Test Cartridges

CLIN 0003
From: MONITORING SYSTEMS AS SPECIFIED IN AWARD NARRATIVE
To: Health Monitoring Systems

CLIN 0004
From: SWAB PACKS AS SPECIFIED IN AWARD NARRATIVE
To: COVID-19 External Control Swab Packs

ARTICLE 15: INSPECTION AND ACCEPTANCE
E. Risk of Loss Due to Expiry
From: Both parties acknowledge that risk of loss due to expiry is retained by the Government for all product accepted under this Agreement. In order to mitigate this risk, the Awardee will make kits available for delivery to VMI or Government distribution sites within [**] of the date of manufacture. Provided this condition is met, the Awardee will have no obligation to replace product that has been accepted by the Government and expires prior to use.

To: Both parties acknowledge that risk of loss due to expiry is retained by the Government for all product accepted under this Agreement. In order to mitigate this risk, the Awardee will make COVID-19 Test Cartridges available for delivery to VMI, Government distribution sites, or individual final destinations within [**] of the date of manufacture. The Awardee will make COVID-19 External Control Swab Packs available for delivery to VMI, Government distribution sites or individual final destinations within [**] of the date of manufacture. Provided this condition is met, the Awardee will have no obligation to replace product that has been accepted by the Government and expires prior to use.

FAR 42.302(c) The purpose of this bilateral modification is to make administrative revisions to this OTA as follows:

SUMMARY OF CHANGES:

On Line Item 0002, the Line Item Description is changed from null to COVID-19 Test Cartridges. On Line Item 0002, the Noun is changed from TEST CARTRI to COVID-19 TE.

SUPPLIES OR SERVICES:

PRICES / AMOUNTS:

CLIN/ELIN	Noun	Qty	Unit	Unit Price	Total Line Item Amount
002	COVID-19 TE	6000000	EA	USD [**]	USD [**]

DESCRIPTION:

CLIN/ELIN	NSN	Part Number	Qty Variance Over	Qty Variance Under	Requisition Number	ACRN
0002	N				0011560601	AA
	COVID-19 Test Cartridges					

INSPECTION AND ACCEPTANCE:

CLIN/ELIN	FOB	Inspection	Acceptance	Serv Comp Dt	Transport Priority	Days for Acceptance
0002	D	S	S			

CLOSING REMARKS:
The USD Cost Amount is USD 0.00.
The USD Fee Amount is USD 0.00.
The total funds obligated to this Contract equal USD 480,916,636.62.
The USD Total Contract Amount is USD 480,916,636.62.

As a result of this modification, the total obligated amount of this contract is unchanged. The total contract amount of this contract is unchanged. **Except as provided by this contract modification, all terms and conditions of this contract remain unchanged and in full force and effect.**

Exhibit 10.12

Certain identified information has been excluded from the exhibit because it is both (i) not material and (ii) is the type of information that the registrant treats as private or confidential. Double asterisks denote omissions.

LOAN AND SECURITY AGREEMENT

This **LOAN AND SECURITY AGREEMENT** (this "**Agreement**") is entered into as of February 5, 2021, by and among **CUE HEALTH INC.**, a Delaware corporation ("**Borrower**"), the financial institutions from time to time party to this Agreement (collectively, "**Lenders**" and individually, each a "**Lender**") and **EAST WEST BANK**, as collateral and administrative agent for Lenders (in such capacity, "**Agent**").

RECITALS

This Agreement sets forth the terms on which Lenders will advance credit to Borrower, and Borrower will repay the amounts owing to Lenders.

AGREEMENT

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. As used in this Agreement, all capitalized terms shall have the definitions set forth on Exhibit A. Any term used in the Code and not defined herein shall have the meaning given to the term in the Code.

1.2 Accounting Terms. Any accounting term not specifically defined on Exhibit A shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP. The term "financial statements" shall include the accompanying notes and schedules.

1.3 Interpretation. Any references to "pro rata", "pro rata share", "ratably" or similar terms shall take into account the Revolving Loan Commitment Percentage of each Lender and any outstanding commitments, undrawn Letters of Credit, and reimbursement obligations related to any Letters of Credit.

2. LOAN AND TERMS OF PAYMENT.

2.1 Credit Extensions.

(a) Promise to Pay. Borrower promises to pay to Agent for the benefit of Lenders, in lawful money of the United States of America, the aggregate unpaid principal amount of all Credit Extensions made by Lenders to Borrower, together with interest on the unpaid principal amount of such Credit Extensions at the times and at the interest rates in accordance with the terms hereof.

(b) Advances Under Revolving Line.

(i) Amount. Subject to and upon the terms and conditions of this Agreement, Borrower may request, and Lenders severally agree to make to Borrower, loans on a revolving credit basis (each a "**Revolving Loan**" and collectively the "**Revolving Loans**") in an aggregate outstanding original principal amount for all Lenders at any time outstanding not to exceed the lesser of (i) the Revolving Line and (ii) such amount as Borrower would still be in compliance with the Asset Coverage Ratio set forth in Section 6.7; provided that in no event shall any Lender be obligated to make a Revolving Loan or participate in a Letter of Credit if after giving effect to such Revolving Loan or such participation the sum of such Lender's (w) Revolving Loans outstanding, (x) Revolving Loan Commitment Percentage of the aggregate maximum amount to be drawn under all Letters of Credit outstanding and (y) Revolving Loan Commitment Percentage of the aggregate amount of unreimbursed drawings under all Letters of Credit outstanding, would exceed its Revolving Loan Commitment. Amounts borrowed pursuant to this Section 2.1(b) may be repaid and reborrowed at any time, from time to time, without penalty or premium prior to the Revolving Maturity Date, at which time all outstanding Advances under this Section 2.1(b) together with all accrued but unpaid interest and fees thereon shall be immediately due and payable.

(ii) Form of Request; Lender Funding of Advances. Whenever Borrower desires an Advance, Borrower will give the Agent irrevocable notice by facsimile transmission or telephone no later than 9:00 a.m., Pacific time, on the Business Day that the Advance is to be made. Each such notification shall be promptly confirmed by a Payment/Advance Form in substantially the form of Exhibit C and delivered by a Responsible Officer. Upon receipt of such notice, the Agent shall promptly notify each Lender thereof on the date of receipt of such notice. On the proposed borrowing date, not later than 1:00 p.m., Pacific time, each Lender shall make available to the Agent the amount of such Lender's pro rata share of the aggregate borrowing amount (as determined in accordance with this Section 2.1(b)) in immediately available funds by wiring such amount to such account as the Agent shall specify. Agent and Lenders shall be entitled to rely on any facsimile or telephonic notice given by a person who Agent and/or Lender reasonably believes to be a Responsible Officer or a designee thereof, and Borrower shall indemnify and hold Agent and Lenders harmless for any damages or loss suffered by such Agent or Lender as a result of such reliance. Agent will credit the amount of Advances made under this Section 2.1(b) to a deposit account of the Borrower at the Agent as Borrower requests in writing; provided that such deposit account is subject to a perfected security interest in favor of the Agent for the benefit of the Lenders.

(iii) Defaulting Lenders. If and to the extent any Lender (a "**Defaulting Lender**") shall not have made its pro rata share of the Revolving Loan available to the Agent in immediately available funds as set forth in this Section 2.1(b) and the Agent in such circumstances has made available to Borrower such amount, that Lender shall, on the Business Day following the date of such Advance (the "**Funding Date**"), make such amount available to the Agent; provided that Agent shall be entitled to any interest applicable to such Advance for each day during such period. A notice submitted by the Agent to any Lender with respect to amounts owing under this subsection shall be conclusive, absent demonstrable error. If such amount is so made available, such payment to the Agent shall constitute such Defaulting Lender's Advance on the Funding Date of such Advance for all purposes of this Agreement. If such amount is not made available to the Agent on the Business Day following the Funding Date, the Agent will notify Borrower of such failure to fund and, upon demand by the Agent, Borrower shall pay such amount to the Agent for the Agent's account, together with interest thereon for each day elapsed since the Funding Date of such Advance, at a rate per annum equal to the interest rate applicable at the time to the Advances composing such Advance, without in any way prejudicing the rights and remedies of Borrower against such Defaulting Lender. The failure of any Lender to make any Advance on any Funding Date shall not relieve any other Lender of any obligation hereunder to make a Loan on such Funding Date, but no Lender shall be responsible for the failure of any other Lender to make the Advance to be made by such other Lender on any Funding Date.

(c) Letters of Credit.

(i) As a subfacility under the Revolving Line, the L/C Issuer agrees from time to time (subject to the terms and conditions of this Agreement) to issue or cause an Affiliate to issue commercial and standby letters of credit for the account of the Borrower (each a "**Letter of Credit**," and collectively "**Letters of Credit**") until thirty (30) days prior to the Revolving Maturity Date; provided, however, that the aggregate drawn and undrawn amount of all outstanding Letters of Credit (including the Existing Letters of Credit) shall not at any time exceed Twenty Million and 00/100 Dollars ($20,000,000) (the "**L/C Sublimit**"). For the avoidance of doubt, the L/C Sublimit shall be a part of, and not in addition to, the Revolving Line. The undrawn amount of all Letters of Credit shall be reserved under the Revolving Line and such amount shall not be available for borrowings. Borrower shall give Agent and the L/C Issuer notice prior to 10:00 a.m., Pacific time at least five (5) Business Days prior to the proposed date of issuance of each Letter of Credit, specifying the beneficiary, the proposed date of issuance and the expiry date of such Letter of Credit, and describing the proposed terms of such Letter of Credit and the nature of the transactions proposed to be supported thereby. The issuance by the L/C Issuer of any Letter of Credit shall, in addition to the conditions precedent set forth in Section 3, be subject to the conditions precedent that such Letter of Credit shall be satisfactory to the L/C Issuer and that Borrower shall have executed and delivered such application agreement and/or such other instruments and agreements relating to such Letter of Credit as the L/C Issuer shall have requested in its sole discretion (each, a "**L/C Application**"). The L/C Issuer shall deliver a copy of the L/C Application to the Agent. The form and substance of each Letter of Credit shall be subject to approval by the L/C Issuer, in its sole discretion. Each Letter of Credit shall be issued for a term, as designated by the Borrower, not to exceed three hundred and sixty-five (365) days; provided, however, that no Letter of Credit shall have an expiration date later than five (5) Business Days prior to the Revolving Maturity Date unless Borrower has posted on the date of issuance of such Letter of Credit cash collateral to an account at the L/C Issuer and in which the Borrower grants a security interest to the Agent (for the benefit of the Lenders) in an amount equal to [**] percent ([**]%) of the outstanding Letters of Credit on terms satisfactory to the Agent and the L/C Issuer in their sole discretion, in which case the expiry date of such cash collateralized Letters of Credit may be up to one (1) year later than the fifth (5^{th}) Business Day prior to the Revolving Maturity Date. The Letters of Credit may include a provision providing that their expiry date will automatically be extended each year for an additional one (1) year period unless the L/C Issuer delivers written notice to the contrary. Each Letter of Credit shall be subject to the additional terms and conditions of the Letter of Credit agreements, applications and any related documents required by the L/C Issuer in connection with the issuance of Letters of Credit. The L/C Issuer shall deliver to the Agent, concurrently with or promptly following its issuance of any Letter of Credit, a true and complete copy of each Letter of Credit. Promptly upon its receipt thereof, the Agent shall give notice to each Lender of the issuance of each Letter of Credit, specifying the amount thereof and the amount of such Lender's percentage thereof.

(ii) If the L/C Issuer shall honor a draft or other demand for payment presented or made under any Letter of Credit, the Borrower agrees to pay to the L/C Issuer an amount equal to the amount paid by the L/C Issuer in respect of such draft or other demand under such Letter of Credit and all reasonable expenses paid or incurred by the Agent relative thereto not later than 1:00 p.m. Pacific time, in United States dollars, on (i) the Business Day that the Borrower received notice of such presentment and honor, if such notice is received prior to 11:00 a.m. Pacific time or (ii) the Business Day immediately following the day that the Borrower received such notice, if such notice is received after 11:00 a.m. Pacific time.

(iii) If the L/C Issuer shall honor a draft or other demand for payment presented or made under any Letter of Credit, but the Borrower does not reimburse the L/C Issuer as required under clause (ii) above and the Revolving Line has not been terminated (whether by maturity, acceleration or otherwise), such drawing paid under such Letter of Credit shall be deemed an Advance under the Revolving Line and shall be repaid by the Borrower in accordance with the terms and conditions of this Agreement applicable to such Advances and the Agent will promptly notify the Lenders of such deemed request, and each such Lender shall make available to the Agent an amount equal to its pro rata share (based on its Revolving Loan Commitment Percentage) of the amount of such Advance; provided, however, that if Advances under the Revolving Line are not available, for any reason, at the time any drawing is paid, then the Borrower shall immediately pay to the L/C Issuer the full amount drawn, together with interest from the date such drawing is paid to the date such amount is fully repaid by the Borrower, at the rate of interest applicable to Advances under the Revolving Line. In such event the Borrower agrees that the Agent, in its sole discretion, may debit any account maintained by the Borrower with the Agent for the amount of any such drawing. Amounts held in such cash collateral account shall be applied by the Agent to the payment of drafts drawn under such letters of credit and to the obligations and liabilities of the Borrower to the Agent, in such order of application as the Required Lenders may in their sole discretion elect. Notwithstanding anything herein to the contrary, the L/C Issuer shall have no obligation hereunder to issue any Letter of Credit the proceeds of which would be made available to any Person to fund any activity or business in any Prohibited Territory or with any Person organized under or doing business in a Prohibited Territory. In addition to the Letters of Credit issued hereunder after the Closing Date, the Existing Letters of Credit shall remain outstanding as of the date hereof, shall be deemed to have been issued pursuant hereto, and shall be considered Letters of Credit hereunder and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof including all fees in respect thereof. Notwithstanding the foregoing, (i) Borrower shall not be required to pay any additional issuance fees with respect to the issuance of the Existing Letters of Credit solely as a result of such letters of credit being converted to Letters of Credit hereunder (but the Borrower shall pay the fees set forth in Section 6.12 hereof in connection with all Letters of Credit, including the Existing Letters of Credit), and (ii) no Existing Letter of Credit may be extended or renewed.

(iv) Upon issuance by the L/C Issuer of each Letter of Credit hereunder (and on the Closing Date with respect to each Existing Letter of Credit), each Lender shall automatically acquire a pro rata participation interest in such Letter of Credit and related payments made by the L/C Issuer in connection with such Letter of Credit, based on its respective Revolving Loan Commitment Percentage.

(v) Each Lender agrees to reimburse the L/C Issuer on demand, pro rata in accordance with its respective Revolving Loan Commitment Percentage, for (i) the reasonable out-of-pocket costs and expenses of the L/C Issuer to be reimbursed by the Borrower pursuant to any Letter of Credit (or related agreement), to the extent not reimbursed by the Borrower or any other Loan Party and (ii) any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, fees, reasonable out-of-pocket expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against L/C Issuer in any way relating to or arising out of this Agreement, any Letter of Credit, any documentation or any transaction relating thereto, to the extent not reimbursed by the Borrower, except to the extent that such liabilities, losses, costs or expenses were incurred by L/C Issuer as a result of L/C Issuer's gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment or by the L/C Issuer's wrongful dishonor of any Letter of Credit after the presentation to it by the beneficiary thereunder of a draft or other demand for payment and other documentation strictly complying with the terms and conditions of such Letter of Credit.

2.2 Overadvances. If the aggregate principal amount of the outstanding Advances at any time exceeds the Revolving Line, Borrower shall promptly (but in any event within three (3) Business Days) after the occurrence of such event, pay to Agent for the benefit of the Lenders, in cash, the amount of such excess.

2.3 Interest Rates, Payments, and Calculations.

(a) Interest Rate. Except as set forth in Section 2.3(b), the Advances shall bear interest, on the outstanding daily balance thereof, at a rate equal to three quarters of one percent (0.75%) above the Prime Rate but in no event shall the interest rate be less than four percent (4.0%).

(b) Default Rate. All outstanding Obligations shall bear interest, from and after the occurrence and during the continuance of an Event of Default, at a rate equal to [**] percentage points above the interest rate applicable immediately prior to the occurrence of the Event of Default or such lesser amount the Required Lenders elect to impose from time to time in their sole discretion.

(c) Payments. Interest hereunder shall be due and payable in arrears on the first calendar day of each calendar month during the term hereof. Agent shall, at its option, charge such interest, all Lender Expenses, and all Periodic Payments against any of Borrower's deposit accounts (other than deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees) or, to the extent sufficient funds are not present in Borrower's deposit accounts, against the Revolving Line, and if charged against the Revolving Line those charges shall thereafter be deemed to be Advances and shall thereafter accrue interest at the rate then applicable hereunder. Without limiting the foregoing, any interest not paid when due shall become a part of the Obligations, and such interest shall thereafter accrue interest at the rate then applicable hereunder.

(d) Computation. In the event the Prime Rate is changed from time to time hereafter, the applicable rate of interest hereunder shall be increased or decreased, effective as of the day the Prime Rate is changed, by an amount equal to such change in the Prime Rate. Agent shall give Borrower prompt notice of such change in the Prime Rate. All interest chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

2.4 Pro Rata Treatment and Payments. Each payment (including each prepayment) by the Borrower on account of fees, principal of and interest on the Credit Extensions shall be made pro rata according to the respective Revolving Loan Commitment Percentages then held by the Lenders. All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without set- off, deduction or counterclaim and shall be made prior to 12:00 noon, Pacific time, on the due date thereof to the Agent, for the account of the Lenders. The Agent shall distribute such payments to the applicable Lenders promptly upon receipt in like funds as received. Except during the continuance of an Event of Default, Agent shall credit a wire transfer of funds, check or other item of payment to such deposit account or Obligation as Borrower specifies. After the occurrence and during the continuance of an Event of Default, Agent shall (except as otherwise directed by the Required Lenders) immediately apply any wire transfer of funds, check, or other item of payment Agent may receive to reduce Obligations (on a pro rata basis), but such applications of funds shall not be considered a payment on account unless such payment is of immediately available federal funds or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any wire transfer or payment received by Agent after 12:00 noon Pacific time shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day. Whenever any payment to Agent for the benefit of the Lenders under the Loan Documents would otherwise be due (except by reason of acceleration) on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension.

2.5 Lender Expenses and Fees. Borrower shall pay to Agent on or prior to the Closing Date, all Lender Expenses incurred through the Closing Date and invoiced to Borrower on or prior to the Closing Date, and, after the Closing Date, shall pay to Agent all Lender Expenses invoiced to Borrower, as and when they become due. Lender Expenses due on the Closing Date may be paid by way of an Advance under the Revolving Line.

2.6 Term. This Agreement shall become effective on the Closing Date and, subject to Section 12.8, shall continue in full force and effect for so long as any Obligations (other than inchoate indemnification or reimbursement obligations or other obligations which, by their terms, survive termination of this Agreement) remain outstanding or Lenders have any obligation to make Credit Extensions under this Agreement which obligation shall terminate on the Revolving Maturity Date. Notwithstanding the foregoing, Lenders shall have the right pursuant to Section 9.1(b) to terminate their obligation to make Credit Extensions under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default.

2.7 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject the Agent or any Lender to any Taxes (other than Indemnified Taxes and Excluded Taxes) on its loans, loan principal, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Advances made by such Lender;

and the result of any of the foregoing shall be to increase the cost to the Agent, increase the cost to the L/C Issuer of issuing any Letter of Credit, or increase the cost to any such Lender of purchasing or maintaining any participation in a Letter of Credit, or the Agent or such Lender of making or maintaining any Advance or of maintaining its obligation to make any such Advance, or to reduce the amount of any sum received or receivable by the Agent or such Lender hereunder (whether of principal, interest or any other amount) then, upon request of the Agent or such Lender, the Borrower will pay to the Agent or such Lender, as the case may be, such additional amount or amounts as will compensate the Agent or such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the commitments of such Lender or the Revolving Loans or Letters of Credit made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered. The agreements in this Section shall survive the termination of this Agreement, the expiration of the Letters of Credit and the payment of all Obligations (other than unasserted contingent indemnification obligations and unasserted expense reimbursement obligations).

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, including a calculation of the amount in reasonable detail, shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof. Any such certificate must be delivered within six
(6) months after the incurrence by the Lender or its holding company, as the case may be, of the amounts set forth therein (except that, if the Change in Law giving rise to such amounts is retroactive, then the six (6) month period referred to herein shall be extended to include the period of retroactive effect thereof).

3. CONDITIONS OF LOANS.

3.1 Conditions Precedent to Initial Credit Extension. The obligation of Lenders to make the initial Credit Extension is subject to the condition precedent that Agent, and Lenders where necessary, shall have received, in form and substance satisfactory to Agent and Lenders, the following:

(a) this Agreement;

(b) a promissory note for each Lender that requests one;

(c) an officer's certificate of Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement in the form of Exhibit G attached hereto;

(d) UCC National Form Financing Statement;

(e) intellectual property security agreements;

(f) such landlord and bailee waivers as requested by Agent;

(g) copies of insurance certificates evidencing the insurance coverage required under Section 6.4 hereof and the insurance endorsements required by such Section;

(h) payment of fees and Lender Expenses then due as specified in Section 2.5;

(i) current SOS Reports indicating that except for Permitted Liens, there are no other security interests or Liens of record in the Collateral;

(j) current financial statements, including draft audited statements for Borrower's fiscal year ended December 31, 2019, together with an unqualified opinion**,** company prepared consolidated and, if prepared by Borrower, consolidating financials, balance sheets and income statements for the most recently ended month in accordance with Section 6.2, and such other updated financial information as Agent may reasonably request;

(k) current Compliance Certificate in accordance with Section 6.2;

(l) a perfection certificate;

(m) subject to Section 4.2, securities and/or deposit account control agreements with respect to any accounts permitted hereunder to be maintained outside Agent;

(n) an Automatic Debit Authorization in the form of Exhibit H attached hereto;

(o) Agent shall have been provided the opportunity to inspect Borrower's Books and to make copies thereof and to check, test, and appraise the Collateral in order to verify Borrower's financial condition or the amount, condition of, or any other matter relating to, the Collateral;

(p) a payoff letter from Comerica Bank in respect of the Existing Indebtedness;

(q) evidence that (i) the Liens securing the Existing Indebtedness will be terminated and (ii) the documents and/or filings evidencing the perfection of such Liens, including without limitation any financing statements and/or control agreements, have or will, concurrently with the initial Credit Extension, be terminated;

(r) a fee letter between Agent and Borrower and payment of the fees specified therein; and

(s) such other documents or certificates, and completion of such other matters, as Agent or any Lender may reasonably request, including, without limitation, any such documents or certificates required in connection with customary "know your customer" requirements, USA Patriot Act, and beneficial ownership regulations.

3.2 Conditions Precedent to all Credit Extensions. The obligation of Lenders to make each Credit Extension, including the initial Credit Extension, is further subject to the following conditions:

(a) timely receipt by Lenders of the Payment/Advance Form as provided in Section 2.1;

(b) receipt by the Agent of an executed Disbursement Letter substantially in the form of Exhibit E attached hereto;

(c) the representations and warranties contained in Article 5 shall be true and correct in all material respects on and as of the date of such Payment/Advance Form and on the effective date of each Credit Extension as though made at and as of each such date, and no Default or Event of Default shall have occurred and be continuing, or would immediately exist after giving effect to such Credit Extension (provided, however, that those representations and warranties expressly referring to another date shall be true and correct in all material respects as of such date, and those representations and warranties already subject to materiality or a Material Adverse Effect condition shall be true and correct in all respects). The making of each Credit Extension shall be deemed to be a representation and warranty by Borrower on the date of such Credit Extension as to the accuracy of the facts referred to in this Section 3.2(c); and

(d) the financial covenants set forth in Section 6.7 shall be met immediately prior to and after giving effect to such borrowing.

4. CREATION OF SECURITY INTEREST AND GUARANTY.

4.1 Grant of Security Interest. Each Loan Party grants and pledges to Agent (for the benefit of the Lenders) a continuing security interest in the Collateral to secure prompt repayment of any and all Obligations and to secure prompt performance by each Loan Party of each of its covenants and duties under the Loan Documents. Except as set forth in the Schedule related to Permitted Liens, such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in later-acquired Collateral. Each Loan Party also hereby agrees not to sell, transfer, assign, mortgage, pledge, lease, grant a security interest in, or encumber any of its Intellectual Property, except in connection with Permitted Liens and Permitted Transfers. Notwithstanding any termination of this Agreement, Agent's Lien (for the benefit of the Lenders) on the Collateral shall remain in effect for so long as any Obligations (other than inchoate indemnification or reimbursement obligations or other obligations which, by their terms, survive termination of this Agreement) are outstanding or any Lender has any obligation to make Credit Extensions under this Agreement. At the sole expense of Borrower following termination of this Agreement, Agent shall deliver such documents as Borrower shall reasonably request to evidence such termination.

4.2 Perfection of Security Interest. Each Loan Party authorizes Agent to file at any time financing statements, continuation statements, and amendments thereto that (i) describe the Collateral as all assets of such Loan Party of the kind pledged hereunder, and (ii) contain any other information required by the Code for the sufficiency of filing office acceptance of any financing statement, continuation statement, or amendment, including whether such Loan Party is an organization, the type of organization and any organizational identification number issued to such Loan Party, if applicable. Any such financing statements may be filed by Agent at any time in any jurisdiction whether or not Revised Article 9 of the Code is then in effect in that jurisdiction. Each Loan Party shall from time to time endorse and deliver to Agent, at the request of Agent, all Negotiable Collateral and other documents that Agent may reasonably request, in form reasonably satisfactory to Agent, to perfect and continue perfection of Agent's security interests (for the benefit of the Lenders) in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents. The Loan Parties shall have possession of the Collateral, except where expressly otherwise provided in this Agreement or where Agent chooses to perfect its security interest by possession in addition to the filing of a financing statement. Where Collateral with a value in excess of [**] Dollars ($[**]) is in possession of a third party or bailee, the applicable Loan Party shall take such steps as Agent reasonably requests for Agent to obtain an acknowledgment, in form and substance reasonably satisfactory to Agent, of the bailee that the bailee holds such Collateral for the benefit of Agent. Where Collateral with a value in excess of [**] Dollars ($[**]) is located at a property which is not owned by a Loan Party, the applicable Loan Party shall take such steps as Agent reasonably requests for Agent to obtain an agreement, in form and substance reasonably satisfactory to Agent, from the owner and/or mortgagee of such property that it agrees to, among other things, waive or subordinate any Lien it may have on the Collateral, and agrees to permit the Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral. The applicable Loan Party shall cause Agent obtain "control" of any Collateral consisting of investment property, securities accounts or deposit accounts (other than Excluded Accounts) (as such items and the term "control" are defined in Revised Article 9 of the Code) by causing the securities intermediary or depositary institution or issuing bank to execute a control agreement in form and substance reasonably satisfactory to Agent.

4.3 Right to Inspect. Agent (through any of its officers, employees, or agents) shall have the right, upon reasonable prior written notice, from time to time at reasonable times during Loan Parties' usual business hours to inspect each Loan Party's Books and to make copies thereof and to check, test, and appraise the Collateral in order to verify such Loan Party's financial condition or the amount, condition of, or any other matter relating to, the Collateral (the "**Inspection**"). For the avoidance of doubt, Lenders shall be entitled to accompany Agent on any Inspection. Notwithstanding the foregoing, unless an Event of Default has occurred and is continuing, the Loan Parties' shall only be obligated to reimburse Agent for [**] in each calendar year.

4.4 Collection Account.

(a) On or prior to the Closing Date, the Borrower shall establish a deposit account maintained with the Agent (the "**Collection Account**"). Promptly after the Closing Date, the Borrower shall cause each Loan Party to (a) instruct all payments with respect to Accounts due to such Loan Party to be made directly to the Collection Account and (b) use commercially reasonable efforts to cause all such payments to be made by the relevant Account debtors directly to the Collection Account (and if any such payments are received other than through a direct payment to the Collection Account, Borrower shall cause such payment to be transferred to the Collection Account within two (2) Business Days of receipt) and while in Borrower's possession such payments shall be held by Borrower in trust for Agent as Agent's trustee, and Borrower shall deliver such payments to Agent in their original form as received, with proper endorsements for deposit.

(b) All items or amounts remitted to the Collection Account or that Agent (or after an Event of Default, Required Lenders) has otherwise received shall be applied to the payment of the Obligations on a daily basis (or such lesser frequency, but not less than [**] times per month, as determined by Agent in consultation with Borrower), whether then due or not, in the order set forth in Section 12.11 and no amounts shall be swept to other accounts unless the Required Lenders agree in writing to such a sweep in their sole discretion. Any amount remaining in the Collection Account after payment in full of the Obligations, so long as no Event of Default exists, shall be transferred by Agent from the Collection Account to Borrower's primary operating account maintained with Agent. Except to the extent (but only to the extent) caused by the Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment, Agent shall not be liable for any loss or damage which Borrower may suffer as a result of Agent's processing of items or its exercise of any other rights or remedies under this Agreement, including without limitation indirect, special or consequential damages, loss of revenues or profits, or any claim, demand or action by any third party arising out of or in connection with the processing of items or the exercise of any other rights or remedies under this Agreement. Borrower shall indemnify and hold Agent and Lenders harmless from and against all such third party claims, demands or actions, and all related expenses or liabilities, including, without limitation, reasonable documented out-of-pocket attorney's fees and including claims, damages, fines, expenses, liabilities or causes of action of whatever kind resulting from Agent's own negligence except to the extent (but only to the extent) caused by Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment.

4.5 Guaranty.

(a) Unconditional Guaranty of Payment. In consideration of the foregoing, each Guarantor from time to time party hereto hereby irrevocably, absolutely and unconditionally guarantees to Agent and Lenders the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all Obligations. Guarantor agrees that it shall execute such other documents or agreements and take such action as Agent or the Required Lenders shall reasonably request to effect the purposes of its guaranty. If there is more than one Guarantor hereunder, such Guarantors shall be jointly and severally obligated for such guarantees provided for herein.

(b) Separate Obligations. These obligations are independent of Borrower's obligations and separate actions may be brought against Guarantor (whether action is brought against Borrower or whether Borrower is joined in the action).

5. REPRESENTATIONS AND WARRANTIES.

Each Loan Party represents and warrants as follows:

5.1 Due Organization and Qualification. Each Loan Party and each Subsidiary is an entity duly existing under the laws of the jurisdiction in which it is organized and qualified and licensed to do business in any state in which the conduct of its business or its ownership of property requires that it be so qualified, except where the failure to do so could not reasonably be expected to cause a Material Adverse Effect.

5.2 Due Authorization; No Conflict. The execution, delivery, and performance of the Loan Documents are within such Loan Party's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in such Loan Party's organizational documents, nor will they constitute an event of default under any material agreement by which any Loan Party is bound. No Loan Party is in default under any agreement by which it is bound, except to the extent such default would not reasonably be expected to cause a Material Adverse Effect.

5.3 Collateral. The Loan Parties have rights in or the power to transfer the Collateral, and their title to the Collateral is free and clear of Liens, adverse claims, and restrictions on transfer or pledge except, in each case, for Permitted Liens. Except as disclosed in writing by Borrower to Agent from time to time, all tangible Collateral in excess of [**] Dollars ($[**]) is located solely in the Collateral State. The Eligible Accounts are bona fide existing obligations. The property or services giving rise to such Eligible Accounts has been delivered or rendered to the account debtor or its agent for immediate shipment to and unconditional acceptance by the account debtor. Except as disclosed in writing to Agent, Borrower has not received notice of actual or imminent Insolvency Proceeding of any account debtor whose accounts are included in any Eligible Account. No licenses or agreements giving rise to such Eligible Accounts is with any Prohibited Territory or with any Person organized under or doing business in a Prohibited Territory.

5.4 Name; Location of Chief Executive Office. Except as disclosed in the Schedule, during the last five (5) years prior to the Closing Date, no Loan Party has done business under any name other than that specified on the signature page hereof, and its exact legal name is as set forth in the first paragraph of this Agreement. The chief executive office of each Loan Party is located in the Chief Executive Office State at the address indicated in Section 10 hereof or such other location as Borrower has notified Agent of pursuant to Section 7.2.

5.5 Actions, Suits, Litigation, or Proceedings. Except as set forth in the Schedule, there are no actions, suits, litigation or proceedings, at law or in equity, pending by or against any Loan Party or any Subsidiary before any court, administrative agency, or arbitrator in which an adverse decision could reasonably be expected to have a Material Adverse Effect.

5.6 No Material Adverse Change in Financial Statements. All consolidated and, if applicable, consolidating financial statements related to the Loan Parties that are delivered by Borrower to Agent fairly present, in all material respects, such Loan Party's consolidated and, if applicable, consolidating financial condition as of the date thereof and such Loan Party's consolidated and, if applicable, consolidating results of operations for the period then ended (subject, in the case of unaudited financial statements, to the absence of footnotes and normal year- end audit adjustments). There has not occurred a Material Adverse Effect since December 31, 2019.

5.7 Solvency, Payment of Debts. The Borrower is and the Loan Parties, taken as a whole on a consolidated basis, are able to pay its debts (including trade debts) as they mature in the ordinary course of business; the value of the balance sheet sets of the Borrower's and the Loan Parties', taken as a whole on a consolidated basis (minus disposition costs) exceeds the fair value of its liabilities; and the Borrower is not and the Loan Parties, taken as a whole on a consolidated basis, are not left with unreasonably small capital after the transactions contemplated by this Agreement.

5.8 Compliance with Laws and Regulations. The Loan Parties and each Subsidiary have met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. No event has occurred resulting from any Loan Party's failure to comply with ERISA that is reasonably likely to result in incurring any liability that could reasonably be expected to have a Material Adverse Effect. No Loan Party is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. No Loan Party is engaged principally, or as one of the important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Each Loan Party has complied in all material respects with all the applicable provisions of the Federal Fair Labor Standards Act. Each Loan Party is in compliance with all applicable Environmental Laws, regulations and ordinances except where the failure to comply would not reasonably be expected to have a Material Adverse Effect. No Loan Party has violated any statutes, laws, ordinances or rules applicable to it, the violation of which could reasonably be expected to have a Material Adverse Effect. Each Loan Party and each Subsidiary have filed or caused to be filed all tax returns required to be filed by such Loan Party or such Subsidiary, and have paid, or have made adequate provision for the payment of, all taxes reflected therein except those being contested in good faith with adequate reserves under GAAP or where the failure to file such returns or pay such taxes could not reasonably be expected to have a Material Adverse Effect or result in any Lien which is not a Permitted Lien.

5.9 Subsidiaries. No Loan Party owns any stock, partnership interest or other equity securities of any Person, except for Permitted Investments.

5.10 Government Consents. Each Loan Party and each Subsidiary have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of such Person's business as currently conducted.

5.11 Inbound Licenses. Except as disclosed on the Schedule , no Loan Party is a party to, nor is bound by, any inbound license, the failure, breach, or termination of which could reasonably be expected to cause a Material Adverse Effect, that prohibits such Loan Party from granting a security interest in such Loan Party's interest in such license or any other property (other than commercial off-the- shelf software).

5.12 Full Disclosure. No representation, warranty or other statement made by any Loan Party in connection with the Loan Documents or the transactions contemplated thereby in any certificate or signed written statement furnished to Agent by any Loan Party taken together with all such certificates and written statements furnished to Agent by any Loan Party contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading in light of the circumstances under which they are made.

6. AFFIRMATIVE COVENANTS.

Each Loan Party covenants that, until payment in full of all outstanding Obligations (other than inchoate indemnification or reimbursement obligations or other obligations which, by their terms, survive termination of this Agreement), and for so long as Lenders may have any commitment to make a Credit Extension hereunder, they shall do all of the following:

6.1 Good Standing and Government Compliance. Each Loan Party shall maintain its organizational existence and good standing in its state of incorporation or formation, and shall cause each of its Subsidiaries to maintain its organizational existence and good standing in its state of incorporation or formation, as applicable, and each shall maintain qualification and good standing in each other jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect, and shall furnish to Agent the organizational identification number issued to such Loan Party by the authorities of the jurisdiction in which it is organized, if applicable. Each Loan Party shall meet, and shall cause each Subsidiary to meet, the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. Each Loan Party shall comply in all material respects with all applicable Environmental Laws, and maintain all material permits, licenses and approvals required thereunder where the failure to do so could reasonably be expected to have a Material Adverse Effect. Each Loan Party shall comply in all material respects, and shall cause each Subsidiary to comply, with all material statutes, laws, ordinances and government rules and regulations to which it is subject, and shall maintain, and shall cause each of its Subsidiaries to maintain, in force all licenses, approvals and agreements, in each case, the loss of which or failure to comply with which would reasonably be expected to have a Material Adverse Effect.

6.2 Financial Statements, Reports, Certificates. Borrower shall deliver to Agent: (i) as soon as available, but in any event within twenty-five (25) days after the end of each calendar month (which shall be extended to thirty (30) days for deliveries to be made in the first two months following the Closing Date), a company prepared consolidated and, if prepared by the Borrower, consolidating balance sheet and income statement covering the Loan Parties' operations during such period, in a form reasonably acceptable to Agent and certified by a Responsible Officer; (ii) as soon as available, but in any event within one hundred twenty (120) days after the end of Borrower's fiscal year, company prepared consolidated and, if prepared by the Borrower, consolidating financial statements of Borrower and its consolidated Subsidiaries prepared in accordance with GAAP, consistently applied, and audited by a certified public accountant, which, following a SPAC Business Combination may be satisfied by audited financial statements of a parent company of Borrower; (iii) if applicable, copies of all statements, reports and notices sent or made available generally by any Loan Party to its security holders or to any holders of Subordinated Debt and all reports on Forms 10-K and 10-Q filed with the Securities and Exchange Commission; (iv) promptly upon receipt of notice thereof by any Loan Party, a report of any legal actions pending or threatened in writing against any Loan Party or any Subsidiary that could reasonably be expected to result in damages or costs to any Loan Party or any Subsidiary of [**] Dollars ($[**]) or more; (v) promptly upon receipt by any Loan Party, each management letter prepared by such Loan Party's independent certified public accounting firm regarding such Loan Party's management control systems; (vi) as soon as available, but in any event within sixty (60) days after the end of Borrower's fiscal year, Borrower's financial and business projections and budget for the immediately following year, with evidence of approval thereof by Borrower's board of directors; and (vii) such budgets, sales projections, operating plans or other financial information generally prepared by Borrower in the ordinary course of business as Agent may reasonably request from time to time.

(a) Not later than twenty-five (25) days after the last day of each calendar month (which shall be extended to thirty (30) days for any such deliveries to be made within the first two months following the Closing Date), the Borrower shall deliver to Agent, in a form reasonably acceptable to Agent, (i) reconciliations of all of the Loan Parties' Accounts as shown on the report for the immediately preceding month to Loan Parties' accounts receivable agings, to Loan Parties' general ledger and to Loan Parties' most recent financial statements, (ii) a detailed aged trial balance of all Accounts as of the end of the preceding fiscal month, specifying each Account's debtor name and address, amount, invoice date and due date, showing any discount, allowance, credit, authorized return or dispute, and including such proof of delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as Agent may reasonably request, (iii) accounts payable agings, and (iv) accounts receivable agings.

(b) In connection with the deliveries under Sections 6.2(i) and (ii) above, Borrower shall deliver to Agent a Compliance Certificate certified as of the last day of the applicable month and signed by a Responsible Officer in substantially the form of Exhibit D hereto, which shall include agings of Borrower's accounts receivable and accounts payable.

(c) Promptly upon, but in any event within three (3) Business Days of becoming aware of the occurrence or existence of an Event of Default hereunder, Borrower shall deliver to Agent a written statement of a Responsible Officer setting forth details of the Event of Default, and the action which the Loan Parties have taken or proposes to take with respect thereto.

Borrower may deliver to Agent on an electronic basis any certificates, reports or information required pursuant to this Section 6.2, and Agent shall be entitled to rely on the information contained in the electronic files, provided that Agent in good faith believes that the files were delivered by a Responsible Officer. If Borrower delivers this information electronically, it shall also deliver to Agent by U.S. Mail, reputable overnight courier service, hand delivery, facsimile or .pdf file within five (5) Business Days of submission of the unsigned electronic copy the certification of monthly financial statements and the Compliance Certificate, each bearing the physical signature of the Responsible Officer.

6.3 Taxes. Each Loan Party shall make, and cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local Taxes, assessments, or contributions required of it by law, including, but not limited to, those laws concerning income taxes, F.I.C.A., F.U.T.A. and state disability, and will execute and deliver to Agent, on demand, proof reasonably satisfactory to Agent indicating that Borrower or a Subsidiary has made such payments or deposits and any appropriate certificates attesting to the payment or deposit thereof; provided that Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower and such non-payment does not result in a Lien which is not a Permitted Lien.

6.4 Insurance.

(a) The Loan Parties, at their expense, shall keep the Collateral insured against such hazards and risks, and in such amounts, as customarily insured against by other owners in similar businesses conducted in the locations where each Loan Party's business is conducted on the date hereof. The Loan Parties shall also maintain liability and other insurance in amounts and of a type that are customary to businesses similar to the Loan Parties' business.

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as reasonably satisfactory to Agent. All policies of property insurance shall contain a lender's loss payable endorsement, in a form reasonably satisfactory to Agent, showing Agent as lender's loss payee, and all liability insurance policies shall show Agent as an additional insured and all such policies shall specify that the insurer must give at least thirty (30) days' notice to Agent before canceling its policy for any reason (or ten (10) days' notice in the event of cancellation for nonpayment). All policies of insurance shall be addressed to Agent as follows: East West Bank as Agent for the Lenders, its Successors and / or Assigns, P.O. Box 60021, City of Industry, CA 91716, Attention: Cue Health Inc. Account Manager. Upon Agent's reasonable request, Borrower shall deliver to Agent certified copies of the policies of insurance and evidence of all premium payments. All proceeds payable under any such policy shall, unless Agent otherwise consents, be payable to Agent to be applied on account of the Obligations. Notwithstanding the foregoing sentence, if no Event of Default has occurred and is continuing, proceeds payable under any insurance policy will, at Borrower's option, be payable to Borrower to repair or replace the property subject to the claim, provided that any such replacement property shall be deemed Collateral in which Agent has been granted a first priority security interest (subject to Permitted Liens); provided further, however, that the aggregate amount of all such proceeds paid directly to Borrower pursuant to this Section shall not exceed [**] Dollars ($[**]) per fiscal year.

6.5 Accounts. Each Loan Party shall maintain all of its primary depository and operating accounts with Agent and its primary investment accounts with Lender or Lenders' Affiliates (covered by reasonably satisfactory control agreements). All accounts, other than Excluded Accounts, shall be subject to control agreements in form and content reasonably acceptable to Agent.

6.6 Reserved.

6.7 Financial Covenants.

(a) Asset Coverage Ratio. At all times, Borrower shall have a minimum asset coverage ratio of not less than 1.25 to 1.00 measured as (i) the sum of cash maintained in deposit accounts with Agent not subject to any Lien other than the Liens in favor Agent plus fifty percent (50%) of Eligible Accounts as Required Lenders determine are eligible, to (ii) all Obligations outstanding hereunder.

(b) Minimum Remaining Months Liquidity. As measured on the last day of each calendar month, Borrower shall maintain a minimum of six (6) months remaining liquidity measured as (i) cash maintained in deposit accounts with Agent not subject to any Lien other than the Liens in favor Agent, divided by (ii) the average of, for the last three (3) calendar months, net income (inclusive of grants received but not yet recognized per GAAP, if applicable and approved by Lenders, to be subtracted once recognized as income per GAAP), plus, to the extent deducted in determining net income, depreciation expense, amortization expense, and less unfunded capital expenditures, all for the Borrower and all as determined in accordance with GAAP.

(c) Minimum Liquidity. At all times, Borrower shall have a minimum liquidity measured as cash maintained in deposit accounts with Agent not subject to any Lien other than the Liens in favor Agent, of at least $80,000,000.00.

6.8 Registration of Intellectual Property Rights.

(a) Borrower shall register or cause to be registered (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as the case may be, those registrable intellectual property rights now owned or hereafter developed or acquired by Borrower, to the extent that Borrower, in its reasonable business judgment, deems it appropriate to so protect such intellectual property rights.

(b) Borrower shall promptly, but in any event within thirty (30) days after filing, give Agent written notice of any applications or registrations of intellectual property rights filed with the United States Patent and Trademark Office, including the date of such filing and the registration or application numbers, if any.

(c) Borrower shall (i) promptly, but in any event within thirty (30) days after filing, give Agent written notice of the filing of any applications or registrations with the United States Copyright Office, including the title of such intellectual property rights to be registered, as such title will appear on such applications or registrations, and the date such applications or registrations will be filed; (ii) promptly, but in any event within thirty (30) days after filing, execute such documents as Agent may reasonably request for Agent to maintain its perfection in such intellectual property rights to be registered by Borrower; (iii) upon the request of Agent, either deliver to Agent or file such documents promptly, but in any event within thirty (30) days after filing any such applications or registrations with the United States Copyright Office; (iv) promptly, but in any event within thirty (30) days after filing, provide Agent with a copy of such applications or registrations together with any exhibits, evidence of the filing of any documents requested by Agent to be filed for Agent to maintain the perfection and priority of its security interest in such intellectual property rights, and the date of such filing.

(d) Borrower shall execute and deliver such additional instruments and documents from time to time as Agent shall reasonably request to perfect and maintain the perfection and priority of Agent's security interest in the Intellectual Property Collateral.

(e) Borrower shall use commercially reasonably efforts to (i) protect, defend and maintain the validity and enforceability of Borrower's trademarks, patents, copyrights, and trade secrets, (ii) detect infringements of the copyrights, trademarks and patents and promptly advise Agent in writing of material infringements detected and (iii) not allow any material copyrights, trademarks and patents to be abandoned, forfeited or dedicated to the public without the written consent of Agent, which shall not be unreasonably withheld.

(f) Agent may audit Borrower's Intellectual Property Collateral to confirm compliance with this Section 6.8. Notwithstanding the foregoing, unless an Event of Default has occurred and is continuing, the Loan Parties' shall only be obligated to reimburse Agent for one (1) such Intellectual Property Collateral audit in each calendar year. Agent shall have the right, but not the obligation, to take, at Borrower's sole expense, any actions that Borrower is required under this Section 6.8 to take but which Borrower fails to take, after fifteen (15) days' notice to Borrower. Borrower shall reimburse and indemnify Agent for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section 6.8.

6.9 Consent of Inbound Licensors. Prior to entering into or becoming bound by any inbound license or agreement (other than over-the-counter software that is commercially available to the public), the failure, breach, or termination of which could reasonably be expected to cause a Material Adverse Effect, Borrower shall: (a) provide written notice to Agent of the material terms of such license or agreement with a description of its likely impact on Borrower's business or financial condition; and (b) in good faith take such actions as Agent may reasonably request to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) Borrower's interest in such licenses or contract rights to be deemed Collateral and for Agent (on behalf of the Lenders) to have a security interest in it that might otherwise be restricted by the terms of the applicable license or agreement, whether now existing or entered into in the future, and (ii) Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent's and Lenders' rights and remedies under this Agreement and the other Loan Documents.

6.10 Creation/Acquisition of Subsidiaries and Other Equity Interests. With respect to each Formed Subsidiary or Acquired Subsidiary, such Loan Party and such Subsidiary, as applicable, shall promptly notify Agent of the creation or acquisition of such new Subsidiary or other equity interests and take all such action as may be reasonably required by Agent to cause each such domestic Subsidiary to guarantee the Obligations of Borrower under the Loan Documents and grant a continuing pledge and security interest in and to the collateral of such Subsidiary (substantially as described on Exhibit B hereto), and such Loan Party shall grant and pledge to Agent a perfected security interest in the stock, units or other evidence of ownership of each Subsidiary or other equity interest acquired (whether foreign or domestic, but subject to the limitations in the definition of Collateral), deliver any and all certificates or other evidence of ownership of such Subsidiary or other equity interest acquired, together with stock or unit powers executed in blank, and take any other action in furtherance of the foregoing reasonably requested by Agent. For the avoidance of doubt, no direct or indirect parent company of the Borrower or any equity holder in the Borrower after giving effect to any SPAC Business Combination shall be required to guaranty the Obligations or pledge assets securing repayment of the Obligations.

6.11 Use of Proceeds. The proceeds of the Advances under the Revolving Line shall, unless otherwise consented to in writing by Agent, be used solely for (A) payment of interest, legal fees and Lender fees, (B) working capital needs and general corporate purposes of the Borrower (including, without limitation, costs, expense or other payables related to or required in connection with a SPAC Business Combination) and (C) paying off the Existing Indebtedness on the date hereof.

6.12 Fees.

(a) Borrower shall pay to Agent for the ratable benefit of each Lender having a commitment hereunder (i) an unused availability fee equal to one-quarter of one percent (0.25%) per annum of the daily unused portion of the Revolving Line which shall be calculated by subtracting the amount outstanding hereunder from the Revolving Line, which fee shall be payable quarterly in arrears on the last day of each calendar quarter, commencing with the quarter ending March 31, 2021 and (ii) a commitment fee equal to one-quarter of one percent (0.25%) of the commitment hereunder, which fee shall be due and payable on the date hereof.

(b) The Borrower shall pay (i) to Agent for distribution to the Lenders in accordance with their Revolving Loan Commitment Percentages, a non-refundable fee equal to [**] percentage points ([**]%) per annum of the outstanding undrawn amount of each standby Letter of Credit (including, for the avoidance of doubt, the Existing Letters of Credit), payable annually in advance, calculated on the basis of the face amount outstanding on the day the fee is calculated, and (ii) to Agent, for distribution to the L/C Issuer of the applicable Letter of Credit, such L/C Issuer's standard fees in connection with each commercial Letter of Credit, which fees shall be non-refundable under all circumstances.

(c) If Borrower terminates or permanently reduces the commitment, in whole or in part at any time before the Revolving Maturity Date, Borrower shall pay to Agent for the ratable benefit of each Lender having a commitment hereunder a prepayment fee equal to the amount by which the commitment is permanently reduced, or the outstanding commitment if terminated in full, times one percent (1.00%). The prepayment fee described in this Section is deemed fully earned and non-refundable as of the Closing Date and due and payable on the date of such termination or permanent reduction. Notwithstanding the foregoing, in the event that the Borrower, Agent and Lenders are not able to agree to a mutually acceptable amendment to permit a SPAC Business Combination pursuant to Section 12.10 hereof within one hundred twenty (120) days of the Closing Date, the Borrower shall be permitted to prepay any amounts outstanding hereunder and terminate the Commitment in full with no prepayment fee. All reductions in commitments pursuant to this paragraph shall be pro rata among the Lenders.

6.13 Further Assurances. At any time, and from time to time, the Loan Parties shall execute and deliver such further instruments and take such further action as may reasonably be requested by Agent and Lenders to effect the purposes of this Agreement.

6.14 Post-Closing Obligations. The Loan Parties shall complete each of the post- closing obligations and/or deliver to Agent each of the documents, instruments, agreements and information listed on the Post-Closing Obligations Schedule attached hereto as Exhibit F, on or before the date set forth for each such item thereon (as may be extended by the Agent in writing in its sole discretion), each of which shall be completed or provided in form and substance reasonably satisfactory to Agent and Lenders.

7. NEGATIVE COVENANTS.

Each Loan Party covenants and agrees that, so long as any credit hereunder shall be available and until the outstanding Obligations (other than inchoate indemnification or reimbursement obligations or other obligations which, by their terms, survive termination of this Agreement) are paid in full or for so long as any Lender may have any commitment to make any Credit Extensions, each Loan Party will not do any of the following without Required Lenders' prior written consent:

7.1 Dispositions. Convey, sell, lease, license, transfer or otherwise dispose of (collectively, to "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, or subject to Section 6.5 of the Agreement, move cash balances on deposit with Agent to accounts opened at another financial institution, other than Permitted Transfers.

7.2 Change in Name, Location, Executive Office, or Executive Management; Change in Business; Change in Fiscal Year; Change in Control. Change its name or the Borrower State or relocate its chief executive office without ten (10) days prior written notification to Agent; replace its chief executive officer or chief financial officer without providing written notification to Agent as soon as possible and in any event within ten (10) Business Days; engage in any business, or permit any of its Subsidiaries to engage in any business, other than reasonably related, ancillary, complementary or incidental businesses to the businesses currently engaged in by Borrower or a natural extension thereof; change its fiscal year end; have a Change in Control.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with or into any other business organization (other than mergers or consolidations of a Subsidiary into Borrower, or a Subsidiary into another Subsidiary), or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person, except (i) where such transactions constitute a Permitted Investment, (ii) no Event of Default has occurred, is continuing or would immediately exist after giving effect to such transactions, (iii) such transactions do not result in a Change in Control, and (iv) in any transaction involving Borrower, Borrower is the surviving entity.

7.4 Indebtedness. Create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness, or prepay any Indebtedness or take any actions which impose on a Loan Party an obligation to prepay any Indebtedness, except Indebtedness to Lenders.

7.5 Encumbrances. Create, incur, assume or allow any Lien with respect to any of its property (including any equity interests owned by it), or assign or otherwise convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries so to do, in each case, except for Permitted Liens, or covenant to any other Person that in the future it will refrain from creating, incurring, assuming or allowing any Lien with respect to any property.

7.6 Distributions. Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock, except that Borrower may (i) repurchase the stock of existing or former employees, officers and directors (their spouses, trusts, heirs and estates) pursuant to stock repurchase agreements in an amount not to exceed [**] Dollars ($[**]) in the aggregate per fiscal year as long as an Event of Default does not exist prior to such repurchase or would not immediately exist after giving effect to such repurchase, (ii) declare and make dividend payments or other distributions payable in stock or other equity interests, (iii) pay dividends or distributions in an aggregate amount equal to [**]% of the net cash proceeds of any sale of new common equity by the Borrower; and (iv) pay other dividends or distributions in an aggregate amount not to exceed $[**] per calendar year, provided that (A) no Event of Default shall exist before or after giving effect thereto, and (B) Borrower shall be in pro forma compliance with the financial covenants set forth in Section 6.7 hereof prior to and after giving effect to such dividends or distributions.

7.7 Investments. Directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries to do so, other than Permitted Investments and then so long as the Borrower is in compliance with Section 6.5 and 6.7 hereof prior to and upon giving effect to such investment, or maintain or invest any of its investment property with a Person other than a Lender or a Lender's Affiliates or permit any Subsidiary to do so unless such Person has entered into a control agreement with Agent on behalf of Lenders or Lenders otherwise have a perfected security interest in such property, in form and substance reasonably satisfactory to Agent, or suffer or permit any Subsidiary to be a party to, or be bound by, an agreement that restricts such Subsidiary from paying dividends or otherwise distributing property to a Loan Party (other than restrictions existing under the Loan Documents). Further, Borrower shall not enter into any license or agreement with any Prohibited Territory or with any Person organized under or doing business in a Prohibited Territory.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any transaction with any Affiliate except for transactions that are in the ordinary course of business, upon fair and reasonable terms that are no less favorable to such Loan Party than would be obtained in an arm's length transaction with a non-affiliated Person.

7.9 Subordinated Debt. Make any payment in respect of any Subordinated Debt, or permit any of its Subsidiaries to make any such payment, except in compliance with the terms of such Subordinated Debt and the terms of the subordination agreement relating to such Subordinated Debt, or amend, terminate or release any provision of any document evidencing such Subordinated Debt, except with Required Lenders' prior written consent and except in compliance with the terms of the subordination agreement relating to such Subordinated Debt, or amend any provision affecting Agent and Lenders' rights contained in any documentation, or in any way that is more restrictive on any Loan Party, relating to the Subordinated Debt, and each of the foregoing, except as noted above, without Agent's prior written consent.

7.10 No Investment Company; Margin Regulation. Become or be controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Credit Extension for such purpose.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an Event of Default by Borrower under this Agreement:

8.1 Payment Default. If Borrower fails to pay any of the Obligations when due.

8.2 Covenant Default.

(a) If Borrower or Guarantor fails to perform any obligation under Sections 6.2, 6.3, 6.4, 6.5, or 6.7 or violates any of the covenants contained in Article 7 of this Agreement; or

(b) If any Loan Party fails or neglects to perform or observe any other term, provision, condition, covenant contained in this Agreement, in any of the Loan Documents, and as to any default under such other term, provision, condition or covenant that can be cured, has failed to cure such default within [**] after the earlier of the date Borrower receives notice thereof or any officer of any Loan Party becomes aware thereof; provided, however, that if the default cannot by its nature be cured within the [**] period or cannot after diligent attempts by Borrower be cured within such [**] period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional reasonable period (which shall not in any case exceed [**]) to attempt to cure such default, so long as Borrower continues to diligently attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default but the Lenders shall not be required to make any Credit Extensions (and shall be permitted in their sole discretion to decline to make any Credit Extension) unless and until such default is cured.

8.3 Material Adverse Change. If there occurs any circumstance or circumstances that results in a Material Adverse Effect as determined by Agent or Required Lender in their reasonable credit judgment.

8.4 Defective Perfection. If Agent shall receive at any time following the Closing Date an SOS Report indicating that Agent's security interest in the Collateral is not prior to all other security interests or Liens of record reflected in the report other than as a result of Agent's failure to file or maintain its Lien or Liens securing Permitted Indebtedness that is allowed to be prior to Agent's security interest.

8.5 Attachment. If any material portion of any Loan Party's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within thirty (30) days, or if any Loan Party is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of any Loan Party's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of any Loan Party's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within thirty (30) days after such Loan Party receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by such Loan Party (provided that no Credit Extensions will be made during such cure period).

8.6 Insolvency. If the Loan Parties, taken as a whole on a consolidated basis, become insolvent, or if an Insolvency Proceeding is commenced by any Loan Party, or if an Insolvency Proceeding is commenced against any Loan Party and is not dismissed or stayed within forty-five (45) days (provided that no Credit Extensions will be made prior to the dismissal of such Insolvency Proceeding).

8.7 Other Agreements. (a) If there is a payment or bankruptcy default by any Loan Party in any agreement to which any Loan Party, as applicable, is a party with a third party or parties which either (i) is a material contract, or (ii) related to Indebtedness in an amount in excess of [**] Dollars ($[**]), or (b) there exists a right by a third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness of a Loan Party in an amount in excess of [**] Dollars ($[**]).

8.8 Subordinated Debt. If any Loan Party makes any payment on account of Subordinated Debt, except to the extent the payment is allowed under any subordination agreement entered into with Agent or otherwise permitted by this Agreement.

8.9 Judgments. If one or more final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least [**] Dollars ($[**]) (not covered by independent third-party insurance as to which liability has been accepted in writing by such insurance carrier) shall be rendered against any Loan Party or any Subsidiary and the same are not, within thirty (30) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that the Lenders shall not be required to make any Credit Extensions (and shall be permitted in their sole discretion to decline to make any Credit Extension) prior to the discharge, stay, or bonding of such judgment, order, or decree).

8.10 Misrepresentations. If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any certificate delivered to Agent by any Responsible Officer pursuant to this Agreement or to induce Lenders to enter into this Agreement or any other Loan Document.

8.11 Guaranty. If any guaranty of all or a portion of the Obligations including, without limitation, the guaranty provided in Section 4.5 hereof (each, a "**Guaranty**") ceases for any reason to be in full force and effect, or any guarantor fails to perform any obligation under any Guaranty or a security agreement securing any Guaranty (collectively, the "**Guaranty Documents**") and as to any default under such other term, provision, condition or covenant that can be cured, has failed to cure such default within any applicable cure periods, or any event of default occurs under any Guaranty Document or any guarantor revokes or purports to revoke a Guaranty, or any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth in any Guaranty Document or in any certificate delivered to Agent in connection with any Guaranty Document, or if any of the circumstances described in Sections 8.3 through 8.9 occur with respect to any guarantor.

8.12 Invalidity of Loan Documents. If any Loan Document, including for the avoidance of doubt, and subordination agreement with respect to any Subordinated Debt, ceases for any reason to be in full force and effect, or any party thereto contests in any manner the validity or enforceability of any Loan Document or any Lien granted pursuant thereto, denies that it has any or further liability or obligation thereunder, or purports to revoke, terminate or rescind any Loan Document.

8.13 Emergency Use Authorization. Borrower shall fail to have in place its emergency use authorization from the U.S. Food & Drug Administrative as in effect on the Closing Date.

8.14 Change in Control. A Change in Control shall occur.

9. LENDERS' RIGHTS AND REMEDIES.

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, the Agent may, and at the direction Required Lenders, shall, at their election, without notice of their election and without demand, do any one or more of the following, all of which are authorized by the Loan Parties:

(a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.6 (Insolvency), all Obligations shall become immediately due and payable without any action by Agent or Lenders);

(b) Cease advancing money or extending credit to or for the benefit of Borrower under this Agreement or under any other agreement between Borrower and Lenders;

(c) Settle or adjust disputes and claims directly with account debtors for amounts, upon terms and in whatever order that Agent reasonably considers advisable;

(d) Make such payments and do such acts as Agent or Required Lenders consider necessary or reasonable to protect the Agent's security interest (for the benefit of the Lenders) in the Collateral. The Loan Parties agree to assemble the Collateral if Agent so requires, and to make the Collateral available to Agent as Agent may designate in a location reasonably convenient to Agent. The Loan Parties authorize Agent to peaceably enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Agent's determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of the Loan Parties' owned premises, such Loan Party hereby grants Agent a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Agent's rights or remedies provided herein, at law, in equity, or otherwise;

(e) Set-off and apply to the Obligations any and all (i) balances and deposits of any Loan Party held by Agent or any Lender, and (ii) Indebtedness at any time owing to or for the credit or the account of any Loan Party held by Agent or any Lender;

(f) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Agent, on behalf of Lenders, is hereby granted a license or other right, solely pursuant to the provisions of this Section 9.1, to use solely following the occurrence and during the continuance of an Event of Default, without charge, any Loan Party's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Section 9.1, any Loan Party's rights under all licenses and all franchise agreements shall inure to Agent's benefit;

(g) Except as otherwise provided in the Code, upon at least ten (10) days prior written notice, sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including any Loan Party's premises) as are commercially reasonable, and apply any proceeds to the Obligations in whatever manner or order Agent deems appropriate. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Agent, and applied to the indebtedness of the purchaser. If the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrower shall be credited with the proceeds of such sale;

(h) Agent and/or any Lender may credit bid and purchase at any public sale;

(i) Apply for the appointment of a receiver, trustee, liquidator or conservator of the Collateral, without notice and without regard to the adequacy of the security for the Obligations and without regard to the solvency of any Loan Party or any other Person liable for any of the Obligations; and

(j) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

Agent and Lenders may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

9.2 Power of Attorney. Each Loan Party hereby irrevocably appoints Agent (and any of Agent's designated officers, or employees) as its true and lawful attorney to: (a) in consultation with Borrower, send requests for verification of Accounts or notify account debtors of Agent's security interest in the Accounts; (b) endorse such Loan Party's, as applicable, name on any checks or other forms of payment or security that may come into Agent's possession;
(a) sign such Loan Party's name, as applicable, on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (d) dispose of any Collateral; (e) make, settle, and adjust all claims under and decisions with respect to any Loan Party's policies of insurance; (f) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Agent determines to be reasonable; and (g) file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of any Loan Party; provided Agent may exercise such power of attorney to sign the name of any Loan Party, as applicable, on any of the documents described in clause (g) above, regardless of whether an Event of Default has occurred. The appointment of Agent as each Loan Party's attorney in fact, and each and every one of Agent's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations (other than inchoate indemnification or reimbursement obligations or other obligations which, by their terms, survive termination of this Agreement) have been fully repaid and performed and Agent's and each Lender's obligation to provide Advances hereunder is terminated.

9.3 Accounts Collection. In consultation with Borrower, Agent may notify any Person owing funds to any Loan Party of Agent's security interest in such funds and verify the amount of such Account and direct that any payments with respect thereto be deposited directly into the Collection Account, if and to the extent not already so deposited pursuant to the instructions provided by the Borrower in accordance with Section 4.4. Borrower shall collect all amounts owing to Borrower for Agent, receive in trust all payments as Agent's trustee, and immediately deliver such payments to Agent in their original form as received from the account debtor, with proper endorsements for deposit.

9.4 Lender Expenses. If any Loan Party fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Agent may do any or all of the following: (a) make payment of the same or any part thereof; (b) set up such reserves under the Revolving Line as Agent deems necessary to protect Lenders from the exposure created by such failure; or (c) obtain and maintain insurance policies of the type discussed in Section 6.4 of this Agreement, and take any action with respect to such policies as Agent reasonably deems prudent. Any amounts so paid or deposited by Agent shall constitute Lender Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Agent shall not constitute an agreement by Agent to make similar payments in the future or a waiver of any Event of Default under this Agreement.

9.5 Liability for Collateral. Neither Agent nor any Lender has any obligation to clean up or otherwise prepare the Collateral for sale. All risk of loss, damage or destruction of the Collateral shall be borne by the Loan Parties, absent gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment on the part of the Agent.

9.6 No Obligation to Pursue Others. Neither Agent nor any Lender has any obligation to attempt to satisfy the Obligations by collecting them from any other person liable for them and Agent may release, modify or waive any Collateral provided by any other Person to secure any of the Obligations, all without affecting Agent's or Lenders' rights against any Loan Party. Each Loan Party waives any right it may have to require Agent or any Lender to pursue any other Person for any of the Obligations.

9.7 Remedies Cumulative. Agent's and Lenders' rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Agent and Lenders shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Agent of one right or remedy shall be deemed an election, and no waiver by Agent of any Event of Default shall be deemed a continuing waiver. No delay by Agent shall constitute a waiver, election, or acquiescence by it. No waiver by Agent shall be effective unless made in a written document signed on behalf of Agent and then shall be effective only in the specific instance and for the specific purpose for which it was given. Each Loan Party expressly agrees that this Section 9.7 may not be waived or modified by Agent by course of performance, conduct, estoppel or otherwise.

9.8 Demand; Protest. Except as otherwise provided in this Agreement, each Loan Party waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment and any other notices relating to the Obligations.

10. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first- class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or by electronic mail to any Loan Party or to Agent, as the case may be, at its addresses set forth below:

If to any Loan Party: Cue Health Inc.
4980 Carroll Canyon Rd., Suite 100
San Diego, CA 92121
Attn: Ayub Khattak, Chief Executive Officer
Email: [**]

If to Agent: East West Bank
9378 Wilshire Blvd., Suite 100
Beverly Hills, CA 90212
Attn: Maytal Shainberg
Email: [**]

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE.

California law governs the Loan Documents without regard to principles of conflicts of law. The Loan Parties, Agent and Lenders each submit to the exclusive jurisdiction of the State and Federal courts in Los Angeles County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Agent or Lenders from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Agent and/or Lenders. Each Loan Party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Loan Party hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Each Loan Party hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

IF AND ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LOAN PARTIES, AGENT AND LENDERS EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IF PERMITTED BY APPLICABLE LAW, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, who is a former or retired judge of any California Federal or State Court, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Either party shall have the right to object to the decision of the private judge and to appeal as provided for in the California Code of Civil Procedure. Nothing in this paragraph shall limit the right of any party at any time to exercise self- help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

12. GENERAL PROVISIONS.

12.1 Successors and Assigns.

(a) This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties and shall bind all persons who become bound as a debtor to this Agreement; provided, however, that neither this Agreement nor any rights hereunder may be assigned by Borrower without the prior written consent of the Agent and each Lender, which each such consent may be granted or withheld in the Agent's or such Lender's sole discretion, as applicable. Subject to the restrictions set forth in clause (b) below, each Lender shall have the right to sell, transfer, assign negotiate, or grant participation in all or any part of, or any interest in, such Lender's obligations, rights and benefits hereunder.

(b) No Lender may assign any or all of its interests hereunder to (i) the Borrower or any of the Borrower's Affiliates or Subsidiaries, (ii) any Defaulting Lender, (iii) a natural person or an investment vehicle or trust for the benefit of a natural person. All assignments by a Lender shall be subject to the following consents:

(i) unless an Event of Default has occurred, the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required for assignments to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within five (5) Business Days after having received notice thereof and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Revolving Loan;

(ii) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(iii) the consent of each L/C Issuer (such consent not to be unreasonably withheld or delayed).

(c) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

12.2 Indemnification. Borrower shall defend, indemnify and hold harmless Lenders and their respective officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement and/or the Loan Documents; and (b) all losses or Lender Expenses in any way suffered, incurred, or paid by any Lender, its officers, employees and agents as a result of or in any way arising out of, following, or consequential to transactions between Lenders and Borrower whether under this Agreement, or otherwise (including without limitation reasonable attorneys' fees and expenses), except, in each case, for obligations, demands, claims, liabilities, losses and expenses caused by Agent and or Lenders' gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment.

12.3 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12.5 Correction of Loan Documents. Agent may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties so long as Agent provides Borrower with written notice of such correction and allows Borrower at least ten (10) days to object to such correction.

12.6 Amendments in Writing, Integration. All amendments, modifications, waivers and consents to or terminations of this Agreement or the other Loan Documents, must be in writing signed by the Loan Parties and the Required Lenders, and such additional Lenders as set forth below. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement and the other Loan Documents, if any, are merged into this Agreement and the Loan Documents.

(a) Lender Consent. Notwithstanding the foregoing, no amendment, modification, waiver or consent shall:

(i) extend or increase any commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 3 or the waiver of any Default shall not constitute an extension or increase of any commitment of any Lender);

(ii) reduce or forgive the principal of, or rate of interest specified herein on, any Advance or any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly and adversely affected thereby (provided that only the consent of the Required Lenders shall be necessary (x) to amend the default rate set forth in Section 2.3(b) or to waive the obligation of the Borrower to pay interest at such default rate or (y) to amend any financial covenant (or any defined term directly or indirectly used therein), even if the effect of such amendment would be to reduce the rate of interest on any Advance or other Obligation or to reduce any fee payable hereunder);

(iii) postpone any date scheduled for any payment of principal of, or interest on, any Advance, or any fees or other amounts payable hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, without the written consent of each Lender directly and adversely affected thereby;

(iv) change any provision of this Section or the percentage in the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(v) affect the rights or duties hereunder or under any other Loan Document of the Agent, unless in writing executed by the Agent, in each case in addition to the Borrower and the Lenders required above; or

(vi) change or amend Section 12.11, Section 12.12 or any other provision of this Agreement providing for pro rata treatment of Lenders, in each case, without the written consent of each Lender;

(vii) release any Guarantor from its obligation under its guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender;

(viii) release all or substantially all of the Collateral (except as otherwise expressly permitted herein or in the other Loan Documents) without the written consent of each Lender;

(ix) subordinate the Obligations or the Liens granted under the Loan Documents, to any other Indebtedness or Liens, without the written consent of each Lender;

(x) amend, modify, terminate or waive any obligation of the Lenders relating to the purchase of participations in Letters of Credit as provided in Section 2.1 without the written consent of the Agent and each L/C Issuer;

(xi) change any component of the definition of Eligible Accounts to increase eligibility thereunder without the consent of Required Lenders, and each Lender as of the Closing Date (which, for the avoidance of doubt, is East West Bank, Comerica Bank, and Silicon Valley Bank); or

(xii) change or amend Section 6.7(b) without the written consent of Required Lenders, and each Lender as of the Closing Date (which, for the avoidance of doubt, is East West Bank, Comerica Bank, and Silicon Valley Bank).

(b) In addition, notwithstanding anything in this Section to the contrary, if the Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Agent and the Borrower shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders to the Agent within five (5) Business Days following receipt of notice thereof.

(c) Replacement of Lenders. If any Lender is a Non-Consenting Lender, then the Agent may upon notice to such Lender, require such Lender to assign and delegate, without recourse, all of its interests, rights (other than its existing rights to payments) and obligations under this Agreement and the related Loan Documents to an assignee permitted hereunder that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) such Non-Consenting Lender shall have received, as applicable, payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee or the Borrower, as applicable; and

(ii) the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Agent to require such assignment and delegation cease to apply.

12.7 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Agent \constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.1, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Agent to accept electronic signatures in any form or format without its prior written consent.

12.8 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations (other than inchoate indemnification and reimbursement obligations and other obligations which, by their terms, survive termination of this Agreement) remain outstanding or Lenders have any obligation to make any Credit Extension to Borrower. The obligations of Borrower to indemnify Lenders with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Lenders have run.

12.9 Confidentiality. In handling any confidential information, Agent and Lenders and all employees and agents of Agent and Lenders shall exercise the same degree of care that each Lender exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Agreement except that disclosure of such information may be made (i) to the subsidiaries or Affiliates of Lenders in connection with their present or prospective business relations with Borrower, (ii) to prospective transferees or purchasers of any interest in the Loans provided they have entered into a confidentiality agreement with terms no less restrictive than those set forth herein in favor of Borrower and have delivered a copy to Borrower, (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar order, (iv) as may be required in connection with the examination, audit or similar investigation of Lender, (v) to Lenders’ accountants, auditors and regulators, and (vi) as Lender may reasonably determine necessary in connection with the enforcement of any remedies hereunder. Confidential information hereunder shall not include information that either: (a) is in the public domain or in the knowledge or possession of Lender when disclosed to Lender, or becomes part of the public domain after disclosure to Lender through no fault of Lender; or (b) is disclosed to Lender by a third party, provided Lender does not have actual knowledge that such third party is prohibited from disclosing such information.

12.10 SPAC Business Combination. The parties hereto agree to negotiate in good faith to amend this agreement as needed permit a SPAC Business Combination on terms acceptable to all such parties provided that all information related thereto requested by Agent or any Lender has been provided by Borrower and provided that any such amendment, including, without limitation, any amendments to the negative covenants set forth in Article 8 of this Agreement, shall be subject to the Agent's and Lender's reasonably business judgement.

12.11 Application of Payments and Proceeds. Upon the occurrence and during the continuance of an Event of Default and after the acceleration of the principal amount of any of the Revolving Loans, all payments and proceeds in respect of any of the Obligations received by the Agent or any Lender under any Loan Document, including any proceeds of any sale of, or other realization upon, all or any part of the Collateral, shall be applied as follows:

first, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to the Agent and/or each L/C Issuer with respect to this Agreement, the other Loan Documents or the Collateral;

second, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any other Lender with respect to this Agreement, the other Loan Documents or the Collateral;

third, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute, would have accrued on such amounts);

fourth, to the principal amount of the Obligations, including to cash collateralize existing obligations with respect to Letters of Credit in compliance with this Agreement,

fifth, to the Obligations owing to any counterparty in respect of any Lender Hedging Agreement;

sixth, to any other Obligations owing to the Agent or any other Lender under the Loan Documents; and

seventh, to the Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct.

In carrying out the foregoing, (a) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (b) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category.

12.12 Adjustments; Set-off.

(a) If any Lender (a "benefitted Lender") shall at any time exercise any set-off right or receive any payment of all or part of its Revolving Loans, or its participations in Letters of Credit, or interest thereon, or fees, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to bankruptcy or insolvency proceedings or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Revolving Loans, its participation in Letters of Credit, or interest thereon, or fees, such benefitted Lender shall purchase for cash from the other Lenders such portion of each such other Lender's Revolving Loans or fees, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such benefitted Lender to share the excess payment or benefits of such collateral or proceeds ratably with each of the Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. The Borrower agrees that each Lender so purchasing a portion of another Lender's Loans or its participation in Letters of Credit may exercise all rights of payment (including, without limitation, rights of set-off) with respect to such portion as fully as if such Lender were the direct holder of such portion, provided that, for the avoidance of doubt but subject to the foregoing provisions of this Section 12.12(a), any Lender shall have the right (without further consent of the Borrower, the Agent or any other Lender), exercisable upon the occurrence and during the continuance of an Event of Default, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, to set-off and appropriate and apply against any such Obligations any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof or bank controlling such Lender to or for the credit or the account of the Borrower.

(b) In addition to any rights and remedies of the Agent provided by law, the Agent shall have the right (without further consent of the Borrower or any other Lender), exercisable upon the occurrence and during the continuance of an Event of Default, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, to set-off and appropriate and apply against any such Obligations any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Agent or any branch or agency thereof or bank controlling the Agent to or for the credit or the account of the Borrower.

12.13 Taxes.

(a) All sums payable by or on behalf of any Loan Party under the Loan Documents shall, except to the extent required by applicable law, be paid free and clear of, and without any deduction or withholding on account of, any Taxes. If any Loan Party or any other Person (acting as a withholding agent) is (in such withholding agent's reasonable good faith discretion) required by applicable law to make any deduction or withholding on account of any Tax from any sum paid or payable by any Loan Party to the Agent or any Lender (which term for purposes of this Section 12.13 shall include any L/C Issuer and any assignee of a Lender, L/C Issuer) under any of the Loan Documents: (i) such Loan Party or other withholding agent shall be entitled to make such deduction or withholding; (ii) if a Loan Party is the applicable withholding agent, the applicable Loan Party shall timely pay any such Tax to the relevant Governmental Authority in accordance with applicable law; and (iii) in the case of Indemnified Taxes, the sum payable by such Loan Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of such deduction, withholding or payment, the Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made.

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

(c) Within thirty (30) days after the due date of payment of any Tax which it is required by this Section 12.13 to pay, if a Loan Party is the applicable withholding agent, such Loan Party shall deliver to the Agent the original or certified copy of a receipt issued by the relevant Governmental Authority evidencing such payment or other evidence reasonably satisfactory to the Agent of such deduction, withholding or payment and of the remittance thereof to the relevant Governmental Authority.

(d) The Loan Parties shall jointly and severally indemnify the Agent and each Lender, within ten (10) days after demand therefor, for the full amount of Indemnified Taxes (including any Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 12.13) payable or paid by the Agent or any such Lender or any of their respective Affiliates arising in connection with payments made under any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, prepared in reasonable detail shall be conclusive absent manifest error. Any such certificate must be provided within six (6) months of incurrence of such tax liability by the Agent or Lender.

(e) Each Lender shall severally indemnify the Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that a Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of such Loan Party to do so), and (ii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this paragraph (c).

(f) The Loan Parties' obligations under this Section 12.13 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Loan Commitments, the expiration of the Letters of Credit and the repayment, satisfaction or discharge of all Obligations.

13. AGENT

13.1 Appointment and Duties. For the avoidance of doubt and notwithstanding anything else herein:

(a) Each Lender hereby appoints Agent (together with any successor Agent) as agent hereunder and authorizes Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Loan Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Agent under such Loan Documents and (iii) exercise such powers as are incidental thereto.

(b) Without limiting the generality of clause (a) above, Agent shall have the sole and exclusive right and authority (to the exclusion of the other Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents, and each Person making any payment in connection with any Loan Document to any Lender is hereby authorized to make such payment to Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of Lenders with respect to any Obligation in any Insolvency Proceeding or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Person), (iii) act as collateral agent for each Lender for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to Agent and the other Lenders with respect to the Collateral, whether under the Loan Documents, applicable law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Agent, Lenders for purposes of the perfection of Liens with respect to any deposit account maintained by a Loan Party with, and cash and cash equivalents held by, such Lender, and may further authorize and direct Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Under the Loan Documents, Agent (i) is acting solely on behalf of Lenders, with duties that are entirely administrative in nature, notwithstanding the use of the defined term "Agent", the terms "agent", "Agent" and "collateral agent" and similar terms in any Loan Document to refer to Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Person and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above.

13.2 Binding Effect. Each Lender, by accepting the benefits of the Loan Documents, agrees that (i) any action taken by Agent in accordance with the provisions of the Loan Documents and (ii) the exercise by Agent of the powers set forth herein or therein, together with such other powers as are incidental thereto, shall be authorized and binding upon all of Lenders.

13.3 Use of Discretion.

(a) Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that Agent is required to exercise; provided, that Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Agent to liability or that is contrary to any Loan Document or applicable requirement of law.

(b) Agent shall provide copies of the various deliverables provided to it by the Borrower pursuant to clauses 5.6, 5.12, 6.2 hereof to the other Lenders; provided that Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or its Affiliates that is communicated to or obtained by Agent or any of its Affiliates in any capacity other than its capacity as Agent hereunder.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Agent in accordance with the Loan Documents for the benefit of all Lenders; provided that the foregoing shall not prohibit (i) Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (ii) any Lender from exercising set-off rights in accordance with the terms hereof or (iii) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any bankruptcy or other debtor relief law.

13.4 Delegation of Rights and Duties. Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender), provided that Agent shall be liable for all acts or failures to act of any such Person to the same extent as Agent would be if Agent performed such action. Any such Person shall benefit from this Article 13 to the extent provided by Agent.

13.5 Reliance and Liability.

(a) Agent may, without incurring any liability hereunder, (i) treat the payee of any note issued hereunder as its holder until such note has been assigned in accordance with the terms of this Agreement, (ii) rely on the Register, (iii) consult with any advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Loan Party) and (iv) rely and act upon any document and information (including those transmitted by electronic transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) None of Agent and its officers, employees, affiliates or agents shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender, each Borrower and each other Loan Party hereby waive and shall not assert (and each Borrower shall cause each other Loan Party to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting from the gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment of Agent or, as the case may be, such officers, employees, affiliates or agents (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein.

(c) Each Lender (i) acknowledges that it has performed and will continue to perform its own diligence and has made and will continue to make its own independent investigation of the operations, financial conditions and affairs of Loan Parties and (ii) agrees that is shall not rely on any audit or other report provided by Agent.

13.6 Agent Individually. Agent and its Affiliates may make loans and other extensions of credit to, acquire Equity Interests of, engage in any kind of business with, any Loan Party or Affiliate thereof as though it were not acting as Agent and may receive separate fees and other payments therefor. To the extent Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the term “Lender” and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, Agent or such Affiliate, as the case may be, in its individual capacity as Lender.

13.7 Lender Credit Decision. Each Lender acknowledges that it shall, independently and without reliance upon Agent, any Lender or upon any document (including any offering and disclosure materials in connection with the syndication of the Loans) solely or in part because such document was transmitted by Agent, conduct its own independent investigation of the financial condition and affairs of each Loan Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by Agent to Lenders, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party that may come in to the possession of Agent or any of its Related Persons, except to the extent of any costs and expenses resulting from the gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment of Agent or, as the case may be, such officers, employees, affiliates or agents (each as determined in a final, non-appealable judgment by a court of competent jurisdiction).

13.8 Expenses; Indemnities.

(a) Each Lender agrees to reimburse Agent and each of its Related Persons (to the extent not reimbursed by any Loan Party) promptly upon demand, severally and ratably, for any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Taxes paid in the name of, or on behalf of, any Loan Party) that may be incurred by Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including, without limitation, preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees, within thirty (30) days after demand therefor, to indemnify Agent (to the extent not reimbursed by any Loan Party), severally and ratably, from and against liabilities that may be imposed on, incurred by or asserted against Agent in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Agent or any of its Related Persons under or with respect to any of the foregoing except to the extent of liabilities resulting from the gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment of Agent or, as the case may be, such officers, employees, affiliates or agents (each as determined in a final, non-appealable judgment by a court of competent jurisdiction). A certificate as to the amount of such payment or liability delivered to any Lender by Agent shall be conclusive absent demonstrable error. Each Lender hereby authorizes Agent to apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Agent to such Lender from any other source against any amount due to Agent under this Section 13.8(b).

13.9 Resignation of Agent.

(a) Agent may resign at any time by delivering notice of such resignation to Lenders and Borrower, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective in accordance with the terms of this Section 13.9. If Agent delivers any such notice, Lenders shall have the right to appoint a successor Agent. If, after thirty (30) days after the date of retiring Agent's notice of resignation, no successor Agent has been appointed by Lenders that has accepted such appointment, then the retiring Agent may, on behalf of Lenders, appoint a successor Agent from among Lenders.

(b) Effective immediately upon its resignation, (i) the retiring Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) Lenders shall assume and perform all of the duties of Agent until a successor Agent shall have accepted a valid appointment hereunder, (iii) the retiring Agent shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such Agent had been, validly acting as Agent under the Loan Documents and (iv) the retiring Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Agent, a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent under the Loan Documents.

13.10 Release of Collateral or Guarantors. Each Lender hereby consents to the release and hereby directs Agent to release or subordinate the following:

(a) any Subsidiary of Borrower from its guaranty of any Obligation if all of the equity interests of such Subsidiary are sold or transferred in a transaction permitted by the Loan Documents; and

(b) any Lien held by Agent for the benefit of Lenders against (i) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Loan Party in a transaction permitted by the Loan Documents (including pursuant to a waiver or consent), (ii) any property subject to a Lien permitted under clause (n) of the definition of Permitted Lien and (iii) all of the Collateral and all Loan Parties, upon termination of the Revolving Line or the occurrence of the Revolving Maturity Date.

Each Lender hereby directs Agent, and Agent hereby agrees, upon receipt of notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this Section 13.10.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

CUE HEALTH INC. as Borrower

By: /s/ Ayub Khattak
Name: Ayub Khattak
Title: President, Chief Executive Officer, Secretary and Treasurer

EAST WEST BANK as Agent and Lender

By: /s/ Maytal Shainberg
Name: Maytal Shainberg
Title: Senior Vice President

COMERICA BANK as Lender

By: /s/ Robert Hernandez
Name: Robert Hernandez
Title: SVP, Group Manager

SILICON VALLEY BANK as Lender

By: /s/ R. Michael White
Name: R. Michael White
Title: Head of BD, SVB LS&HC

EXHIBIT A

DEFINITIONS

"Accounts" means all presently existing and hereafter arising "accounts," as such term is defined in Section 9102 of the Code, contract rights, instruments (including those evidencing indebtedness owed to Borrower by its Affiliates), general intangibles, payment intangibles, chattel paper (including electronic chattel paper) and all other forms of obligations owing to Borrower arising out of the sale or lease of goods or inventory (including, without limitation, the licensing of digital content, software and other technology) or the rendering of services by Borrower and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's Books relating to any of the foregoing.

"Advance" or "Advances" means a cash advance or cash advances or issuance of a Letter of Credit under the Revolving Line.

"Affiliate" means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, and each of such Person's senior executive officers, directors, and partners.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.
"Borrower State" means Delaware, the state under whose laws Borrower is organized. "Borrower's Books" means all of Borrower's books and records including: ledgers;
records concerning Borrower's assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment, containing such information.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks in the State of California or the State of New York are authorized or required to close.

"Cash" means Unrestricted Cash and Cash Equivalents that are not subject to any Lien other than Lien under the Loan Documents.

"Cash Equivalents" means (a) any readily-marketable securities (i) issued by, or directly, unconditionally and fully guaranteed or insured by the United States federal government or
(ii) issued by any agency of the United States federal government the obligations of which are fully backed by the full faith and credit of the United States federal government, (b) any readily- marketable direct obligations issued by any other agency of the United States federal government, any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case having a rating of at least "A-1" from S&P or at least "P-1" from Moody's, (c) any commercial paper rated at least "A-1" by S&P or "P-1" by Moody's and issued by any Person organized under the laws of any state of the United States, (d) any Dollar- denominated time deposit, certificate of deposit, overnight bank deposit or bankers' acceptance issued or accepted by any Lender or any commercial bank that is, in each case, rated investment grade by both S&P and Moody's, (e) interests in any money market fund registered under the Investment Company Act of 1940 that (i) has substantially all of its assets invested continuously in the types of investments referred to in clause (a), (b), (c) or (d) above with maturities as set forth in the proviso below, (ii) has net assets in excess of [**] Dollars ($[**]) and (iii) has obtained from either S&P or Moody's the highest rating obtainable for money market funds in the United States, and (f) other cash equivalents determined by the Agent to have a risk equivalent to items rated at least "A-1" by S&P or "P-1" by Moody's and otherwise acceptable from time to time to the Agent; provided, however, that the maturities of all obligations specified in any of clauses (a) through (d) above shall not exceed 365 days.

"Cash Management Obligations" means the obligations of the Loan Parties to the Agent or any Lender under one or more credit cards, debit cards, cash management agreements, deposit account agreements, treasury agreements, sweep agreements or similar agreements pertaining to cash management services.

"Change in Control" shall mean a transaction in which any "person" or "group" (other than Borrower's existing investors) (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of a sufficient number of shares of all classes of stock then outstanding of Borrower ordinarily entitled to vote in the election of directors, empowering such "person" or "group" to elect a majority of the Board of Directors of Borrower, who did not have such power before such transaction.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Chief Executive Office State" means California, where Borrower's chief executive office is located.

"Closing Date" means the date of this Agreement.

"Code" means the California Uniform Commercial Code as amended or supplemented from time to time.

"Collateral" means all of Borrower's right, title and interest in and to the property described on Exhibit B attached hereto and all Intellectual Property Collateral except to the extent (i) any such property is nonassignable by its terms without the consent of the licensor thereof or another party (but only to the extent such prohibition on transfer remains in place and is enforceable under applicable law, including, without limitation, Sections 9406 and 9408 of the Code) provided that upon the cessation of any such restriction or prohibition, such property shall automatically become part of the Collateral, (ii) the granting of a security interest therein is contrary to applicable law, provided that upon the cessation of any such restriction or prohibition, such property shall automatically become part of the Collateral, (iii) constitutes the equity interests of a controlled foreign corporation (as defined in the IRC), in excess of such amount of the voting power of all classes of equity interests of such controlled foreign corporations entitled to vote as would result in materially adverse tax consequences to the Loan Parties if such amount was included as Collateral hereunder, (iv) is an intent-to-use trademark, or (v) is an asset as to which the costs of creating or perfecting a security interest or pledge exceeds the benefit to Agent and Lenders to be obtained therefrom, as determined by Agent from time to time; provided that in no case shall the definition of "Collateral" exclude any Accounts, proceeds of the disposition of any property, or general intangibles consisting of rights to payment.

"Collateral State" means the state or states where the Collateral is located, which is California.

"Collection Account" has the meaning set forth in Section 4.4.

"Contingent Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business or customary indemnity obligations entered into in connection with any acquisition or any disposition permitted hereunder. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"Credit Extension" means each Advance or any other extension of credit by Lenders to or for the benefit of Borrower hereunder.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Disqualified Stock" means any equity, stock or stock equivalent which, by its terms, or upon the happening of any event or condition (a) matures or is mandatorily redeemable or redeemable at the option of the holder thereof (in whole or in party) on or prior to the date that is ninety-one (91) days following the Revolving Maturity Date, (b) is convertible into or exchangeable for debt securities, any equity, stock or stock equivalents described in clause (a), in each case, at any time on or prior to the date that is ninety (90) days following the Revolving Maturity Date, or (c) is entitled to receive scheduled dividends or distributions in cash prior to the time that the Obligations (other than unasserted claims of contingent indemnification obligations) are paid in full.

"Eligible Accounts" means those Accounts that arise in the ordinary course of Borrower's business that comply with all of Borrower's representations and warranties to Agent set forth in Section 5.3; provided, that, subject to Section 12.6, Agent may change the standards of eligibility by giving Borrower prior written notice. Unless otherwise agreed to by Agent, Eligible Accounts shall not include the following:

(a) Accounts that the account debtor has failed to pay in full (i) within ninety (90) days of invoice date or (ii) within sixty (60) days of the original due date;

(b) credit balances over ninety (90) days;

(c) Accounts with respect to an account debtor [**] percent ([**]%) of whose Accounts the account debtor has failed to pay (i) within ninety (90) days of invoice date or (ii) within sixty (60) days of the original due date;

(d) Account with respect to an account debtor whose total obligations to Borrower exceed [**] percent ([**]%) of all Accounts, except as approved in writing by Agent and Agent has approved Accounts owing from the U.S. Department of Defense and the U.S. Department of Health & Human Services to exceed such percentage;

(e) Accounts with respect to which the account debtor does not have its principal place of business in the United States;

(f) Accounts with respect to which the account debtor is the United States or any department, agency, or instrumentality of the United States, except for (i) Accounts of the United States if the payee has assigned its payment rights to Bank and the assignment has been acknowledged under the Assignment of Claims Act of 1940 (31 U.S.C. 3727), (ii) Accounts owing from the U.S. Department of Defense and the U.S. Department of Health & Human Services pursuant to contracts in place as of the Closing Date, and (iii) Accounts approved by the Required Lenders in writing;

(g) Accounts with respect to which Borrower is liable to the account debtor for goods sold or services rendered by the account debtor to Borrower, but only to the extent of any amounts owing to the account debtor against amounts owed to Borrower;

(h) Accounts with respect to which goods are placed on consignment, guaranteed sale, sale or return, sale on approval, bill and hold, demo or promotional, or other terms by reason of which the payment by the account debtor may be conditional;

(i) Accounts with respect to which the account debtor is an officer, employee, agent, Subsidiary or Affiliate of Borrower;

(j) Accounts that have not yet been billed to the account debtor or that relate to deposits (such as good faith deposits) or other property of the account debtor held by Borrower for the performance of services or delivery of goods which Borrower has not yet performed or delivered and unconditionally accepted by the account debtor;

(k) Accounts with respect to which the account debtor disputes liability or makes any claim with respect thereto that there may be a basis for dispute (but only to the extent of the amount subject to such dispute or claim), or is subject to any Insolvency Proceeding, or becomes insolvent, or goes out of business;

(l) Accounts the collection of which Agent reasonably determines after inquiry and consultation with Borrower to be doubtful; and

(m) retentions and hold-backs.

"Environmental Laws" means all laws, rules, regulations, orders and the like issued by any federal state, local foreign or other Governmental Authority pertaining to the environment or to any hazardous materials or wastes, toxic substances, flammable, explosive or radioactive materials, asbestos or other similar materials.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

"Event of Default" has the meaning assigned in Article 8.

"Excluded Accounts" means deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees.

"Excluded Taxes" means, with respect to the Agent, any Lender or any other recipient of any payment made by or on account of any obligation of any Loan Party under any Loan Document, Taxes imposed on or measured by its net income or net profits (however denominated), franchise Taxes imposed on it in lieu of net income Taxes and branch profits Taxes imposed on it, in each case, by any jurisdiction (or any political subdivision thereof) (a) as a result of the recipient being organized under the laws of, or having its principal office located in, or, in the case of any Lender, its applicable lending office in such jurisdiction, or (b) as a result of any other present or former connection between such recipient and such jurisdiction (other than connections arising solely from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Advance or Loan Document).

"Existing Indebtedness" is the Indebtedness of Borrower to Comerica Bank in the aggregate principal outstanding amount as of the Closing Date of approximately [**] Dollars ($[**]) pursuant to that certain Loan and Security Agreement, dated May 18, 2015, entered into by and between Comerica Bank and Borrower.

"Existing Letters of Credit" means, individually and collectively, (a) that certain Irrevocable Standby Letter of Credit No. OSB16721C issued December 20, 2018 by Comerica Bank in the amount of $[**] with BMR-MODA Sorrento, LP as the Beneficiary and Cue Health Inc. as the Applicant, (b) that certain Irrevocable Standby Letter of Credit No. OSB11611C issued December 29, 2016 by Comerica Bank in the amount of $[**] with ARE-SD Region No. 2, LLC as the Beneficiary and Cue Health Inc., formerly known as Cue Inc., as the Applicant, and (c) that certain Irrevocable Standby Letter of Credit No. OSB19688C issued June 3, 2020 by Comerica Bank in the amount of $[**] with ARE-SD Region No. 67, LLC as the Beneficiary and Cue Health Inc. as the Applicant.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles, consistently applied, as in effect from time to time.

"Governmental Authority" means any federal, state, municipal, national, supranational or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with the United States of America, any State thereof or the District of Columbia or a foreign entity or government.

"Guarantor" means any Person that has guaranteed the Obligations of Borrower under the Loan Documents pursuant to a document in form and substance satisfactory to Agent in its reasonable discretion.

"Hedging Agreements" means any and all agreements, devices or arrangements designed to protect at least one of the parties thereto from the fluctuations of interest rates, commodity prices, exchange rates or forward rates applicable to such party's assets, liabilities or exchange transactions, including dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants or any similar derivative transactions.

"Indebtedness" means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit (to the extent not cash collateralized), (b) all obligations evidenced by notes, bonds, debentures or similar instruments (c) all capital lease obligations that have been or required to be accounted for as a capital lease on a balance sheet prepared in accordance with GAAP and (d) all Contingent Obligations, if any.

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

"Insolvency Proceeding" means any proceeding commenced by or against any Person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Intellectual Property Collateral" means all of Borrower's right, title, and interest in and to the following:

(a) copyrights, trademarks and patents;

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Borrower now or hereafter existing, created, acquired or held;

(d) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(e) All licenses or other rights to use any of the copyrights, trademarks and patents, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(f) All amendments, renewals and extensions of any of the copyrights, trademarks and patents; and

(g) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

"Investment" means any beneficial ownership of (including stock, partnership or limited liability company interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

"IRC" means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

"L/C Issuer" means, as applicable (a) in the case of the Existing Letters of Credit, Comerica Bank in its capacity as the issuer of each Existing Letter of Credit and (b) in the case of all other Letters of Credit, East West Bank, in its capacity as the issuer of each such other Letter of Credit.

"Lender Expenses" means all reasonable documented out-of-pocket costs or expenses (including reasonable documented attorneys' fees and out-of-pocket expenses, generated by outside counsel) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents; reasonable Collateral audit fees; and Agent and Lenders' reasonable documented attorneys' fees and out-of-pocket expenses (generated by outside counsel) incurred in amending, enforcing or defending the Loan Documents (including fees and expenses of appeal), incurred before, during and after an Insolvency Proceeding, whether or not suit is brought.

"Lender Hedging Agreement" means any Hedging Agreement entered into between (i) the Borrower or any Subsidiary thereof and (ii) the Agent, any Affiliate of the Agent, any Lender, or any Affiliate of any Lender.

"Lien" means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"Loan Documents" means, collectively, this Agreement, any note or notes executed by Borrower, and any other document, instrument or agreement entered into in connection with this Agreement, all as amended, restated, amended and restated, modified, supplemented or extended from time to time.

"Loan Party" means any Borrower or Guarantor.

"Material Adverse Effect" means (a) a material impairment in the perfection or priority of Agent's Lien in the Collateral or in the value of such Collateral (taken as a whole); (b) any event, change, circumstance, effect or other that either individually or in the aggregate with all other events, changes, circumstances, effects or other matters, has been materially adverse to the to the business, assets, liabilities, results of operations or financial condition of Borrower or prevents or materially delays or materially impairs the ability of Borrower to perform its obligations under this Agreement; or (c) a material impairment of the prospect of repayment of any portion of the Obligations when due, each of the foregoing as determined by the Agent or the Required Lenders in their reasonable discretion.

"Moody's" means Moody's Investors Service, Inc., or any successor to its rating agency business.

"Negotiable Collateral" means Collateral regarding which a security interest under the Code is or may be perfected by possession or control.

"Non-Consenting Lender" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all or all affected Lenders in accordance with the terms of Section 12.6 and (b) has been approved by the Required Lenders.

"Obligations" means all debt, principal, interest, Lender Expenses and other amounts owed to Lenders by Borrower pursuant to this Agreement or any other Loan Document, including any and all obligations under Lender Hedging Agreements and any and all Cash Management Obligations, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding and including any debt, liability, or obligation owing from Borrower to others that Lenders may have obtained by assignment or otherwise.

"OFAC" means the Office of Foreign Asset Control of the United States Treasury Department.

"Other Connection Taxes" means, with respect to the Agent, any Lender or any other recipient of any payment made by or on account of any obligation of any Loan Party under any Loan Document, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Advance or Loan Document).

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

"Periodic Payments" means all installments or similar recurring payments that Borrower may now or hereafter become obligated to pay to Agent pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between Borrower and Lenders.

"Permitted Indebtedness" means:

(a) Indebtedness of Borrower in favor of Lenders arising under this Agreement or any other Loan Document;

(b) Indebtedness existing on the Closing Date and disclosed in the Schedule;

(c) Indebtedness (i) owing by any Loan Party to any other Loan Party, (ii) owing by any Subsidiary that is not a Loan Party to any other Subsidiary that is not a Loan Party, and (iii) owing by any Subsidiary that is not a Loan Party to any Loan Party in an amount not to exceed [**] Dollars ($[**]) at any time outstanding;

(d) Reimbursement obligations in connection with corporate credit cards or in the ordinary course of business;

(e) Subordinated Debt;

(f) Indebtedness of any Acquired Subsidiary incurred prior to the date of its acquisition by Borrower in an amount not to exceed [**] Dollars ($[**]);

(g) Endorsements of negotiable instruments for deposit or collection in the ordinary course of business;

(h) Indebtedness in an amount not to exceed [**] Dollars ($[**]) in the form of deferred purchase price adjustments, customary indemnification obligations and working capital adjustments and similar obligations (including all seller notes), hold-backs, earn-outs and other contingent payment obligations not yet due and payable in connection with the acquisition of an Acquired Subsidiary, in each case on subordination terms reasonably acceptable to Agent;

(i) Indebtedness to trade creditors incurred in the ordinary course of business;

(j) Indebtedness of Borrower secured by a lien described in clause (n) of the defined term "Permitted Liens," provided such Indebtedness does not exceed the lesser of the cost or fair market value of the equipment financed with such Indebtedness;

(k) Indebtedness with respect to any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement or other agreement or arrangement designed to protect Borrower against fluctuation in interest rates, currency exchange rates or commodity prices maintained with Agent or any Lender (or any of their Affiliates);

(l) Indebtedness in respect of netting services, overdraft protections and other customary bank products in connection with deposit accounts;

(m) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, in each case provided in the ordinary course of business

(n) Indebtedness incurred in connection with the financing of insurance premiums, provided, that the Borrower shall not finance more than one (1) year's premiums at any time;

(o) Indebtedness, direct or indirect, not otherwise permitted hereunder not to exceed [**] Dollars ($[**]) in the aggregate at any one time outstanding; and

(p) Extensions, refinancings and renewals of any items of Permitted Indebtedness otherwise permitted by this definition, provided that the principal amount is not increased or the terms modified to impose more burdensome terms upon Borrower or its Subsidiary, or less favorable to Agent and Lenders, as the case may be.

"Permitted Investment" means:

(a) Investments existing on the Closing Date disclosed in the Schedule;

(b) (i) Marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one (1) year from the date of acquisition thereof, (ii) commercial paper maturing no more than one (1) year from the date of creation thereof and currently having rating of at least A-1 or P-1 from either Standard & Poor's Corporation or Moody's Investors Service, (iii) Lenders' certificates of deposit maturing no more than one (1) year from the date of investment therein, (iv) Lenders' money market accounts and (v) other Cash Equivalents;

(c) Repurchases of stock from existing, former employees, officers or directors of Borrower under the terms of applicable repurchase agreements (i) in an aggregate amount not to exceed [**] Dollars ($[**]) in any fiscal year, provided that no Event of Default has occurred, is continuing or would immediately exist after giving effect to the repurchases, or (ii) in any amount where the consideration for the repurchase is the cancellation of indebtedness owed by such existing former employees, officers or directors to Borrower regardless of whether an Event of Default exists;

(d) Investments of (i) Borrower or its Subsidiaries in Borrower or Subsidiaries that are Guarantors, (ii) Subsidiaries that are not Guarantors in Subsidiaries that are not Guarantors and (iii) Borrower or Subsidiaries that are Guarantors in Subsidiaries that are not Guarantors not to exceed [**] Dollars ($[**]) in the aggregate in any fiscal year;

(e) Investments not to exceed [**] Dollars ($[**]) in the aggregate in any fiscal year consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plan agreements approved by Borrower's Board of Directors;

(f) (i) loans to employees existing on the Closing Date and specified on the Schedule, and (ii) Investments not to exceed an aggregate principal amount of [**] Dollars ($[**]) during the term of this Agreement consisting of loans to employees not in the ordinary course of business;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower's business;

(h) Investments consisting of deposit or securities accounts, which are maintained in accordance with the terms of this Agreement;

(i) the formation of a Subsidiary ("Formed Subsidiary") or (ii) the consensual acquisition of all equity interests in any other entities (each an "Acquired Subsidiary"); provided that Borrower shall be in pro forma compliance with the financial covenants set forth in Section 6.7 hereof prior to and after giving effect to such acquisition, no Event of Default shall have occurred or would result from such acquisition or formation and the representations and warranties set forth in the Loan Documents are true and correct in all material respects after giving effect thereto; provided further that, Borrower shall deliver financial information requested by Agent or the Lenders with respect to any Acquired Subsidiary ten (10) Business Days prior to such acquisition; provided that such acquisition shall not be a "hostile" acquisition and shall have been approved by the board of directors (or equivalent) and/or shareholders (or equivalent) of the Borrower and the Acquired Subsidiary and shall be in the same line of business as the Borrower or a line of business that is incidental, ancillary or complementary thereto or a natural extension thereof; provided further that any such Formed Subsidiary or Acquired Subsidiary shall become a Guarantor hereunder concurrently with such transaction (for the avoidance of doubt, no entity which becomes a direct or indirect parent or equity holder of Borrower as a result of a SPAC Business Combination shall be required to become a Guarantor) and Borrower shall otherwise comply with the requirements set forth in Section 6.10 of this Agreement with respect to such Formed Subsidiary or Acquired Subsidiary;

(j) Investments of any Person existing at the time such Person becomes an Acquired Subsidiary of the Borrower, so long as such Investments were not made in contemplation of such Person becoming a Subsidiary and provided that such Investments do not exceed [**] Dollars ($[**]) in the aggregate; and

(k) Investments not otherwise permitted hereunder not to exceed [**] Dollars ($[**]) in the aggregate in any fiscal year.

"Permitted Liens" means the following:

(a) Any Liens existing on the Closing Date and disclosed in the Schedule (excluding Liens to be satisfied with the proceeds of the Advances) or arising under this Agreement or the other Loan Documents or any other Lien in favor of Agent for the benefit of Lenders;

(b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings and for which Borrower maintains adequate reserves, provided the same have no priority over any of Agent's security interests;

(c) Carrier's, warehousemen's, mechanic's, materialmen's, repairmen's, suppliers', utilities or other like Liens arising in the ordinary course of business which are not overdue for a period for more than 10 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(d) Pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(e) Deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(f) Liens affecting the interest of the landlords and licensors (any underlying landlords and licensors) of any real property leased, licensed or occupied by a Borrower or any of their Subsidiaries;

(g) Liens of a collection bank on items in the course of collection arising under Section 4-208 of the Code or other normal and customary rights of set-off and banker's liens in favor of banks or other depository institutions arising in the ordinary course of business;

(h) The title and interests of a lessor or sublessor in and to personal property leased or subleased, in each case, extending only to such personal property and only to the extent such lease or sublease is permitted hereunder;

(i) Liens on premium refunds and insurance proceeds granted in favor of insurance companies (or their financing affiliates) solely in connection with the financing of insurance premiums permitted hereunder;

(j) non-exclusive licenses of intellectual property rights in the ordinary course of business that have been disclosed to Agent in writing and are permitted hereunder;

(k) Precautionary financing statements filed in connection with operating leases permitted by this Agreement;

(l) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clauses (a) through (c) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase;

(m) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Sections 8.5 (attachment) or 8.9 (judgments);

(n) Liens not to exceed [**] Dollars ($[**]) in the aggregate (i) upon or in any Equipment acquired or held by Borrower or any of its Subsidiaries to secure the purchase price of such Equipment or indebtedness incurred solely for the purpose of financing the acquisition or lease of such Equipment, or (ii) existing on such Equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such Equipment;

(o) Security deposits securing real estate leases;

(p) Liens securing Subordinated Debt; and

(q) Liens attaching solely to cash earnest money deposits in connection with an acquisition of an Acquired Subsidiary as permitted hereunder or an acquisition of property otherwise permitted hereunder.

"Permitted Transfer" means the conveyance, sale, lease, transfer or disposition by Borrower or any Subsidiary of:

(a) Inventory of the Borrower in the ordinary course of business;

(b) Non-exclusive licenses and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business and licenses that could not result in a legal transfer of title of the licensed property, that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discrete geographical areas outside of the United States, in each case, not interfering in any material respect with the business of Borrower or its Subsidiaries;

(c) Worn-out, surplus or obsolete equipment;

(d) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of replacement property or (ii) the proceeds of such disposition are reasonably promptly applied to the purchase price of such replacement property;

(e) Dispositions or transfers of property by Borrower or any Subsidiary of Borrower that is a Guarantor to Borrower or to another Subsidiary that is a Guarantor;

(f) Dispositions of cash and cash equivalents in the ordinary course of business;

(g) Sale, assignment, transfer, disposition or discount of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof;

(h) sales of common equity of the Borrower for cash that do not cause or result in a Change in Control, provided that such equity is not Disqualified Stock.; and

(i) Other assets of Borrower or its Subsidiaries that do not in the aggregate exceed [**] Dollars ($[**]) during any fiscal year.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

"Prime Rate" means, for any particular day, the variable rate of interest, per annum, most recently announced by Agent, as its "prime rate," whether or not such announced rate is the lowest rate available from Agent.

"Prohibited Territory" means any person or country listed by OFAC as to which transactions between a United States Person and that territory are prohibited.

"Required Lenders" means, unless all of the Lenders and Agent agree otherwise in writing, at any time (x) only one Lender holds the total commitments under this Agreement, such Lender and (y) there is more than one Lender which are not Affiliates, then at least two such Lenders who are not Affiliates who together hold more than [**] percent ([**]%) of the commitments of all Lenders; provided that, for the purposes of this clause (y), the total commitments of the Lenders held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided further that a Lender and its Affiliates shall be deemed one Lender.

"Responsible Officer" means each of the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer and the Controller of Borrower.

"Revolving Line" means revolving Credit Extensions of up to One Hundred Thirty Million Dollars ($130,000,000.00) in aggregate original principal amount at any time outstanding, which may be reduced from time to time in accordance with the terms of this Agreement.

"Revolving Loan" is defined in Section 2.1(b) hereof.

"Revolving Loan Commitment" means the commitment of a Lender listed below, or in the Assignment and Assumption in the form attached hereto as Exhibit I pursuant to which it becomes a Lender hereunder, to make Credit Extensions and participate in Letters of Credit hereunder, as the same may be adjusted pursuant to the provisions hereof. For the avoidance of doubt, no Lender shall have any liability for the commitment of any other Lender.

Lender	**Revolving Loan Commitment**	**Revolving Loan Commitment Percentage**
East West Bank	[**]	[**]
Comerica Bank	[**]	[**]
Silicon Valley Bank	[**]	[**]
TOTAL	**$130,000,000.00**	**100%**

"Revolving Loan Commitment Percentage" means, with respect to each Lender, the percentage equivalent of the ratio which such Lender's Revolving Loan Commitment bears to the Revolving Line.

"Revolving Maturity Date" means February 5, 2023.

"S&P" means S&P Global Ratings, or any successor to its rating agency business.

"Schedule" means the schedule of exceptions attached hereto and approved by Agent, if any.

"SOS Reports" means the official reports from the Secretaries of State of each Collateral State, Chief Executive Office State and the Borrower State and other applicable federal, state or local government offices identifying all current security interests filed in the Collateral and Liens of record as of the date of such report.

"SPAC Business Combination" means any transaction or series of transactions effected pursuant to an agreement or series of agreements entered into by the Borrower with a publicly traded blank check or special purpose acquisition company ("SPAC"), or by the Borrower with a SPAC and/or one or more of such SPAC's subsidiaries and/or other entities, for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or other business combination with such SPAC (including, without limitation and for the avoidance of doubt, any such SPAC Business Combination as a result of which the Borrower or any other entity with which the Borrower merges or is otherwise combined in such SPAC Business Combination becomes or otherwise continues as a direct or indirect subsidiary of the SPAC and/or any other new parent entity or entities formed in connection with such SPAC Business Combination) provided that the Borrower is the surviving entity from such merger (and for the avoidance of doubt, a parent or holding entity of Borrower in connection with such SPAC Business Combination need not be a Borrower or Guarantor hereunder), and all of the foregoing in the form contemplated by the letter of intent with respect to the SPAC Business Combination in the form provided to Agent prior to the Closing Date.

"Subordinated Debt" means any debt now or hereafter incurred by any Loan Party that is subordinated in writing to the debt owing by Borrower to Agent and Lenders on terms, including any security therefor, acceptable to Agent and the Required Lenders in their sole discretion.

"Subsidiary" means any corporation, partnership or limited liability company or joint venture in which (i) any general partnership interest or (ii) more than fifty percent (50%) of the stock, limited liability company interest or joint venture of which by the terms thereof ordinary voting power to elect the Board of Directors, managers or trustees of the entity, at the time as of which any determination is being made, is owned by Borrower, either directly or through an Affiliate.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Unrestricted Cash" means cash that is not subject to any lien or security interest (other than the those granted pursuant to the this Agreement) and that is on deposit with a Lender or its Affiliates in an account that is subject to a perfected security interest in favor of the Agent for the benefit of the Lenders and in respect of which the relevant Loan Party has entered into an account control agreement reasonably satisfactory to the Agent.

Exhibit 10.13

STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET

1. Basic Provisions ("Basic Provisions").

1.1 **Parties**. This Lease ("**Lease**"), dated for reference purposes only January 20, 2021, is made by and between Nancy Ridge Technology Center, L.P., a California limited partnership ("**Lessor**") and Cue Health Inc., a Delaware corporation ("**Lessee**"), (collectively the "**Parties**", or individually a "**Party**").

1.2(a) **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, unit/suite, city, state): 6330 Nancy Ridge Drive, Suites 107 and 108, San Diego, California 92121 ("**Premises**"). The Premises are located in the County of San Diego, and are generally described as (describe briefly the nature of the Premises and the "Project"): approximately 8,010 rentable square feet in an industrial building. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("**Building**") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "**Project**." (See also Paragraph 2)

1.2(b) **Parking:** Pro rata share of unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** Approximately three year and zero months ("**Original Term**") commencing See Addendum ("**Commencement Date**") and ending See Addendum ("**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 on full execution of this Lease ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $27,234.00 per month ("**Base Rent**"), payable on the first day of each month commencing on Commencement Date. (See also Paragraph 4)

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

1.6 **Lessee's Share of Common Area Operating Expenses:** four and 58/100ths percent (4.58 %) ("**Lessee's Share**"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** $27,234.00 for the period first full month.

(b) **Common Area Operating Expenses:** The current estimate for the period first full month is $2,803.50.

(c) **Security Deposit:** $27,234.00 ("**Security Deposit**"). (See also Paragraph 5) See Addendum.

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

(e) **Total Due Upon Execution of this Lease:** $57,271.50.

1.8 **Agreed Use:** Lab, R&D, office, shipping, receiving, assembly, manufacturing, and other related uses. (See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the "**Insuring Party**". (See also Paragraph 8)

1.10 **Real Estate Brokers.** (See also Paragraph 15 and 25)

(a) **Representation**: Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("**Broker(s)**") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm Jones Lange LaSalle License No. ___ Is the broker of (check one): ☑ the Lessor; or □ both the Lessee and Lessor (dual agent).

Lessor's Agent Grant Schoneman and Chad Urie License No.s 01516695 and 01261962, respectively are (check one): ☑ the Lessor's Agents (salesperson or broker associate); or □ both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm Hughes Marino License No. ___ Is the broker of (check one): ☑ the Lessee; or □ both the Lessee and Lessor (dual agent).

Lessee's Agent Shane Poppen License No. ___is (check one): ☑ the Lessee's Agent (salesperson or broker associate); or □ both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers.** Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by N/A ("**Guarantor**"). (See also Paragraph 37)

1.12 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☑ an Addendum consisting of Paragraphs 50 through 74 ;

☑ a site plan depicting the Premises;

□ a site plan depicting the Project;

☑ a current set of the Rules and Regulations for the Project;

□ a current set of the Rules and Regulations adopted by the owners' association;

□ a Work Letter;

□ other (specify): ____.

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. 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 that portion of the Premises contained within the Building ("Unit") 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 Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit 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 such 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 Unit. 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 repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see 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 49), 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 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 Unit, 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 the 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 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.

(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 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, (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.

2.6 **Vehicle Parking**. Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 **Common Areas - Definition**. The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roofs, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights**. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations**. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes**. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

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 Rent shall be abated for the period of such Early Possession. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession**.

3.4 **Lessee Compliance**. Lessor shall not be required to tender 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 **Common Area Operating Expenses**. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "**Common Area Operating Expenses**" are defined, for purposes of this Lease, as all costs relating to the ownership and operation of the Project, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and if necessary the replacement, of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month. Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 **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. 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 Rent be paid 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 Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

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 Breaches 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. 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. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

6.1 **Use**. Lessee shall use and occupy the Premises only for (1) the Agreed Use, or (2) subject to Lessor's consent, 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 Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. 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 Lessee's agent's or contractors.

(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, Lessee's agents or contractors (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project 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, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession 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 the Lessee taking possession, 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 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 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 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 authorized by Lessor 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 and/or testing the condition of the Premises and/or 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 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, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to 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.

(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, and (iii) 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 or any extension thereof, 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), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises.

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/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 and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises 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 also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or Lessee's agents or contractors (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) 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 Premiums**. The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

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**. Lessor shall obtain and keep in force a policy or policies of insurance 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), 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 a commercially reasonable amount.

(b) **Rental Value**. Lessor shall also 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.

(c) **Adjacent Premises**. Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements**. Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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 commercially reasonable deductible. 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 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 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 increase his liability insurance coverage 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 and subject to the waiver of subrogation below, 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, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. 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 and without limiting the generality of **Paragraph 8.6** above, with respect to all claims for which Lessee maintains first party casualty insurance or is required to maintain insurance under **Paragraph 8.4** above 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, 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. See Addendum.

8.9 **Failure to Provide Insurance**.

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 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. 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 improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. 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 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 (subject to reimbursement pursuant to Paragraph 4.2), 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 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 Project address. The term "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 Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements**. Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures 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.

10.4 **Joint Assessment**. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes**. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. 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. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. 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.

Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

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(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.

(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. 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, (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 41, (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 2.9 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 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 to 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 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 floor area of the Unit, or more than 25% of the parking spaces 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**.

15.2 **Assumption of Obligations**.

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, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents 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 AIR CRE, 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.

(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 overnight courier such as FedEx) or may be sent by certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or 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. 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 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.

23.3 **Options**. Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

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 monies 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.

(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 confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent 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. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b)

(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. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

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.

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 on 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 which may be placed only on the Premises, Lessee shall not place any sign upon the Project 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. All requests for consent shall be in writing. 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 AIR CRE.

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 or a Permitted Assignee (as such term is defined in the Addendum) 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), or (iii) during the time Lessee is in Breach of this Lease.

(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. 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.

41. Reservations. Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. 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.

43. 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.

44. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. 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.

46. 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.

47. 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.

48. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties arising out of this Lease ☐ is ☑ is not attached to this Lease.

49. Accessibility; Americans with Disabilities Act.

(a) The Premises:

☑ have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

☐ 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. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ 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. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are 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 compliance with ADA or other accessibility statutes, 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 AIR CRE 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, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE 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 ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: ____
On: 1/22/2021
By LESSOR:
Nancy Ridge Technology Center, L.P., a California limited partnership

By: /s/ Christopher L. Loughridge
Name Printed: Christopher L. Loughridge
Title: Manager of General Partner
Phone: ____
Fax: ____
Email: ____

By: _____
Name Printed: ____
Title: ____
Phone: ____
Fax: ____
Email: ____

Address: 7920 Miramar Road, Suite 123, San Diego, California 92126 (See addendum for additional address)
Federal ID No.: _____

BROKER

/s/ Jones Lange LaSalle

Attn: Grant Schoneman and Chad Urie
Title: ____

Address: ____
Phone: ____
Fax: ____
Email: ____
Federal ID NO.: ____
Broker DRE License #: ____
Agent DRE License #: ____

Executed at: ____
On: 1/22/2021
By LESSEE:

Cue Health Inc., a Delaware corporation

By: /s/ Ayub Khattak
Name Printed: Ayub Khattak
Title: ____
Phone: ____
Fax: ____
Email: ____

By _____
Name Printed: ____
Title: ____
Phone: ____
Fax: ____
Email: ____

Address: 6330 Nancy Ridge Drive, Suite 107, San Diego, California 92126

Federal ID No.: _____

BROKER

/s/ Hughes Marino

Attn: Shane Poppen
Title: ____

Address: ____
Phone: ____
Fax: ____
Email: ____
Federal ID NO.: ____
Broker DRE License #: ____
Agent DRE License #: ____

Addendum to Lease

This Addendum, dated **January 20, 2021**, constitutes an addendum to that certain Standard Industrial/Commercial Multi-Tenant Lease—Net **("the Lease")** by Nancy Ridge Technology Center, L.P., a California limited partnership **("Lessor")**, and **Cue Health Inc**. (**"Lessee"**) pertaining to the Premises commonly known as **6330** Nancy Ridge Drive, **Suites 107 and 108**, San Diego, California 92121. Defined (capitalized) terms used in this Addendum shall have the same meanings as in the Lease. References contained herein to **"this Lease"** shall mean collectively the Lease, this Addendum, and all attached exhibits and schedules. Lessor and Lessee hereby supplement the Lease, as follows:

50. Commencement Date; Expiration Date. As used in this Lease, "**Commencement Date**" shall mean the date that is the later of (1) **February 1, 2021** or (2) the date on which Lessor has Substantially Completed (as defined below) Lessor's Work (defined below) and delivered to Lessee possession of the Premises. As used in this Lease, "**Expiration Date**" means the last date of the **thirty-sixth** full calendar month following the Commencement Date (e.g., if the Commencement Date is January 15, 2021, then the Expiration Date will be January 31, 2024). "Substantially Completed" means that Lessor's Work has been completed other than Punchlist Items (as defined below) "**Punchlist Items**" shall mean only commercially reasonable punchlist items, the non-completion of which does not unreasonably interfere with Lessee's use or occupancy of the Premises, and which punchlist items shall be corrected promptly by Lessor (within sixty (60) days following Lessor's receipt of written notice thereof from Lessee) without unreasonable interference with Lessee's use of or access to or from the Premises.

51. Additional Parties for Notices.

51.1 All notices to be delivered to Lessor under this Lease shall also be delivered to the following parties in the manner described in **Paragraph 23** of the Lease:

Rose Harris
7920 Miramar Road, Suite 123
San Diego, California 92126-4206
Telephone: 858-271-4833

F. Sigmund Luther
5333 Mission Center Road, Suite 360
San Diego, California 92102
Telephone: 619-239-0755

51.2 All notices to be delivered to Lessee under this Lease shall also be delivered to the following party in the manner described in **Paragraph 23** of the Lease:

Cooley LLP
4401 Eastgate Mall
San Diego, California 92121-1909
Attention Michael Levinson.

52. Annual Increases in Base Rent; Base Rent Abatement. On each anniversary of the Commencement Date, the Base Rent shall increase by **three percent**. The Base Rent for the **second full calendar month** of the Original Term shall be abated.

53. Right to Recapture. Lessor shall have the option, in Lessor's sole and unfettered discretion, to terminate this Lease and recapture the Premises in lieu of approving any proposed sublease or assignment (excluding any sublease or assignment to a Permitted Assignee (defined below) and excluding any transfer to a Permitted Assignee).

54. Assignment/Subleasing Overage. If Lessee assigns this Lease or subleases any portion of the Premises for more consideration than that paid by Lessee to Lessor (less any expenses incurred by Lessee during the Original Term to obtain such assignment or sublease, including without limitation brokerage fees and commissions, legal fees, moving costs, cost of improvements and marketing expenses), then 75 percent of such overage shall be paid by Lessee to Lessor as additional Rent. If excess rent is being determined for a subtenant(s) that occupy(ies) less than all of the Premises, then the excess rent shall be the difference between (1) the amount of the rent and other amounts paid by the subtenant and (2) the amount of Base Rent and other charges due under this Lease, multiplied by a fraction, the numerator of which is the useable floor area of the Premises occupied by the subtenant and the denominator or which is the total useable floor area of the Premises.

55. Confidentiality. All terms of this Lease are confidential. Lessee shall not share any of the terms or conditions of this Lease with any other party without Lessor's prior written permission; however, such confidentiality obligation shall not apply to Lessee's disclosure to (1) Lessee's attorneys, accountants, and other persons related to Lessee who, in the normal course of business, would have access to such knowledge or (2) any local, state, or federal regulation or law enforcement agency requesting the same under color of law or (3) prospective assignees, sublessees, investors, lenders and similar parties with a reasonable need to know the terms of this Lease.

56. Exemption of Lessor; Waiver of Consequential Damages. Notwithstanding anything to the contrary contained in this Lease, (a) except for the waiver of subrogation provision in **Paragraph 8.6** and except that Lessee shall look solely to its insurance required to be carried pursuant to **Paragraphs 8.2(a), 8.4(a) or 8.4(b)**, in no event shall Lessor be exculpated in any manner to the extent of the gross negligence, willful misconduct or breach of this Lease by or of Lessor or any officer, employee, director, manager, contractor, or agent of Lessor and (b) neither Lessor nor Lessee shall have any liability to the other for any consequential, indirect, special or punitive damages.

57. Default Notices. Any notices that are required to be served as a condition to initiating a special proceeding for unlawful detainer may be served pursuant to Code of Civil Procedure section 1162 or **Paragraph 23** of the Lease, and any notice of Default described in the Lease will be in lieu of (not in addition to) any notice required by the Code of Civil Procedure. With respect to all notices that may be delivered, the parties agree that in addition to the manner of delivery provided in **Paragraph 23** of the Lease, notices may be delivered by FedEx or other similar overnight delivery service that provides evidence of receipt.

58. Payment of Deductible Amounts. Notwithstanding the waiver of subrogation in **Paragraph 8.6** of the Lease, Lessee's obligation with respect to payment of any "deductible amount" under Lessor's liability, fire and/or casualty policies of insurance shall be as follows:

58.1 If the damage or destruction is caused by the negligent or intentional act or omission by Lessee or Lessee's agents, employees, invitees, or contractors or otherwise arises out of the operation of the Lessee's business and/or occupancy of the Premises, then Lessee shall pay the full deductible amount, and such amount shall not be included in Common Area Operating Expenses; however, Lessee's obligation under this **Paragraph 58.1** shall not exceed **$10,000.00** for each occurrence to which this **Paragraph 58.1** applies.

58.2 If the damage or destruction is caused by a negligent or intentional act or omission by another tenant of the Building or such other tenant's agents, invitees, employees or contractors or otherwise arises out of the operation of such other tenant's business and/or such other tenant's occupancy of another portion of the Building, then (1) such other tenant shall pay the full "deductible amount," (2) Lessee shall have no responsibility or liability therefor, and (3) such amount shall not be included as an element of Common Area Operating Expenses.

58.3 If the damage or destruction arises from any other cause other than a cause described in the preceding **subparagraphs 58.1 or 58.2**, then the deductible amount shall be an item of Common Area Operating Expenses.

59. No Public Testing. Lessee shall not use the Premises to conduct on-site testing of or taking samples from members of the general public. Nothing contained in this **Paragraph 59** shall be construed to prohibit Lessee from conducting on-site testing of or taking samples from Lessee's employees, even if such employees do not typically work at the Premises.

60. Attorneys' Fees. Lessor shall further be entitled to recover reasonable attorneys' fees incurred in connection with any hearing or motion for assumption or rejection of the Lease under United States Code Title 11.

61. Exit Assessment. Upon the expiration or earlier termination of this Lease, Lessee shall surrender the Premises to Lessor free of any Hazardous Substance brought upon, kept, used, stored, handled, treated, generated in, or released or disposed of by Lessee (collectively, "**Lessee HazMat Operations**"). At least 1 month prior to the surrender of the Premises or such earlier date as Lessee may elect to cease operations at the Premises, Lessee shall deliver to Lessor a narrative description of the actions proposed (or required by any governmental authority) to be taken by Lessee in order to surrender the Premises at the expiration or earlier termination of this Lease, free from any residual impact from the Lessee HazMat Operations and otherwise released for unrestricted use and occupancy (i.e., for all of the same uses as Lessee during its use of the Premises) (the "**Decommissioning and HazMat Closure Plan**"). Such Decommissioning and HazMat Closure Plan shall be accompanied by a current listing of (i) all Hazardous Materials licenses and permits held by or on behalf of any Lessee Party with respect to the Premises, and (ii) all Hazardous Materials used, stored, handled, treated, generated, released or disposed of by Lessee from the Premises, and shall be subject to the commercially reasonable review and approval of Lessor's environmental consultant. In connection with the review and approval of the Decommissioning and HazMat Closure Plan, upon the request of Lessor, Lessee shall deliver to Lessor or its consultant such additional nonproprietary information concerning Lessee HazMat Operations as Lessor shall reasonably request. On or before such surrender, Lessee shall deliver to Lessor evidence that the approved Decommissioning and HazMat Closure Plan shall have been satisfactorily completed and Lessor shall have the right, subject to reimbursement at Lessee's expense as set forth below, to cause Lessor's environmental consultant to inspect the Premises and perform such additional procedures as may be deemed reasonably necessary to confirm that the Premises are, as of the effective date of such surrender or early termination of this Lease, free from any residual impact from Lessee HazMat Operations. Lessee shall reimburse Lessor, as Additional Rent, for the actual out-of-pocket expense incurred by Lessor for Lessor's environmental consultant to review and approve the Decommissioning and HazMat Closure Plan and to visit the Premises and verify satisfactory completion of the same, which cost shall not exceed $2,500. Lessor shall have the unrestricted right to deliver such Decommissioning and HazMat Closure Plan and any report by Lessor's environmental consultant with respect to the surrender of the Premises to third parties. If Lessee shall fail to prepare or submit a Decommissioning and HazMat Closure Plan approved by Lessor, or if Lessee shall fail to complete the approved Decommissioning and HazMat Closure Plan, or if such Decommissioning and HazMat Closure Plan, whether or not approved by Lessor, shall fail to adequately address any residual effect of Lessee HazMat Operations in, on or about the Premises, Lessor shall have the right to take such actions as Lessor may deem reasonable or appropriate to assure that the Premises and the Project are surrendered free from any residual impact from Lessee HazMat Operations, the cost of which actions shall be reimbursed by Lessee as Additional Rent.

62. Lessee's Remedies. In addition to the remedies in **Paragraph 9.6** of the Lease, Lessee shall have the right to terminate this Lease following Premises Partial Damage under the following circumstances:

62.1 If the Premises Partial Damage materially affects Lessee's use of the Premises, Lessee may terminate this Lease if either (1) the reasonably estimated time to repair the damage exceeds 90 days or (2) Lessor has failed to complete Lessor's repair work within the Repair Period (defined below) and such failure continues for 20 days following delivery by Lessee to Lessor of written notice that Lessee elects to terminate this Lease if Lessor's repair work is not completed within 20 days after delivery of the notice. As used herein, the term **"Repair Period"** shall mean the longer of (1) a period commencing on the date of the casualty and expiring 90 days thereafter or (2) a period commencing on the date of the casualty and expiring on the date Lessor has specified in a written notice delivered to Lessee as Lessor's estimate of the reasonable time to repair; however, if, within 60 days following the date of the casualty, Lessor fails to deliver to Lessee a written notice that specifies Lessor's estimate of the reasonable time to repair, then the Repair Period shall be for 90 days following the date of the casualty. In the case of termination when the reasonably estimated time to repair exceeds 90 days, Lessee must deliver to Lessor written notice of Lessee's election to terminate within 30 days following the date of Lessee's receipt from Lessor of written notice that the reasonably estimated time to repair exceeds 90 days, and such termination shall be effective upon Lessor's receipt of the notice or such later date specified in the notice not exceeding 30 days after Lessor's receipt of the notice. In the case of termination when Lessor has not completed Lessor's repair work within the Repair Period, Lessee must deliver Lessee's 20-day notice prior to Lessor's completion of Lessor's repair work, and termination shall be effective upon expiration of the 20-day period. Nothing contained in this paragraph shall be construed to waive or relieve Lessee from any obligation that may exist to pay or contribute to the deductible amount or the cost of repair and restoration as provided above.

62.2 If at any time during the last nine months of this Lease the Premises is damaged and (1) such damage materially affects Lessee's use of the Premises, (2) the cost of repair exceeds two months' Base Rent, and (3) such damage was not caused by Lessee or Lessee's employees, agents, or contractors, then Lessee may terminate this Lease following the occurrence of such damage by giving a written termination notice to Lessor within 30 days after the date of occurrence of such damage. If Lessee elects to terminate this Lease as allowed under the preceding sentence, then (1) such termination shall be effective as of the date Lessee specifies in such notice and (2) the obligations of the Parties under this Lease shall be the same as if this Lease naturally expired on the date of such termination.

63. Permitted Lease Assignments. Lessor's consent shall not be required for an assignment of this Lease (i) to any person(s) or entity that controls, is controlled by, or is under common control with Lessee, (ii) to any entity resulting from the merger, acquisition, consolidation, or other reorganization with Lessee, whether or not Lessee is the surviving entity, (iii) to any person or legal entity that acquires all or substantially all of the assets or stock of Lessee (each of the foregoing is hereinafter referred to as a **"Permitted Assignee"**), (iv) in connection with a sale of shares or other equity interests in Lessee pursuant to a registered public offering, or (v) in connection with any transfer of shares of stock in Lessee which transfer does not reduce the net worth of Lessee, provided that before such assignment shall be effective, (a) the Permitted Assignee shall deliver to Lessor a written document by which the Permitted Assignee assumes the obligations of Lessee under this Lease if the transaction involves an actual assignment of this Lease (e.g., if this Lease is assigned in connection with a sale of Lessee's assets), (b) Lessor shall be given written notice of such assignment, including a copy of the document(s) that evidence the assignment, and (c) the use of the Premises by the Permitted Assignee shall be as set forth in **Paragraph 1.8** of the Lease. The term "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management, affairs, and policies of anyone, whether through the ownership of voting securities, by contract, or otherwise. A Permitted Assignee shall be permitted to exercise Lessee's option to extend the term of this Lease.

64. Building Signage. Lessee may, at Lessee's cost, install Lessee's name and logo on the exterior of the Premises, subject to Lessee's receipt of Lessor's prior written consent with respect to the size, design, and means of attachment. Lessor's consent shall not be unreasonably withheld. Upon expiration or earlier termination of this Lease, Lessee shall remove all signs installed by Lessee in or about the Premises and repair all damage caused by such removal.

65. Contractors. Lessor may require that Lessee use Lessor's selected contractors to complete Alterations or perform Lessee's maintenance and repair obligations with respect to the plumbing, electrical, and mechanical systems in the Premises; however, Lessee's right to require that Lessee use Lessor's selected contractors shall be subject to the condition that Lessor furnish to Lessee the names of at least two contractors for each trade for which Lessor requires that Lessee use Lessor's selected contractors.

66. Renewal Option. Lessee shall have **one three-year** option to renew the Lease. The renewal option shall expire and be of no further force or effect if Lessee (a) Defaults under any of the terms or the Lease beyond applicable notice and cure periods, (b) fails to deliver Notice exercising said option **nine months** or more prior to the Expiration Date, or (c) subleases any portion of the Premises or Assigns the Lease to anyone other than an affiliate of Lessee. If the provisions of this paragraph conflict with the provisions of **Paragraph 39** of the Lease, the provisions of this paragraph shall prevail. During the option period, all terms and conditions of this Lease shall remain in effect, except that Base Rent for the first year of the option period shall be the greater of (1) the Base Rent in effect during the year preceding the commencement of the option period or (2) the then prevailing market rate for comparable space in the Sorrento Mesa area. After the Base Rent has been established for the first year of the option period, the Base Rent shall be subject to **three percent** annual increases, as provided above.

67. Lessor's Work; Lessee's Early Access. Lessor shall, at Lessor's cost, complete the following work (collectively "**Lessor's Work**") (1) **paint interior walls of the Premises using Project standard paint, (2) install Project standard lighting in Premises, and (3) install Project standard floor tile in lab areas of Premises.** Provided Lessee and Lessee's contractor(s) do not interfere with the completion of Lessor's Work and subject to **Paragraph 3.2** of the Lease, Lessee may have early access to the Premises to install Lessee's-Owned Alterations and Utility Installations. Subject to Lessee's compliance with **Paragraph 7.3** of the Lease, Lessee may install in the Premises (1) **new doors to create two small ante rooms in the lab support room closest to the hallway in Suite 107, (2) modified mechanical systems so that labs are negative pressure, (3) additional door(s)/opening between Suite 107 and 108, (4) connection to the backup generator to Suite 108, (5) additional emergency outlets, and (6) polished concrete in the office area**.

68. Exclusions to Common Area Operating Expenses. Common Area Operating Expenses shall not include:

68.1 Leasing commissions, attorneys' fees, costs and disbursements and other expenses incurred in connection with negotiations or disputes with tenants, or other occupants or prospective tenants or other occupants, or associated with the enforcement of any leases or the defense of Lessor's title to or interest in the Project or any part thereof.

68.2 Costs (including permit, license and inspection fees) incurred in renovating or otherwise improving or decorating, painting or redecorating space for other tenants or other occupants or in renovating or redecorating vacant space.

68.3 Expenses in connection with services or other benefits of a type that are not provided to Lessee, but that are provided to other tenant(s) or occupant(s).

68.4 Repairs and maintenance for items that are covered by guaranties that are or will be honored by the guarantor.

68.5 Costs incurred due to violation by Lessor or any tenant of the terms and conditions of any other lease.

68.6 Payments in respect to overhead and/or profit to subsidiaries of affiliates of Lessor or to any party as a result of noncompetitive selection process, for management or other services on or to the Project, or for supplies or other materials to the extent that the costs of such services, supplies or other materials exceed the costs that would have been paid had the services, supplies or materials been provided by parties unaffiliated with the Lessor on a competitive basis.

68.7 Costs related to Lessor refinancing the debt on the Project, including points and closing costs.

68.8 Debt interest or amortization payments on any mortgages or deeds of trust

68.9 Costs and expenses incurred by Lessor in connection with repairs undertaken by Lessor under the sections of the Lease entitled “Damage or Destruction” or “Condemnation.”

68.10 reserves for or depreciation of the Project.

68.11 salaries, wages, benefits and other compensation paid to officers and employees of Lessor who are not assigned in whole or in part (and, if in part, then on a pro rata basis based on the amount of time devoted to the Project) to the operation, management, maintenance or repair of the Project.

68.12 general organizational, administrative and overhead costs relating to maintaining Lessor’s existence, either as a corporation, partnership, or other entity, including general corporate, legal and accounting expenses.

68.13 costs of Lessor’s charitable or political contributions, or of fine art maintained at the Project.

68.14 a property management fee in excess of 4% of gross receipts.

68.15 any expenses otherwise includable within Operating Expenses to the extent actually reimbursed by persons other than tenants of the Project under leases for space in the Project.

68.16 any costs incurred to remove, study, test or remediate hazardous materials that exist in or about the Project prior to the Commencement Date; and costs incurred to remove, remedy, contain, or treat hazardous material, which hazardous material is brought into the Project or onto the Project after the date hereof by Lessor or any other tenant of the Project.

69. Control Areas. Lessee shall not store at the Premises more than Lessee’s pro rata share of allowed combustible materials based upon the ratio of the Premises floor area to the total “Control Area” of which the Premises is a part.

70. Energy Efficiency Reporting. Lessee acknowledges that Lessor may, from time to time, be required to disclose certain information concerning the Premises’ energy use pursuant to California Public Resources Code Section 25402.10 and the regulations promulgated pursuant thereto (collectively, together with any future law or regulation regarding disclosure of energy efficiency data with respect to the Building, **“Energy Disclosure Regulations”**). Lessee shall cooperate with Lessor with respect to any disclosure and/or reporting requirements pursuant to any Energy Disclosure Regulations. Without limiting the generality of the foregoing, Lessee shall, within 20 days following request from Lessor, disclose to Lessor all information requested by Lessor in connection with the Energy Disclosure Regulations. Lessee acknowledges that this information shall be provided on a non-confidential basis and may be provided by Lessor to the applicable utility providers, the California Energy Commission (and other governmental entities having jurisdiction with respect to the Energy Disclosure Regulations), and any third parties to whom Lessor is required to make the disclosures pursuant to the Energy Disclosure Regulations.

71. AIR Printed Form Corrections. The printed portion of the AIR form is modified as follows:

(a) [Intentionally deleted.]

(b) Paragraph 6.2(g) shall be amended as follows: "(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 shall investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense."

(c) In no event shall Lessee be responsible for any cost or expense pursuant to Paragraph 6.4 except to the extent that Lessee caused or contributed to a Hazardous Substance Condition.

(d) The following is hereby added to Paragraph 8.8: "Notwithstanding anything to the contrary contained in this Lease, neither Lessor nor Lessee shall have any liability to the other for any consequential, indirect, special or punitive damages."

(e) Paragraph 9.6(a) is hereby amended by deleting the following term from the end of the first sentence: "but not to exceed the proceeds received from the Rental Value insurance."

(f) Paragraph 12.1(d) shall be amended to read as follows: "(d) An assignment or subletting without consent shall be a Default curable after notice per Paragraph 13.1(d)."

(g) The last sentence of Paragraph 31 is hereby replaced with the following: "In addition, if Lessee is in Default of this Lease, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of such 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)."

(h) Lessee's obligation to reimburse Lessor for reasonable third-party out-of-pocket expenses incurred by Lessor in connection with Lessee's request for Lessor's consent under Paragraph 36 of the Lease shall not exceed $1,000.00 unless Lessor provides to Lessee advance written notice that such expenses may exceed $1,000.00.

72. Changes to Project. Notwithstanding anything to the contrary in this Lease, in no event shall Lessor operate, maintain or make any changes to the Project or any portion thereof that will unreasonably interfere with or limit (a) Lessee's access to or from the Premises, (b) Lessee's use of the Premises, (c) Lessee's parking, or signage under this Lease, or (d) views of or from the Premises.

73. Payment of Rent. Notwithstanding anything to the contrary in this Lease, Lessee may at its election pay any Rent to Lessor by electronic transfer and Lessor shall provide Lessee with ACH information upon request from Lessee.

74. Interference. Notwithstanding anything to the contrary in this Lease, if (1) Lessee is unable to use the Premises or any parking rights under this Lease (whether by lack of services, lack of utilities, lack of access, repairs or construction, or any other reason, (2) such inability to use is not caused by an occurrence for which Lessee is required to maintain insurance under the terms of this Lease and (3) inability to use is not caused by Lessee and provided that such inability to use is caused by the acts or omissions of Lessor) for more than five (5) business days, then Rent shall be abated until the Premises may be used by Lessee (and if such lack of use is limited to a portion of the Premises, then such abatement of Rent shall be prorated based on the portion of the Premises that is unavailable) and if such inability lasts longer than thirty (30) days, then Lessee may, at its election, terminate this Lease.

Schedule of Exhibits

Exhibit A	Diagram of the Project that Includes the Location of the Premises
Exhibit B	Rules and Regulations

Exhibit 10.14

LEASE

by and between

BMR-MODA SORRENTO LP,
a Delaware limited partnership,

AS LANDLORD

and

CUE HEALTH INC.,
a Delaware corporation,

AS TENANT

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LEASE

THIS LEASE (this "Lease") is entered into as of this 4th day of December, 2018 (the "Execution Date"), by and between BMR-MODA SORRENTO LP, a Delaware limited partnership ("Landlord"), and CUE HEALTH INC., a Delaware corporation ("Tenant").

RECITALS

A. WHEREAS, Landlord owns certain real property (the "Property") and the improvements on the Property located at 4940 and 4980 Carroll Canyon Road, and 5451 and 5501 Oberlin Drive, San Diego, California 92121, including the buildings located thereon; and

B. WHEREAS, Landlord wishes to lease to Tenant, and Tenant desires to lease from Landlord, certain premises (the "Premises") consisting of approximately 20,900 rentable square feet of space located on the first (1st) floor of the building located at 4980 Carroll Canyon Road in which the Premises are located (the "Building"), pursuant to the terms and conditions of this Lease, as detailed below.

AGREEMENT

NOW, THEREFORE, Landlord and Tenant, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, agree as follows:

1. Lease of Premises.

1.1 Effective on the Term Commencement Date (as defined below), Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, as shown on Exhibit A attached hereto, for use by Tenant in accordance with the Permitted Use (as defined below) and no other uses. The Property and all landscaping, parking facilities, private drives, if any, and other improvements and appurtenances related thereto, including the Building and other adjacent buildings owned by Landlord located at 4940 Carroll Canyon Road, 5451 Oberlin Drive and 5501 Oberlin Drive, each located in San Diego, California, are hereinafter collectively referred to as the "Project." All portions of the Building that are for the non-exclusive use of the tenants of the Building only, and not the tenants of the Project generally, such as service corridors, stairways, elevators, public restrooms and public lobbies (all to the extent located in the Building), are hereinafter referred to as "Building Common Area." All portions of the Project that are for the non-exclusive use of tenants of the Project generally, including driveways, sidewalks, parking areas, landscaped areas, and service corridors, stairways, elevators, public restrooms and public lobbies (but excluding Building Common Area), are hereinafter referred to as "Project Common Area." The Building Common Area and Project Common Area are collectively referred to herein as "Common Area." Landlord agrees that Landlord will not convert any shipping/receiving area utilized by tenants in the Building Common Area or the Project Common Area to common amenity space.

2. Basic Lease Provisions. For convenience of the parties, certain basic provisions of this Lease are set forth herein. The provisions set forth herein are subject to the remaining terms and conditions of this Lease and are to be interpreted in light of such remaining terms and conditions.

2.1 This Lease shall take effect upon the Execution Date and, except as specifically otherwise provided within this Lease, each of the provisions hereof shall be binding upon and inure to the benefit of Landlord and Tenant from the date of execution and delivery hereof by all parties hereto. The parties acknowledge and agree that the Premises shall be delivered to Tenant for the commencement and performance of the Tenant's Improvements upon at least ten (10) business days written notice from Tenant to Landlord requesting delivery of the Premises (such date of delivery shall be referred to as the "Delivery Date"); provided, that Tenant shall not be liable for the cost of utilities supplied to the Premises prior to the Delivery Date.

2.2 In the definitions below, each current Rentable Area (as defined below) is expressed in square feet. Rentable Area and "Tenant's Pro Rata Share" are both subject to adjustment as provided in this Lease.

Definition or Provision	Means the Following (As of the Execution Date)
Approximate Rentable Area of the Premises	20,900 square feet
Approximate Rentable Area of the Building	28,320 square feet
Approximate Rentable Area of the Project	104,577 square feet
Tenant's Pro Rata Share of the Building	73.80%
Tenant's Pro Rata Share of the Project	19.99%

2.3 Monthly and annual installments of Base Rent for the Premises ("Base Rent") as of the Term Commencement Date, subject to the Abatement Amount credited to Tenant during the Abatement Period pursuant to the terms and conditions of Section 8 below:

Dates	Square Feet of Rentable Area	Base Rent per Square Foot of Rentable Area	Monthly Base Rent	Annual Base Rent
Term Commencement Date - Month 12	20,900	$ 3.60 monthly	$ 75,240.00	$ 902,880.00
Months 13 - 24	20,900	$ 3.71 monthly	$ 77,497.20	$ 929,966.40
Months 25 - 36	20,900	$ 3.82 monthly	$ 79,822.12	$ 957,865.39
Months 37 - 48	20,900	$ 3.93 monthly	$ 82,216.78	$ 986,601.35
Months 49 - 60	20,900	$ 4.05 monthly	$ 84,683.28	$ 1,016,199.39
Months 61 - 72	20,900	$ 4.17 monthly	$ 87,223.78	$ 1,046,685.37
Months 73 - 84	20,900	$ 4.30 monthly	$ 89,840.49	$ 1,078,085.93
Months 85 - 96	20,900	$ 4.43 monthly	$ 92,535.71	$ 1,110,428.51
Months 97 - 108	20,900	$ 4.56 monthly	$ 95,311.78	$ 1,143,741.37
Months 109 - 120	20,900	$ 4.70 monthly	$ 98,171.13	$ 1,178,053.61
Months 121 - 127	20,900	$ 4.84 monthly	$ 101,116.27	$ 1,213,395.22

Base Rent is subject to an annual upward adjustment of three percent (3%) of the then-current Base Rent, with the first such adjustment becoming effective commencing on the first (1st) annual anniversary of the Term Commencement Date, and subsequent adjustments becoming effective on every successive annual anniversary of the Term Commencement Date during the Term. The foregoing table reflects such annual upward adjustments of the Base Rent. Base Rent is also subject to adjustment arising from any disbursement of the Additional TI Allowance as set forth in Section 4.4 below and subject to abatement in accordance with Article 8 below.

2.4 Estimated Term Commencement Date: October 1, 2019

2.5 Estimated Term Expiration Date: March 31, 2030

2.6 Security Deposit: $75,240.00

2.7 Permitted Use: Office and laboratory use in conformity with all federal, state, municipal and local laws, codes, ordinances, rules and regulations of Governmental Authorities (as defined below) having jurisdiction over the Premises, the Building, the Property, the Project, Landlord or Tenant, including both statutory and common law and hazardous waste rules and regulations ("Applicable Laws").

2.8 Address for Rent Payment:

BMR-MODA SORRENTO LP
Attention Entity 699
P.O. Box 511415
Los Angeles, California 90051-7970

2.9 Address for Notices to Landlord:

BMR-MODA SORRENTO LP
17190 Bernardo Center Drive
San Diego, California 92128
Attn: Legal Department

2.10 Address for Notices to Tenant:

Prior to the Term Commencement Date:

11100 Roselle Street
Suite A
San Diego, CA 92121
Attention: Ayub Khattak

From and after the Term Commencement Date:

At the Premises
Attention: Ayub Khattak

in either case with a copy to:

Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
Attention: Michael Levinson, Esq.

2.11 Address for Invoices to Tenant:

Prior to the Term Commencement Date:

11100 Roselle Street
Suite A
San Diego, CA 92121
Attention: Ayub Khattak

From and after the Term Commencement Date:

At the Premises
Attention: Ayub Khattak

2.12 The following Exhibits are attached hereto and incorporated herein by reference:

Exhibit A Premises
Exhibit B Work Letter
Exhibit B-1 Tenant Work Insurance Schedule
Exhibits B-2 Approved TI Concept Plan
Exhibit C Acknowledgement of Term Commencement Date and Term Expiration Date
Exhibit D Form of Additional TI Allowance Acceptance Letter
Exhibit E Form of Letter of Credit
Exhibit F Rules and Regulations
Exhibit G Tenant's Personal Property
Exhibit H Form of Estoppel Certificate
Exhibit I Signage Criteria

3. Term. The actual term of this Lease as the same may be earlier terminated in accordance with this Lease, the "Term") shall commence on the Term Commencement Date (as defined in Article 4) and end on the date (the "Term Expiration Date") that is the last day of the one hundred twenty-seventh (127th) month after the Term Commencement Date, subject to any extension or earlier termination of this Lease as provided herein. TENANT HEREBY WAIVES THE REQUIREMENTS OF SECTION 1933 OF THE CALIFORNIA CIVIL CODE, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

4. Possession and Commencement Date.

4.1. The "Term Commencement Date" shall be the earlier of (a) the Estimated Term Commencement Date and (b) the day the work required of Tenant (the "Tenant Improvements") described in the Work Letter set forth in Exhibit B attached hereto (the "Work Letter") is Substantially Complete (as defined below). Tenant shall execute and deliver to Landlord written acknowledgment of the actual Term Commencement Date and the Term Expiration Date within ten (10) days after Tenant takes occupancy of the Premises, in the form attached as Exhibit C hereto. Failure to execute and deliver such acknowledgment, however, shall not affect the Term Commencement Date or Landlord's or Tenant's liability hereunder. Failure by Tenant to obtain validation by any medical review board or other similar governmental licensing of the Premises required for the Permitted Use by Tenant shall not serve to extend the Term Commencement Date. The term "Substantially Complete" or "Substantial Completion" means that the Tenant Improvements are substantially complete in accordance with the Approved Plans (as defined in the Work Letter), except for minor punch list items.

4.2. Tenant shall cause the Tenant Improvements to be constructed in the Premises pursuant to the Work Letter at Tenant's sole cost and expense; provided Landlord shall provide a tenant improvement allowance to Tenant in connection with the Tenant Improvements not to exceed (a) Four Million Three Hundred Eighty-Nine Thousand and 00/100 Dollars ($4,389,000.00) (based upon Two Hundred Ten and 00/100 Dollars ($210.00) per square foot of Rentable Area (as defined below)) (the "Base TI Allowance") plus (b) if properly requested by Tenant pursuant to this Section, Four Hundred Eighteen Thousand and 00/100 Dollars ($418,000.00) (based upon Twenty and 00/100 Dollars ($20.00) per square foot of Rentable Area) (the "Additional TI Allowance"). The Base TI Allowance, together with Additional TI Allowance (if properly requested by Tenant pursuant to this Article 4), shall be referred to herein as the "TI Allowance." In no event shall any unused TI Allowance entitle Tenant to a credit against Rent payable under this Lease. The TI Allowance may be applied to the costs of (m) construction, (n) project review by Landlord (which fee shall equal the lesser of (i) one and one-half percent (1.5%) of the cost of the Tenant Improvements, including the Base TI Allowance and, if used by Tenant, the Additional TI Allowance and (ii) Landlord's actual incurred cost for Landlord's thirty-party agent or representative to review Tenant's construction and performance of the Tenant Improvements in the Premises), (o) commissioning of mechanical, electrical and plumbing systems by a licensed, qualified commissioning agent hired by Tenant, and review of such party's commissioning report by a licensed, qualified commissioning agent hired by Landlord, (p) space planning, architect, engineering and other related services performed by third parties unaffiliated with Tenant, (q) building permits and other taxes, fees, charges and levies by Governmental Authorities (as defined below) for permits or for inspections of the Tenant Improvements, (r) costs and expenses for labor, material, equipment and fixtures and (s) project management fees to Hughes Marino equal to (and not to exceed) three percent (3%) of the cost of the Tenant Improvements. In no event shall the TI Allowance be used for (v) the cost of work that is not authorized by the Approved Plans (as defined in the Work Letter) or otherwise approved in writing by Landlord, (w) payments to Tenant or any affiliates of Tenant, (x) the purchase of any furniture, personal property or other non-building system equipment, (y) costs arising from any default by Tenant of its obligations under this Lease or (z) costs that are recoverable by Tenant from a third party (e.g., insurers, warrantors, or tortfeasors).

4.3. To the extent that the total projected cost of the Tenant Improvements (as projected or approved by Landlord) exceeds the TI Allowance (such excess, the "Excess TI Costs"), Tenant shall pay the costs of the Tenant Improvements on a pari passu basis with Landlord as such costs are paid, in the proportion of such Excess TI Costs payable by Tenant to the TI Allowance payable by Landlord. If the entire Excess TI Costs advanced by Tenant to Landlord are not applied toward the costs of the Tenant Improvements, then Landlord shall promptly return such excess to Tenant following completion of all of the Tenant Improvements.

4.4 Tenant shall have until six (6) months following the Term Commencement Date (the "TI Deadline"), to submit Fund Requests (as defined in the Work Letter) to Landlord for disbursement of the unused portion of the TI Allowance, after which date Landlord's obligation to fund any such costs for which Tenant has not submitted a Fund Request to Landlord shall expire. Base Rent shall be increased to include the amount of the Additional TI Allowance disbursed by Landlord in accordance with this Lease amortized over the portion of the initial Term occurring after the expiration of the Abatement Period (as defined below) at a rate of eight percent (8.00%) annually. The amount by which Base Rent shall be increased shall be determined as of the Term Commencement Date and Base Rent shall be increased accordingly and the payments of such increased Base Rent shall commence after expiration of the Abatement Period. If such determination of the increase in Base Rent as of the Term Commencement Date does not reflect use by Tenant of all of the Additional TI Allowance, then it shall be determined again as of the TI Deadline, with Tenant paying (on the next succeeding day that Base Rent is due under this Lease (the "TI True-Up Date")) any underpayment of the further adjusted Base Rent for the period beginning on the day after the Abatement Period expires and ending on the TI True-Up Date. For purposes of clarification, the annual upward adjustments of Base Rent described in Section 2.3 shall apply to any increase in Base Rent arising from any disbursement of the Additional TI Allowance. Landlord shall not be obligated to expend any portion of the Additional TI Allowance unless and until Landlord shall have received from Tenant a letter in the form attached as Exhibit D hereto executed by an authorized officer of Tenant.

4.5. Tenant and its authorized agents shall be granted a license by Landlord to enter upon the Premises prior to the Delivery Date at a time and date determined by Landlord in Landlord reasonable discretion, at Tenant's sole risk and expense, for the sole purpose of inspecting, surveying and measuring the Premises (and not to conduct any invasive environmental testing of the Premises or to conduct any business of Tenant in the Building or Premises); provided, however, that (a) prior to entering upon the Premises, Tenant shall furnish to Landlord evidence satisfactory to Landlord that insurance coverages required of Tenant under the provisions of Article 23 are in effect, (b) and such early entry shall at all times prior to the Delivery Date be subject to Articles 12, 13, 14, 19, 21, 22, 23, 28, 31, 34, 35, 37, 38, 39 and 40 of this Lease; (c) Tenant shall pay all service and maintenance charges for the Premises attributable to Tenant's early entry and use of the Premises as reasonably determined by Landlord, except that Tenant shall not be obligated to pay for the cost of utilities supplied to the Premises prior to the Delivery Date, and (d) prior to entering upon the Premises, Tenant shall have delivered to Landlord an executed original of this Lease and payment in an amount equal to (i) monthly Base Rent for the first (1st) month of the initial Term, plus (ii) the Security Deposit. In the event of any breach or default by Tenant of any term or provision of those certain Lease sections set forth in clause (b) above, Landlord may, in its reasonable discretion, in addition to exercising any of its other rights and remedies set forth herein, revoke such early entry license upon written notice to Tenant.

4.6. Tenant shall pay all utility charges, together with any fees, surcharges and taxes thereon for the period beginning on the date that Tenant first accesses the Premises for any reason after the Execution Date. For the avoidance of doubt, Tenant shall not be liable for the cost of utilities supplied to the Premises prior to the Delivery Date.

5. Condition of Premises. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of the Premises, the Building or the Project, or with respect to the suitability of the Premises, the Building or the Project for the conduct of Tenant's business. Tenant acknowledges that, subject to Landlord's obligations to make available to Tenant the TI Allowance in accordance with this Lease as described below in this Section 5, (a) it is fully familiar with the condition of the Premises and agrees to take the same in its condition "as is" as of the Delivery Date and (b) Landlord shall have no obligation to alter or repair the Premises for Tenant's occupancy or construct any improvements or otherwise prepare the Premises for Tenant's occupancy, except that Landlord will make available to Tenant the Base TI Allowance and, if properly requested by Tenant pursuant to the terms of the Lease, the Additional TI Allowance. Tenant's taking of possession of the Premises shall, except as otherwise agreed to in writing by Landlord and Tenant, conclusively establish that the Premises, the Building and the Project were at such time in good, sanitary and satisfactory condition and repair.

6. Rentable Area.

6.1 The term "Rentable Area" shall reflect such areas as reasonably calculated by Landlord's architect, as the same may be reasonably adjusted from time to time by Landlord in consultation with Landlord's architect to reflect changes to the Premises (or a portion thereof), the Building or the Project, as applicable. Notwithstanding the foregoing to the contrary, in no event shall the Rentable Area of the Project, the Premises or the Building be deemed to have increased unless due to a change in the outer dimensions of the exterior walls of the same.

6.2 The Rentable Area of the Building is generally determined by making separate calculations of Rentable Area applicable to each floor within the Building and totaling the Rentable Area of all floors within the Building. The Rentable Area of a floor is computed by measuring to the outside finished surface of the permanent outer Building walls. The full area calculated as previously set forth is included as Rentable Area, without deduction for columns and projections or vertical penetrations, including stairs, elevator shafts, flues, pipe shafts, vertical ducts and the like, as well as such items' enclosing walls.

6.3 The term "Rentable Area," when applied to the Premises, is that area equal to the usable area of the Premises, plus an equitable allocation of Rentable Area within the Building that is not then utilized or expected to be utilized as usable area, including that portion of the Building devoted to corridors, equipment rooms, restrooms, elevator lobby, atrium and mailroom.

6.4 The Rentable Area of the Project is the total Rentable Area of all buildings within the Project.

7. Rent.

7.1 Commencing on the Term Commencement Date, Tenant shall pay to Landlord the sums set forth in Section 2.3 as Base Rent for the Premises, subject to the abatement of Base Rent to the extent set forth in Section 8 below. Base Rent shall be paid in equal monthly installments as set forth in Section 2.3, each in advance on the first day of each and every calendar month during the Term. For the avoidance of doubt, Tenant's payment of Base Rent for the first (1st) month of the Term shall be delivered to Landlord on the Term Commencement Date.

7.2 In addition to Base Rent, Tenant shall pay to Landlord as additional rent ("Additional Rent"), commencing on the Term Commencement Date (or the Expense Trigger Date (as defined below) with respect to Operating Expenses) and at times hereinafter specified in this Lease, notwithstanding any abatement of Base Rent provided in Section 8 below, (a) Tenant's Adjusted Share (as defined below) of Operating Expenses (as defined below), (b) the Property Management Fee (as defined below) and (c) any other amounts that Tenant assumes or agrees to pay under the provisions of this Lease that are owed to Landlord, including any and all other sums that may become due by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Lease to be performed by Tenant, after notice and the lapse of any applicable cure periods.

7.3 Base Rent and Additional Rent shall together be denominated "Rent." Rent shall be paid to Landlord, without abatement, deduction or offset, in lawful money of the United States of America to the address set forth in Section 2.8 or to such other person or at such other place as Landlord may from time designate in writing (which may, at Tenant's election, include payment of Rent by ACH, subject to an ACH authorization form reasonably acceptable to Landlord (which form shall stipulate that such authorization is for credit entries only to Landlord's bank account)). In the event the Term commences or ends on a day other than the first day of a calendar month, then the Rent for such fraction of a month shall be prorated for such period on the basis of the number of days in the month and shall be paid at the then-current rate for such fractional month.

7.4 Tenant's obligation to pay Rent shall not be discharged or otherwise affected by (a) any Applicable Laws now or hereafter applicable to the Premises, (b) any other restriction on Tenant's use, (c) except as expressly provided herein, any casualty or taking or (d) any other occurrence; and Tenant waives all rights now or hereafter existing to terminate or cancel this Lease or quit or surrender the Premises or any part thereof, or to assert any defense in the nature of constructive eviction to any action seeking to recover rent. Tenant's obligation to pay Rent with respect to any period or obligations arising, existing or pertaining to the period prior to the date of the expiration or earlier termination of the Term or this Lease shall survive any such expiration or earlier termination; provided, however, that nothing in this sentence shall in any way affect Tenant's obligations with respect to any other period.

8. Rent Abatement. Notwithstanding anything to the contrary contained herein and provided that no default by Tenant occurs hereunder beyond any applicable notice and cure period, Landlord hereby agrees that Tenant shall not be required to pay monthly Base Rent for the second (2nd) month of the initial Term through the eighth (8th) month of the initial Term (the "Abatement Period"). The total amount of monthly Base Rent abated during the Abatement Period shall not exceed Five Hundred Twenty-Six Thousand Six Hundred Eighty and 00/100 Dollars ($526,680.00) (the "Abatement Amount"); provided that the Abatement Amount shall not be increased as a result of any increase in Base Rent arising from Landlord's disbursement of any Additional TI Allowance in accordance with Sections 4.2 and 4.4 of this Lease. During the Abatement Period, Tenant shall still be responsible for the payment of all of its other monetary obligations under this Lease, including, all Additional Rent, including Operating Expenses the Property Management Fee and costs of utilities for the Premises. In the event of a default by Tenant under the terms of this Lease that results in termination of this Lease in accordance with the provisions of this Lease, then as a part of the recovery set forth in this Lease and in addition to any other remedies to which Landlord is entitled pursuant to Section 31 hereof, Landlord shall be entitled to the immediate recovery, as of the day prior to such termination, of the unamortized Abatement Amount that was abated under the provisions of this Section 8.

9. Operating Expenses.

9.1 As used herein, the term "Operating Expenses" shall include:

(a) Government impositions, including property tax costs consisting of real and personal property taxes (including amounts due under any improvement bond upon the Building or the Project (including the parcel or parcels of real property upon which the Building, the other buildings in the Project and areas serving the Building and the Project are located)) or assessments in lieu thereof imposed by any federal, state, regional, local or municipal governmental authority, agency or subdivision (each, a "Governmental Authority"); taxes on or measured by gross rentals received from the rental of space in the Project; taxes based on the square footage of the Premises, the Building or the Project, as well as any parking charges, utilities surcharges or any other costs levied, assessed or imposed by, or at the direction of, or arising from Applicable Laws or interpretations thereof, promulgated by any Governmental Authority in connection with the use or occupancy of the Project or the parking facilities serving the Project; taxes on this transaction or any document to which Tenant is a party creating or transferring an interest in the Premises; any fee for a business license to operate an office building; and any expenses, including the reasonable cost of attorneys or experts, reasonably incurred by Landlord in seeking reduction by the taxing authority of the applicable taxes, less tax refunds obtained as a result of an application for review thereof; and

(b) All other costs of any kind paid or incurred by Landlord in connection with the operation or maintenance of the Building and the Project, and costs of repairs and replacements to improvements within the Project as appropriate to maintain the Project as required hereunder; costs of utilities furnished to the Common Area; sewer fees; cable television; trash collection; cleaning, including windows; heating, ventilation and air-conditioning ("HVAC") furnished to the Building, Project and Common Area; maintenance of landscaping and grounds; maintenance of drives and parking areas; maintenance of the roof; security services and devices; building supplies; maintenance or replacement of equipment utilized for operation and maintenance of the Project; license, permit and inspection fees; sales, use and excise taxes on goods and services purchased by Landlord in connection with the operation, maintenance or repair of the Building or Project systems and equipment; telephone, postage, stationery supplies and other expenses incurred in connection with the operation, maintenance or repair of the Project; third party accounting, legal and other professional fees and expenses incurred in connection with the Project; costs of furniture, draperies, carpeting, landscaping supplies and other customary and ordinary items of personal property provided by Landlord for use in Common Area; except as set forth in Section 12.2, capital expenditures incurred (i) in replacing obsolete equipment, (ii) for the primary purpose of reducing Operating Expenses or (iii) required by any Governmental Authority to comply with changes in Applicable Laws that take effect after the Execution Date or to ensure continued compliance with Applicable Laws in effect as of the Execution Date, in each case amortized over the useful life thereof, as reasonably determined by Landlord, in accordance with generally accepted accounting principles (collectively, "Permitted Capital Expenditures"); costs of complying with Applicable Laws (except to the extent such costs are incurred to remedy non-compliance as of the Execution Date with Applicable Laws); costs to keep the Project in compliance with, or costs or fees otherwise required under or incurred pursuant to any CC&Rs (as defined below), including condominium fees; insurance premiums, including premiums for commercial general liability, property casualty, earthquake, terrorism and environmental coverages; portions of insured losses paid by Landlord as part of the deductible portion of a loss pursuant to the terms of insurance policies; service contracts; costs of services of independent contractors retained to do work of a nature referenced above; and costs of compensation (including employment taxes and fringe benefits) of all persons who perform regular and recurring duties connected with the day-to-day operation and maintenance of the Project, its equipment, the adjacent walks, landscaped areas, drives and parking areas, including janitors, floor waxers, window washers, watchmen, gardeners, sweepers, plow truck drivers, handymen, and engineering/maintenance/facilities personnel (provided that such costs shall be prorated, as reasonably determined by Landlord, for persons that perform work at other properties owned by Landlord or any affiliate of Landlord).

(c) Notwithstanding the foregoing, Operating Expenses shall not include any net income, franchise, capital stock, estate or inheritance taxes, or taxes that are the personal obligation of Tenant or of another tenant of the Project; leasing commissions; advertising and marketing expenses; expenses that relate to preparation of rental space for a tenant at the Project, including costs incurred to improve, renovate, redecorate or otherwise prepare any rental space for a tenant; legal expenses incurred by Landlord in connection with the negotiation of leases with prospective tenants and occupants of the Project (other than Tenant) and legal expenses (including attorneys' fees) incurred in connection with disputes and enforcement of any leases with tenants of the Project (other than Tenant); costs of repairs to the extent reimbursed by payment received from other tenants of the Project or a third party not affiliated with Landlord; legal expenses (including attorneys' fees) incurred in connection with negotiations or disputes between Landlord and employees, management agents, leasing agents, purchasers or mortgagees of the Building; expenses of initial development and construction, including grading, paving, landscaping and decorating (as distinguished from maintenance, repair and replacement of the foregoing); costs or expenses to the extent reimbursed by payment of insurance proceeds received by Landlord; interest, principal or any other payments under any loans to Landlord or loans secured by a loan agreement, mortgage, deed of trust, security instrument or other loan document covering the Project or a portion thereof (collectively, "Loan Documents") (provided that interest upon a government assessment or improvement bond payable in installments shall constitute an Operating Expense under Subsection 9.1(a)); all payments of rent (but not taxes or operating expenses) under any ground lease or other underlying lease of all or any portion of the Project; salaries of executive officers of Landlord; depreciation claimed by Landlord for tax purposes (provided that this exclusion of depreciation is not intended to delete from Operating Expenses actual costs of repairs and replacements that are provided for in Subsection 9.1(b)); taxes that are excluded from Operating Expenses by the last sentence of Subsection 9.1(a); costs or expenses incurred in connection with the financing or sale of the Project or any portion thereof; costs to maintain reserves of any kind; costs incurred to remedy any non-compliance as of the Execution Date with Applicable Laws that was not caused by Tenant or any Tenant Party; costs incurred to remove, study, test or remediate Hazardous Materials (as defined below) to the extent such Hazardous Materials existed on or about the Project as of the Execution Date and did not arise from and were not caused or exacerbated by Tenant or any Tenant Party (except with respect to those costs for which Tenant is otherwise responsible pursuant to the express terms of this Lease, which costs shall remain Tenant's direct obligation); costs arising from a breach of this Lease by Landlord or the gross negligence or willful misconduct of Landlord or its employees; costs expressly excluded from Operating Expenses elsewhere in this Lease or that are charged to or paid by Tenant under other provisions of this Lease; professional fees and disbursements and other costs and expenses related to the ownership (as opposed to the use, occupancy, operation, maintenance or repair) of the Project; capital expenditures, except Permitted Capital Expenditures; costs to subsidiaries or affiliates of Landlord for goods and/or services in or to the Project to the extent the same materially exceeds arm's-length competitive costs charged by firms that are not related to Landlord for the same goods and/or services; costs of Landlord's charitable or political contributions; costs for the initial purchase of any fine art maintained at the Project; a property management fee other than the Property Management Fee (as defined below); penalties, fines, interest or other similar charges incurred by Landlord due to Landlord's inability or unwillingness to make payment of taxes and/or to file any tax or informational returns when due (unless due to a default by Tenant); and any item that, if included in Operating Expenses, would involve a double collection for such item by Landlord. To the extent that Tenant uses more than Tenant's Pro Rata Share of any item of Operating Expenses, Tenant shall pay Landlord for such excess in addition to Tenant's obligation to pay Tenant's Pro Rata Share of Operating Expenses (such excess, together with Tenant's Pro Rata Share, "Tenant's Adjusted Share").

9.2 Tenant shall pay to Landlord on the first day of each calendar month of the Term, as Additional Rent, (a) the Property Management Fee (as defined below) and (b) Landlord's estimate of Tenant's Adjusted Share of Operating Expenses with respect to the Building and the Project, as applicable, for such month.

(w) The "Property Management Fee" shall equal three percent (3.00%) of Base Rent due from Tenant. Tenant shall pay the Property Management Fee in accordance with Section 9.2 with respect to the entire Term, including any extensions thereof or any holdover periods by Tenant, regardless of whether Tenant is obligated to pay Base Rent, Operating Expenses or any other Rent with respect to any such period or portion thereof. During the Abatement Period (and any period of occupancy prior to the Term as further described in Section 9.5), the Property Management Fee shall be calculated as if Tenant were paying Seventy-Five Thousand Two Hundred Forty and 00/100 Dollars ($75,240.00) per month for Base Rent.

(x) Within ninety (90) days after the conclusion of each calendar year (or such longer period as may be reasonably required by Landlord), Landlord shall furnish to Tenant a statement showing in reasonable detail the actual Operating Expenses, Tenant's Adjusted Share of Operating Expenses, and the cost of providing utilities to the Premises for the previous calendar year ("Landlord's Statement"). Any additional sum due from Tenant to Landlord shall be due and payable within thirty (30) days after receipt of an invoice therefor. If the amounts paid by Tenant pursuant to this Section exceed Tenant's Adjusted Share of Operating Expenses for the previous calendar year, then Landlord shall credit the difference against the Rent next due and owing from Tenant; provided that, if the Lease term has expired, Landlord shall accompany Landlord's Statement with payment for the amount of such difference.

(y) Any amount due under this Section for any period that is less than a full month shall be prorated for such fractional month on the basis of the number of days in the month.

9.3 Landlord may, from time to time, modify Landlord's calculation and allocation procedures for Operating Expenses, so long as such modifications produce Dollar results substantially consistent with Landlord's then-current practice at the Project. Landlord or an affiliate(s) of Landlord currently own or lease other property(ies) adjacent to the Project or its neighboring properties (collectively, "Neighboring Properties"). In connection with Landlord performing services for the Project pursuant to this Lease, similar services may be performed by the same vendor(s) for Neighboring Properties. In such a case, Landlord shall reasonably allocate to each Building and the Project the costs for such services based upon the ratio that the square footage of the Building or the Project (as applicable) bears to the total square footage of all of the Neighboring Properties or buildings within the Neighboring Properties for which the services are performed, unless the scope of the services performed for any building or property (including the Building and the Project) is disproportionately more or less than for others, in which case Landlord shall equitably allocate the costs based on the scope of the services being performed for each building or property (including the Building and the Project). Since the Project consists of multiple buildings, certain Operating Expenses may pertain to a particular building(s) and other Operating Expenses to the Project as a whole. Landlord reserves the right in its sole discretion to allocate any such costs applicable to any particular building within the Project to such building, and other such costs applicable to the Project to each building in the Project (including the Building), with the tenants in each building being responsible for paying their respective proportionate shares of their buildings to the extent required under their leases. Landlord shall allocate such costs to the buildings (including the Building) in a reasonable, non-discriminatory manner, and such allocation shall be binding on Tenant.

9.4 Landlord's Statement shall be final and binding upon Tenant unless Tenant, within forty-five (45) days after Tenant's receipt thereof, shall contest any item therein by giving written notice to Landlord, specifying each item contested and the reasons therefor; provided that Tenant shall in all events pay the amount specified in Landlord's Statement, pending the results of the Independent Review and determination of the Accountant(s), as applicable and as each such term is defined below. If, during such forty-five (45)-day period, Tenant reasonably and in good faith questions or contests the correctness of Landlord's statement of Tenant's Adjusted Share of Operating Expenses, Landlord shall provide Tenant with reasonable access to Landlord's books and records to the extent relevant to determination of Operating Expenses, and such information as Landlord reasonably determines to be responsive to Tenant's written inquiries. Upon Tenant's request, Landlord agrees to provide such books and records and such other information required to be provided by Landlord electronically following Tenant's written request. In the event that, after Tenant's review of such information, Landlord and Tenant cannot agree upon the amount of Tenant's Adjusted Share of Operating Expenses, then Tenant shall have the right to have an independent public accounting firm hired by Tenant on an hourly basis and not on a contingent-fee basis (at Tenant's sole cost and expense) and approved by Landlord (which approval Landlord shall not unreasonably withhold or delay) audit and review such of Landlord's books and records for the year in question as directly relate to the determination of Operating Expenses for such year (the "Independent Review"), but not books and records of entities other than Landlord. Landlord shall make such books and records available at the location where Landlord maintains them in the ordinary course of its business. Landlord need not provide copies of any books or records; provided that, in connection with an Independent Review, Landlord agrees to provide the applicable books and records required by this Lease electronically following Tenant's written request. Tenant shall commence the Independent Review within fifteen (15) days after the date Landlord has given Tenant access to Landlord's books and records for the Independent Review. Tenant shall complete the Independent Review and notify Landlord in writing of Tenant's specific objections to Landlord's calculation of Operating Expenses (including Tenant's accounting firm's written statement of the basis, nature and amount of each proposed adjustment) no later than sixty (60) days after Landlord has first given Tenant access to Landlord's books and records for the Independent Review. Landlord shall review the results of any such Independent Review. The parties shall endeavor to agree promptly and reasonably upon Operating Expenses taking into account the results of such Independent Review. If, as of the date that is sixty (60) days after Tenant has submitted the Independent Review to Landlord, the parties have not agreed on the appropriate adjustments to Operating Expenses, then the parties shall engage a mutually agreeable independent third party accountant with at least ten (10) years' experience in commercial real estate accounting in the San Diego area (the "Accountant"). If the parties cannot agree on the Accountant, each shall within ten (10) days after such impasse appoint an Accountant (different from the accountant and accounting firm that conducted the Independent Review) and, within ten (10) days after the appointment of both such Accountants, those two Accountants shall select a third (which cannot be the accountant and accounting firm that conducted the Independent Review). If either party fails to timely appoint an Accountant, then the Accountant the other party appoints shall be the sole Accountant. Within ten (10) days after appointment of the Accountant(s), Landlord and Tenant shall each simultaneously give the Accountants (with a copy to the other party) its determination of Operating Expenses, with such supporting data or information as each submitting party determines appropriate. Within ten (10) days after such submissions, the Accountants shall by majority vote select either Landlord's or Tenant's determination of Operating Expenses. The Accountants may not select or designate any other determination of Operating Expenses. The determination of the Accountant(s) shall bind the parties. If the parties agree or the Accountant(s) determine that the Operating Expenses actually paid by Tenant for the calendar year in question exceeded Tenant's obligations for such calendar year, then Landlord shall, at Tenant's option, either (a) credit the excess to the next succeeding installments of estimated Additional Rent or (b) pay the excess to Tenant within thirty (30) days after delivery of such results. If the parties agree or the Accountant(s) determine that Tenant's payments of Operating Expenses for such calendar year were less than Tenant's obligation for the calendar year, then Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of such results. If the Independent Review reveals or the Accountant(s) determine that the Operating Expenses billed to Tenant by Landlord and paid by Tenant to Landlord for the applicable calendar year in question exceeded by more than five percent (5%) what Tenant should have been billed during such calendar year, then Landlord shall pay the reasonable cost of the Independent Review and the reasonable cost of the Accountant(s). In all other cases Tenant shall pay the cost of the Independent Review and the Accountant(s).

9.5 Tenant shall not be responsible for Operating Expenses with respect to any time period prior to the Term Commencement Date (other than utilities for the Premises as set forth in Section 16.1); provided, however, that if Tenant occupies the Premises for the conduct of its business prior to the Term Commencement Date, Tenant shall be responsible for Operating Expenses from such earlier date of possession (the Term Commencement Date or such earlier date, as applicable, the "Expense Trigger Date"); and provided, further, that Landlord may annualize certain Operating Expenses incurred prior to the Expense Trigger Date over the course of the budgeted year during which the Expense Trigger Date occurs, and Tenant shall be responsible for the annualized portion of such Operating Expenses corresponding to the number of days during such year, commencing with the Expense Trigger Date, for which Tenant is otherwise liable for Operating Expenses pursuant to this Lease. Tenant's responsibility for Tenant's Adjusted Share of Operating Expenses shall continue to the latest of (a) the date of termination of the Lease, and (b) the date Tenant has fully vacated the Premises, provided that the foregoing shall in no event limit Landlord's right to recover unpaid Rent for the balance of the Term in accordance with Section 31.5 if this Lease is terminated due to a default by Tenant.

9.6 Operating Expenses for the calendar year in which Tenant's obligation to share therein commences and for the calendar year in which such obligation ceases shall be prorated on a basis reasonably determined by Landlord. Expenses such as taxes, assessments and insurance premiums that are incurred for an extended time period shall be prorated based upon the time periods to which they apply so that the amounts attributed to the Premises relate in a reasonable manner to the time period wherein Tenant has an obligation to share in Operating Expenses.

9.7 In the event that the Building or Project is less than fully occupied during a calendar year, Tenant acknowledges that Landlord may extrapolate Operating Expenses that vary depending on the occupancy of the Building or Project, as applicable, to equal Landlord's reasonable estimate of what such Operating Expenses would have been had the Building or Project, as applicable, been ninety-five percent (95%) occupied during such calendar year; provided, however, that Landlord shall not recover more than one hundred percent (100%) of Operating Expenses.

10. Taxes on Tenant's Property.

10.1. Tenant shall be solely responsible for the payment of any and all taxes levied upon (a) personal property and trade fixtures located at the Premises and (b) any gross or net receipts of or sales by Tenant, and shall pay the same at least twenty (20) days prior to delinquency.

10.2. If any such taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property or, if the assessed valuation of the Building, the Property or the Project is increased by inclusion therein of a value attributable to Tenant's personal property or trade fixtures, and if Landlord, after written notice from Landlord to Tenant, pays the taxes based upon any such increase in the assessed value of the Building, the Property or the Project, then Tenant shall, upon demand, repay to Landlord the taxes so paid by Landlord.

10.3. If any improvements in or alterations to the Premises, whether owned by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation at which improvements conforming to Landlord's building standards (the "Building Standard") in other spaces in the Building are assessed, then the real property taxes and assessments levied against Landlord or the Building, the Property or the Project by reason of such excess assessed valuation shall be deemed to be taxes levied against personal property of Tenant and shall be governed by the provisions of Section 10.2. Any such excess assessed valuation due to improvements in or alterations to space in the Project leased by other tenants at the Project shall not be included in Operating Expenses. If the records of the applicable governmental assessor's office are available and sufficiently detailed to serve as a basis for determining whether such Tenant improvements or alterations are assessed at a higher valuation than the Building Standard, then such records shall be binding on both Landlord and Tenant.

11. Security Deposit.

11.1 Tenant shall deposit with Landlord on or before the Execution Date the sum set forth in Section 2.6 (the "Security Deposit"), which sum shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be kept and performed by Tenant during period commencing on the Execution Date and ending upon the expiration or termination of the Term. If Tenant Defaults (as defined below) with respect to any provision of this Lease, including any provision relating to the payment of Rent, then Landlord may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any Rent or any other sum in default, or to compensate Landlord for any other loss or damage that Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, then Tenant shall, within ten (10) days following demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall be a material breach of this Lease. The provisions of this Article shall survive the expiration or earlier termination of this Lease. TENANT HEREBY WAIVES THE REQUIREMENTS OF SECTION 1950.7 OF THE CALIFORNIA CIVIL CODE, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

11.2 In the event of bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for all periods prior to the filing of such proceedings.

11.3 Landlord may deliver to any purchaser of Landlord's interest in the Premises the funds deposited hereunder by Tenant, and thereupon Landlord shall be discharged from any further liability with respect to such deposit. This provision shall also apply to any subsequent transfers.

11.4 If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, then the Security Deposit, or any balance thereof, shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within thirty (30) days after the expiration or earlier termination of this Lease.

11.5 If the Security Deposit shall be in cash, Landlord shall hold the Security Deposit in an account at a banking organization selected by Landlord; provided, however, that Landlord shall not be required to maintain a separate account for the Security Deposit, but may intermingle it with other funds of Landlord. Landlord shall be entitled to all interest and/or dividends, if any, accruing on the Security Deposit. Landlord shall not be required to credit Tenant with any interest for any period during which Landlord does not receive interest on the Security Deposit.

11.6 The Security Deposit may be in the form of cash, a letter of credit or any other security instrument proposed by Tenant that is acceptable to Landlord in its sole discretion. Tenant may at any time, except when Tenant is in Default (as defined below), deliver a letter of credit (the "L/C Security") as the entire Security Deposit, as follows:

(a) If Tenant elects to deliver L/C Security, then Tenant shall provide Landlord, and maintain in full force and effect throughout the Term and until the date that is four (4) months after the then-current Term Expiration Date, a letter of credit in the form of Exhibit E issued by an issuer reasonably satisfactory to Landlord, in the amount of the Security Deposit, with an initial term of at least one year. Landlord may require the L/C Security to be re-issued by a different issuer at any time during the Term if Landlord reasonably believes that the issuing bank of the L/C Security is or may soon become insolvent; provided, however, Landlord shall return the existing L/C Security to the existing issuer immediately upon receipt of the substitute L/C Security. If any issuer of the L/C Security shall become insolvent or placed into FDIC receivership, then Tenant shall immediately deliver to Landlord (without the requirement of notice from Landlord) substitute L/C Security issued by an issuer reasonably satisfactory to Landlord, and otherwise conforming to the requirements set forth in this Article. As used herein with respect to the issuer of the L/C Security, "insolvent" shall mean the determination of insolvency as made by such issuer's primary bank regulator (*i.e.*, the state bank supervisor for state chartered banks; the OCC or OTS, respectively, for federally chartered banks or thrifts; or the Federal Reserve for its member banks). If, at the Term Expiration Date, any Rent remains uncalculated or unpaid, then (i) Landlord shall with reasonable diligence complete any necessary calculations, (ii) Tenant shall extend the expiry date of such L/C Security from time to time as Landlord reasonably requires and (iii) in such extended period, Landlord shall not unreasonably refuse to consent to an appropriate reduction of the L/C Security. Tenant shall reimburse Landlord's legal costs (as estimated by Landlord's counsel) in handling Landlord's acceptance of L/C Security or its replacement or extension, not to exceed Five Thousand Dollars ($5,000) in any one instance.

(b) If Tenant delivers to Landlord satisfactory L/C Security in place of the entire Security Deposit, Landlord shall remit to Tenant any cash Security Deposit Landlord previously held.

(c) Landlord may draw upon the L/C Security, and hold and apply the proceeds in the same manner and for the same purposes as the Security Deposit, if (i) an uncured Default (as defined below) exists, (ii) as of the date that is forty-five (45) days before any L/C Security expires (even if such scheduled expiry date is after the Term Expiration Date) Tenant has not delivered to Landlord an amendment or replacement for such L/C Security, reasonably satisfactory to Landlord, extending the expiry date to the earlier of (1) four (4) months after the then-current Term Expiration Date or (2) the date that is one year after the then-current expiry date of the L/C Security, (iii) the L/C Security provides for automatic renewals, Landlord asks the issuer to confirm the current L/C Security expiry date, and the issuer fails to do so within ten (10) business days, (iv) Tenant fails to pay (when and as Landlord reasonably requires) any bank charges for Landlord's transfer of the L/C Security or (v) the issuer of the L/C Security ceases, or announces that it will cease, to maintain an office in the city where Landlord may present drafts under the L/C Security (and fails to permit drawing upon the L/C Security by overnight courier or facsimile). This Section does not limit any other provisions of this Lease allowing Landlord to draw the L/C Security under specified circumstances.

(d) Tenant shall not seek to enjoin, prevent, or otherwise interfere with Landlord's draw under L/C Security, even if it violates this Lease. Tenant acknowledges that the only effect of a wrongful draw would be to substitute a cash Security Deposit for L/C Security, causing Tenant no legally recognizable damage. Landlord shall hold the proceeds of any draw in the same manner and for the same purposes as a cash Security Deposit. In the event of a wrongful draw, the parties shall cooperate to allow Tenant to post replacement L/C Security simultaneously with the return to Tenant of the wrongfully drawn sums, and Landlord shall upon request confirm in writing to the issuer of the L/C Security that Landlord's draw was erroneous.

(e) If Landlord transfers its interest in the Premises, then Tenant shall at Tenant's expense, within five (5) business days after receiving a request from Landlord, deliver (and, if the issuer requires, Landlord shall consent to) an amendment to the L/C Security naming Landlord's grantee as substitute beneficiary. If the required Security Deposit changes while L/C Security is in force, then Tenant shall deliver (and, if the issuer requires, Landlord shall consent to) a corresponding amendment to the L/C Security.

12. Use.

12.1 During the Term, Tenant shall use the Premises for the Permitted Use, and shall not use the Premises, or permit or suffer the Premises to be used, for any other purpose without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion. During the Term, Tenant shall, subject to Force Majeure, casualty, condemnation, closures in connection with Landlord's repair and maintenance obligations under this Lease, and all of the other terms, conditions and provisions of this Lease, have access to the Premises twenty-four (24) hours per day, seven (7) days per week.

12.2 Tenant shall not use or occupy the Premises in violation of Applicable Laws, zoning ordinances, or the certificate of occupancy (or its substantial equivalent) issued for the Building or the Project, and shall, upon five (5) days' written notice from Landlord, discontinue any use of the Premises that is declared or claimed by any Governmental Authority having jurisdiction to be a violation of any of the above, or that in Landlord's reasonable opinion violates any of the above; provided that, Tenant shall not be obligated to make or be liable for any alterations required to be made outside of the Premises to comply with Applicable Laws, including the ADA (as defined below), except (a) subject to the immediately following sentence, to the extent triggered or required as a result of any additional Tenant Improvements (other than those approved by Landlord pursuant to the Approved TI Concept Plans set forth in Exhibit B-2) or Alterations performed by or on behalf of Tenant; (b) to the extent triggered or required as a result of Tenant's particular use of the Premises; (c) to the extent the costs thereof are permitted to be included as part of Tenant's Adjusted Share of Operating Expenses pursuant to Article 9; and/or (d) to the extent caused by any default by Tenant or as otherwise included as part of Tenant's indemnification obligations under this Lease. For the avoidance of doubt and notwithstanding anything to the contrary in this Lease (including Section 5 above or the indemnification provision below in this Section 12.2), in the event that the applicable Governmental Authority requires certain legal compliance work in the Common Areas existing as of the date of this Lease, in each case as a condition to the issuance of permits for the Tenant Improvements set forth in the Approved TI Concept Plans, and provided that such compliance work is not triggered due to the specific and unique nature of such Tenant Improvements but is work which would have been required by the issuance of any building permit for typical lab and office improvements, then Landlord will cause such legal compliance work to be performed in the foregoing areas as necessary for the issuance of the applicable permit, the cost of such work will be paid by Landlord and will not be charged against the TI Allowance or passed through as an Operating Expense. Tenant shall comply with any direction of any Governmental Authority having jurisdiction that shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or with respect to the use or occupation thereof, and shall indemnify, defend (at the option of and with counsel reasonably acceptable to the indemnified party(ies)), save, reimburse and hold harmless (collectively, "Indemnify," "Indemnity" or "Indemnification," as the case may require) Landlord and its affiliates, employees, agents and contractors; and any lender, mortgagee, ground lessor or beneficiary (each, a "Lender" and, collectively with Landlord and its affiliates, employees, agents and contractors, the "Landlord Indemnitees") harmless from and against any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages, suits or judgments, and all reasonable expenses (including reasonable attorneys' fees, charges and disbursements, regardless of whether the applicable demand, claim, action, cause of action or suit is voluntarily withdrawn or dismissed) incurred in investigating or resisting the same (collectively, "Claims") of any kind or nature that arise before, during or after the Term as a result of Tenant's breach of this Section.

12.3 Tenant shall not do or permit to be done anything that will invalidate or increase the cost of any fire, environmental, extended coverage or any other insurance policy covering the Building or the Project, and shall comply with all rules, orders, regulations and requirements of the insurers of the Building and the Project, and Tenant shall promptly, upon demand, reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Article.

12.4 Tenant shall keep all doors opening onto public corridors closed, except when in use for ingress and egress.

12.5 No additional locks or bolts of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any changes be made to existing locks or the mechanisms thereof without Landlord's prior written consent. Tenant shall, upon termination of this Lease, return to Landlord all keys and access cards to offices and restrooms either furnished to or otherwise procured by Tenant. In the event any key so furnished to Tenant is lost, Tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such change. Notwithstanding the foregoing, but subject to Landlord's approval (in accordance with Section 17.1), Tenant may, at Tenant's sole cost and expense as an Alteration (as defined below), install its own integrated security system in the Premises (the "Tenant Security System"); provided, however, that (a) Tenant's installation of the Tenant Security System shall be subject to all of the terms, conditions and provisions of this Lease governing Alterations (including, without limitation, Article 17), (b) Tenant shall use reasonable efforts to select a Tenant Security System that is reasonably compatible with any Landlord security system in place at the Building or Project as of the Term Commencement Date, (c) Tenant shall coordinate the installation and operation of the Tenant Security System with Landlord to assure that the Tenant Security System does not interfere with (y) any Landlord security system in place as of the Term Commencement Date (for which security system Landlord makes no representations or warranties of any kind whatsoever, including the functionality or integration of any such Landlord security system), and (z) the Buildings systems and equipment. Tenant shall be solely responsible, at Tenant's sole cost and expense, for monitoring and operating the Tenant Security System. Landlord may require Tenant, at Tenant's sole cost, to remove the Tenant Security System and restore the Building to its condition prior to the installation of the Tenant Security System upon the expiration or earlier termination of this Lease.

12.6 No awnings or other projections shall be attached to any outside wall of the Building. Except as part of any Tenant Improvements approved by Landlord in accordance with the Work Letter, no curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises other than Landlord's standard window coverings. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without Landlord's prior written consent, nor shall any bottles, parcels or other articles be placed on the windowsills or items attached to windows that are visible from outside the Premises. No equipment, furniture or other items of personal property shall be placed on any exterior balcony without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

12.7 No sign, advertisement or notice ("Signage") shall be exhibited, painted or affixed by Tenant on any part of the Premises (that is visible outside of the Premises) or the Building without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall be entitled to Building and Project Signage substantially consistent with the Signage permitted for comparable Tenants in the Project, including, (i) a listing of Tenant's name in the Building's lobby directory, (ii) suite identification signage on or adjacent to the entrance to the Premises, and (iii) Tenant shall be entitled to Building-top Signage and, for so long as a monument sign exists for tenants of the Building, a space on such monument sign; in each case, in accordance with Landlord's signage criteria at the Project set forth in Exhibit I attached hereto. For any Signage, Tenant shall, at Tenant's own cost and expense, (a) acquire all permits for such Signage in compliance with Applicable Laws and (b) design, fabricate, install and maintain such Signage in a first-class condition. Tenant shall be responsible for reimbursing Landlord for costs incurred by Landlord in removing any of Tenant's Signage upon the expiration or earlier termination of the Lease. Interior signs on entry doors to the Premises and the directory tablet, if any, shall be inscribed, painted or affixed for Tenant by Landlord at Tenant's sole cost and expense, and shall be of a size, color and type and be located in a place reasonably acceptable to Landlord and in compliance with requirements of Applicable Law. The directory tablet shall be provided exclusively for the display of the name and location of tenants only. Tenant shall not place anything on the exterior of the corridor walls or corridor doors other than Landlord's standard lettering. At Landlord's option, Landlord may install any Tenant Signage, and Tenant shall pay all costs associated with such installation within thirty (30) days after demand therefor.

12.8 Tenant may only place equipment within the Premises with floor loading consistent with the Building's structural design unless Tenant obtains Landlord's prior written approval. Tenant may place such equipment only in a location designed to carry the weight of such equipment.

12.9 Tenant shall cause any equipment or machinery to be installed in the Premises so as to reasonably prevent sounds or vibrations therefrom from extending into the Common Area or other offices in the Project.

12.10 Tenant shall not (a) do or permit anything to be done in or about the Premises that shall in any way obstruct or interfere with the rights of other tenants or occupants of the Project, or injure or annoy them, (b) use or allow the Premises to be used for immoral, unlawful or objectionable purposes, (c) cause, maintain or permit any nuisance or waste in, on or about the Project or (d) take any other action that would in Landlord's reasonable determination in any manner adversely affect other tenants' quiet use and enjoyment of their space or adversely impact their ability to conduct business in a professional and suitable work environment. Notwithstanding anything in this Lease to the contrary, Tenant may not install any security systems (including cameras) outside the Premises or that record sounds or images outside the Premises without Landlord's prior written consent, which Landlord may withhold in its sole and absolute discretion.

12.11 Subject to Section 12.2 above and notwithstanding any other provision herein to the contrary, Tenant shall be responsible for all liabilities, costs and expenses arising from or in connection with the compliance of the Premises with the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., and any state and local accessibility laws, codes, ordinances and rules (collectively, and together with regulations promulgated pursuant thereto, the "ADA"), and Tenant shall Indemnify the Landlord Indemnitees from and against any Claims arising from any such failure of the Premises to comply with the ADA. The Premises have not undergone inspection by a Certified Access Specialist ("CASp," as defined in California Civil Code Section 55.52). Even if not required by California law, the Premises may be inspected by a CASp to determine whether the Premises comply with the ADA, and Landlord may not prohibit a CASp performing such an inspection. If Tenant requests that such an inspection take place, Landlord and Tenant shall agree on the time and manner of the inspection, as well as which party will pay the cost of the inspection and the cost to remedy any defects identified by the CASp. A Certified Access Specialist can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under State law. Although State law does not require a Certified Access Specialist inspection of the Premises, Landlord may not prohibit Tenant from obtaining a Certified Access Specialist inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by Tenant. Landlord and Tenant shall agree on the arrangements for the time and manner of the Certified Access Specialist inspection, the payment of the fee for the Certified Access Specialist inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

12.12 Tenant shall use commercially reasonable good faith efforts to maintain temperature and humidity in the Premises in accordance with ASHRAE Standards 55-2013 (Thermal Environmental Conditions for Human Occupancy) and 62.1-2016 (Ventilation for Acceptable Indoor Air Quality) at all times when the Premises are occupied by any Tenant Party, except that with respect to any specialty lab space (as opposed to general lab areas), Tenant shall be permitted to maintain temperature and humidity in accordance with the relevant lab process.

13. Rules and Regulations, CC&Rs, Parking Facilities and Common Area.

13.1 Tenant shall have the non-exclusive right, in common with others, to use the Common Area in conjunction with Tenant's use of the Premises for the Permitted Use, and such use of the Common Area and Tenant's use of the Premises shall be subject to the rules and regulations adopted by Landlord and attached hereto as Exhibit F, together with such other reasonable and nondiscriminatory rules and regulations as are hereafter promulgated by Landlord in its sole and absolute discretion (the "Rules and Regulations"). Landlord shall enforce the Rules and Regulations in a non-discriminatory manner. Tenant shall and shall ensure that its contractors, subcontractors, employees, subtenants and invitees faithfully observe and comply with the Rules and Regulations. Landlord shall not be responsible to Tenant for the violation or non-performance by any other tenant or any agent, employee or invitee thereof of any of the Rules and Regulations.

13.2 This Lease is subject to any recorded covenants, conditions or restrictions on the Project or Property, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time (the "CC&Rs"), provided that Landlord agrees not to voluntarily execute any further amendments, restatements, supplements or modifications of the CC&Rs that would materially and adversely affect Tenant's rights or obligations hereunder. Tenant shall, at its sole cost and expense, comply with the CC&Rs.

13.3 Tenant shall have a non-exclusive, irrevocable license during the Term to use Tenant's Pro Rata Share of the parking facilities serving the Project (the "Allotted Parking Spaces"), in common on an unreserved basis with other tenants of the Project during the Term at no additional cost to Tenant. As of the Execution Date (based on the square footage of the Premises as of the Execution Date), Tenant's Pro Rata Share of the parking facilities serving the Project shall be fifty-nine (59) parking spaces.

13.4 Tenant agrees not to unreasonably overburden the parking facilities and agrees to cooperate with Landlord and other tenants in the use of the parking facilities, provided Tenant shall not be deemed to be unreasonably overburdening the parking facilities so long as Tenant is only using Tenant's Allotted Parking Spaces in accordance with the terms of this Lease. Landlord reserves the right to determine that parking facilities are becoming overcrowded and to limit Tenant's use thereof. Upon such determination, Landlord may reasonably allocate parking spaces among Tenant and other tenants of the Building or the Project. Nothing in this Section, however, is intended to create an affirmative duty on Landlord's part to monitor parking.

13.5 Subject to the terms of this Lease including the Rules and Regulations and the rights of other tenants of the Project, Tenant shall have the non-exclusive right to access the freight loading dock, at no additional cost.

14. Project Control by Landlord.

14.1 Landlord reserves full control over the Building and the Project to the extent not inconsistent with Tenant's enjoyment of the Premises as provided by this Lease. This reservation includes Landlord's right to subdivide the Project; convert the Building and other buildings within the Project to condominium units; change the size of the Project by selling all or a portion of the Project or adding real property and any improvements thereon to the Project; grant easements and licenses to third parties; maintain or establish ownership of the Building separate from fee title to the Property; make additions to or reconstruct portions of the Building and the Project; install, use, maintain, repair, replace and relocate for service to the Premises and other parts of the Building or the Project pipes, ducts, conduits, wires and appurtenant fixtures, wherever located in the Premises, the Building or elsewhere at the Project; and alter or relocate any other Common Area or facility, including private drives, lobbies, entrances and landscaping; provided, however, that such rights shall be exercised in a way that does not materially adversely affect Tenant's beneficial use and occupancy of the Premises, including the Permitted Use and Tenant's access to the Premises, or materially and adversely reduce or diminish Tenant's parking and signage rights under this Lease. Tenant acknowledges that Landlord specifically reserves the right to allow the exclusive use of corridors and restroom facilities located on specific floors to one or more tenants occupying such floors; provided, however, that Tenant shall not be deprived of the use of the corridors reasonably required to serve the Premises or of restroom facilities serving the floor upon which the Premises are located.

14.2 Possession of areas of the Premises necessary for utilities, services, safety and operation of the Building is reserved to Landlord.

14.3 Tenant shall, at Landlord's request, promptly execute such further documents as may be reasonably appropriate to assist Landlord in the performance of its obligations hereunder; provided that Tenant need not execute any document that creates additional liability for Tenant or that deprives Tenant of the quiet enjoyment and use of the Premises as provided for in this Lease.

14.4 Landlord may, at any and all reasonable times during non-business hours (or during business hours, if (a) with respect to Subsections 14.4(u) through 14.4(y), Tenant so requests, and (b) with respect to Subsection 14.4(z), if Landlord so requests), and upon twenty-four (24) hours' prior notice (which may be oral or by email to the office manager or other Tenant-designated individual at the Premises; but provided that no time restrictions shall apply or advance notice be required if an emergency necessitates immediate entry), enter the Premises to (u) inspect the same and to determine whether Tenant is in compliance with its obligations hereunder, (v) supply any service Landlord is required to provide hereunder, (w) alter, improve or repair any portion of the Building other than the Premises for which access to the Premises is reasonably necessary, (x) post notices of nonresponsibility, (y) access the telephone equipment, electrical substation and fire risers and (z) show the Premises to prospective tenants during the final year of the Term and current and prospective purchasers and lenders at any time. In connection with any such alteration, improvement or repair as described in Subsection 14.4(w), Landlord may erect in the Premises or elsewhere in the Project scaffolding and other structures reasonably required for the alteration, improvement or repair work to be performed. In no event shall Tenant's Rent abate as a result of Landlord's activities pursuant to this Section; provided, however, that all such activities shall be conducted in such a manner so as to cause as little interference to Tenant as is reasonably possible. Landlord shall at all times retain a key with which to unlock all of the doors in the Premises. If an emergency necessitates immediate access to the Premises, Landlord may use whatever force is necessary to enter the Premises, and any such entry to the Premises shall not constitute a forcible or unlawful entry to the Premises, a detainer of the Premises, or an eviction of Tenant from the Premises or any portion thereof.

15. Quiet Enjoyment. Landlord covenants that Tenant, upon paying the Rent and performing its obligations contained in this Lease, may peacefully and quietly have, hold and enjoy the Premises, free from any claim by Landlord or persons claiming under Landlord, but subject to all of the terms and provisions hereof, provisions of Applicable Laws and rights of record to which this Lease is or may become subordinate. This covenant is in lieu of any other quiet enjoyment covenant, either express or implied.

16. Utilities and Services.

16.1 From and after the date upon which Landlord delivers possession of the Premises to Tenant for the purpose of commencing the Tenant Improvements, Tenant shall pay for all water (including the cost to service, repair and replace reverse osmosis, de-ionized and other treated water), gas, heat, light, power, telephone, internet service, cable television, other telecommunications and other utilities supplied to the Premises, together with any fees, surcharges and taxes thereon. If any such utility is not separately metered to Tenant, Tenant shall pay Tenant's Adjusted Share of all charges of such utility jointly metered with other premises as Additional Rent or, in the alternative, Landlord may, at its option, monitor the usage of such utilities by Tenant and charge Tenant with the cost of purchasing, installing and monitoring such metering equipment, which cost shall be paid by Tenant as Additional Rent. Landlord may base its bills for utilities on reasonable estimates; provided that Landlord adjusts such billings as part of the next Landlord's Statement (or more frequently, as determined by Landlord) to reflect the actual cost of providing utilities to the Premises. To the extent that Tenant uses more than Tenant's Pro Rata Share of any utilities, then Tenant shall pay Landlord for Tenant's Adjusted Share of such utilities to reflect such excess. In the event that the Building or Project is less than fully occupied during a calendar year, Tenant acknowledges that Landlord may extrapolate utility usage that varies depending on the occupancy of the Building or Project (as applicable) to equal Landlord's reasonable estimate of what such utility usage would have been had the Building or Project, as applicable, been ninety-five percent (95%) occupied during such calendar year; provided, however, that Landlord shall not recover more than one hundred percent (100%) of the cost of such utilities. Tenant shall not be liable for the cost of utilities supplied to the Premises prior to the date upon which Landlord delivers possession of the Premises to Tenant for the purpose of commencing the Tenant Improvements.

16.2 Landlord shall not be liable for, nor shall any eviction of Tenant result from, the failure to furnish any utility or service, whether or not such failure is caused by accidents; breakage; casualties (to the extent not caused by the party claiming Force Majeure); Severe Weather Conditions (as defined below); physical natural disasters (but excluding weather conditions that are not Severe Weather Conditions); strikes, lockouts or other labor disturbances or labor disputes (other than labor disturbances and labor disputes resulting solely from the acts or omissions of the party claiming Force Majeure); acts of terrorism; riots or civil disturbances; wars or insurrections; shortages of materials (which shortages are not unique to the party claiming Force Majeure); government regulations, moratoria or other governmental actions, inactions or delays; failures to grant consent or delays in granting consent by any Lender whose consent is required under any applicable Loan Document; failures by third parties to deliver gas, oil or another suitable fuel supply, or inability of the party claiming Force Majeure, by exercise of reasonable diligence, to obtain gas, oil or another suitable fuel; or other causes beyond the reasonable control of the party claiming that Force Majeure has occurred (collectively, "Force Majeure"); or, to the extent permitted by Applicable Laws, Landlord's negligence. In the event of such failure, Tenant shall not be entitled to termination of this Lease or any abatement or reduction of Rent, nor shall Tenant be relieved from the operation of any covenant or agreement of this Lease. "Severe Weather Conditions" means weather conditions that are materially worse than those that reasonably would be anticipated for the Property at the applicable time based on historic meteorological records.

16.3 Tenant shall pay for, prior to delinquency of payment therefor, any utilities and services that may be furnished to the Premises during or, if Tenant occupies the Premises after the expiration or earlier termination of the Term, after the Term, beyond those utilities provided by Landlord, including telephone, internet service, cable television and other telecommunications, together with any fees, surcharges and taxes thereon. Upon Landlord's demand, utilities and services provided to the Premises that are separately metered shall be paid by Tenant directly to the supplier of such utilities or services.

16.4 Tenant shall not, without Landlord's prior written consent in its sole discretion, use any device in the Premises (including data processing machines) that will in any way increase the amount of ventilation, air exchange, gas, steam, electricity or water required or consumed in the Premises beyond the existing capacity of the Building or the Project or beyond the existing capacity of the existing HVAC system or any other Building system serving the Premises.

16.5 If Tenant shall require utilities or services in excess of those usually furnished or supplied for tenants in similar spaces in the Building or the Project by reason of Tenant's equipment or extended hours of business operations, then Tenant shall first procure Landlord's consent for the use thereof, which consent Landlord may condition upon the availability of such excess utilities or services, and Tenant shall pay as Additional Rent an amount equal to the cost of providing such excess utilities and services.

16.6 Landlord shall provide, or cause to be provided, water in Common Area for lavatory and landscaping purposes only, which water shall be from the local municipal or similar source; provided, however, that if Landlord determines that Tenant requires, uses or consumes water provided to the Common Area for any purpose other than ordinary lavatory purposes, Landlord may install a water meter ("Tenant Water Meter") and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Landlord for the costs of any Tenant Water Meter and the installation and maintenance thereof during the Term. If Landlord installs a Tenant Water Meter, Tenant shall pay for water consumed, as shown on such meter, as and when bills are rendered. If Tenant fails to timely make such payments, Landlord may pay such charges and collect the same from Tenant. Any such costs or expenses incurred or payments made by Landlord for any of the reasons or purposes stated in this Section shall be deemed to be Additional Rent payable by Tenant and collectible by Landlord as such.

16.7 Landlord reserves the right to stop service of the elevator, plumbing, ventilation, air conditioning and utility systems (each, a "Service Stoppage"), when Landlord deems necessary or desirable, due to accident, emergency or the need to make repairs, alterations or improvements, until such repairs, alterations or improvements shall have been completed, and Landlord shall further have no responsibility or liability for failure to supply elevator facilities, plumbing, ventilation, air conditioning or utility service when prevented from doing so by Force Majeure or, to the extent permitted by Applicable Laws, Landlord's negligence. Without limiting the foregoing, it is expressly understood and agreed that any covenants on Landlord's part to furnish any service pursuant to any of the terms, covenants, conditions, provisions or agreements of this Lease, or to perform any act or thing for the benefit of Tenant, shall not be deemed breached if Landlord is unable to furnish or perform the same by virtue of Force Majeure or, to the extent permitted by Applicable Laws, Landlord's negligence. Except in the case of emergencies (in which event no notice (or effort to provide notice) shall be required), Landlord shall provide Tenant with twenty-four (24) hours' notice prior to any Service Stoppage (which notice may be oral or by email to the Tenant).

16.8 Tenant shall be entitled to use the back-up generator exclusively serving the Premises (the "Generator") and to connect the Generator to the Premises' emergency electrical panel; provided that Tenant shall be solely responsible and liable for the cost of operating, using, maintaining, repairing and replacing the Generator, and Landlord expressly disclaims any warranties with regard to the Generator or the operation, use, maintenance or repair thereof, including any warranty of merchantability or fitness for a particular purpose The Generator shall be made available "as is" with all faults. Tenant shall maintain the Generator and any equipment connecting the Generator to Tenant's automatic transfer switch in good working condition, and Tenant shall be solely responsible, at Tenant's sole cost and expense (and Landlord shall not be liable), for maintaining and operating Tenant's automatic transfer switch and the distribution of power from Tenant's automatic transfer switch throughout the Premises. Landlord shall not be liable for any failure of the Generator to operate or for any failure of Tenant to make any repairs or to perform any maintenance of the Generator or any Claims arising from the Generator. The provisions of Section 16.2 of this Lease shall apply to the Generator. Tenant may install equipment to provide additional emergency power, including adding equipment to the existing Generator, in a location reasonably designated by Landlord, subject to Landlord's prior written approval, which Landlord shall not unreasonably withhold, condition or delay. The installation of such equipment shall constitute Alterations.

16.9 For any utilities serving the Premises for which Tenant is billed directly by such utility provider, Tenant agrees to furnish to Landlord (a) any invoices or statements for such utilities within thirty (30) days after Landlord's written request therefor, (b) within thirty (30) days after Landlord's request, any other utility usage information reasonably requested by Landlord, and (c) within thirty (30) days after each calendar year during the Term, authorization to allow Landlord to access Tenant's usage information necessary for Landlord to complete an ENERGY STAR® Statement of Performance (or similar comprehensive utility usage report (e.g., related to Labs 21), if requested by Landlord) and any other information reasonably requested by Landlord for the immediately preceding year; and Tenant shall comply with any other energy usage or consumption requirements required by Applicable Laws. Tenant shall retain records of utility usage at the Premises, including invoices and statements from the utility provider, for at least sixty (60) months, or such other period of time as may be requested by Landlord. Tenant acknowledges that any utility information for the Premises, the Building and the Project may be shared with third parties, including Landlord's consultants and Governmental Authorities. In the event that Tenant fails to comply with this Section, Tenant hereby authorizes Landlord to collect utility usage information directly from the applicable utility providers. In addition to the foregoing, Tenant shall comply with all Applicable Laws related to the disclosure and tracking of energy consumption at the Premises. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

16.10 Tenant hereby waives the provisions of California Civil Code Section 1932(1) due to an interruption, failure or inability to provide any services.

17. Alterations.

17.1 Tenant shall make no alterations, additions or improvements, other than the Tenant Improvements (which shall be subject to the Work Letter and not this Article 17, other than as expressly set forth in Section 17.7, 17.8, 17.9 and 17.12 below), in or to the Premises or engage in any construction, demolition, reconstruction, renovation or other work (whether major or minor) of any kind in, at or serving the Premises ("Alterations") without Landlord's prior written approval, which approval may be subject to the consent of one or more Lenders, if required under any applicable Loan Document, but which approval Landlord shall not otherwise unreasonably withhold, condition or delay; provided, however, that, in the event any proposed Alteration affects (a) any structural portions of the Building, including exterior walls, the roof, the foundation or slab, foundation or slab systems (including barriers and subslab systems) or the core of the Building, (b) the exterior of the Building or (c) any Building systems, including elevator, plumbing, HVAC, electrical, security, life safety and power, then Landlord may withhold its approval in its sole and absolute discretion. Tenant shall, in making any Alterations, use only those architects, contractors, suppliers and mechanics of which Landlord has given prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. In seeking Landlord's approval, Tenant shall prepare and provide to Landlord for approval schematics and a general plan covering the Alterations (the "Draft Development Plans"), which shall contain sufficient information and detail concerning the nature and cost of such Alterations as Landlord may reasonably request; provided that Tenant shall not commence any such Alterations that require Landlord's consent unless and until Tenant has received the written approval of Landlord and any and all Lenders whose consent is required under any applicable Loan Document. Landlord shall notify Tenant in writing within seven (7) business days after receipt of the Draft Development Plans whether Landlord approves or objects to the Draft Development Plans and of the manner, if any, in which the Draft Development Plans are unacceptable. Landlord's failure to respond within such seven (7) business day period shall be deemed an approval by Landlord. If Landlord reasonably objects to the Draft Development Plans, then Tenant shall not proceed with the proposed Alterations unless Tenant revises the Draft Development Plans and causes Landlord's objections to be remedied in the revised Draft Development Plans. Tenant shall then resubmit the revised Draft Development Plans to Landlord for approval. Landlord's approval of or objection to revised Draft Development Plans and Tenant's correction of the same shall be in accordance with this Section until Landlord has approved the Draft Development Plans in writing or been deemed to have approved them. The iteration of the Draft Development Plans that is approved or deemed approved by Landlord without objection shall be referred to herein as the "Approved Development Plans." Tenant shall not proceed with the proposed Alteration unless Tenant then prepares final plans and specifications for the Alteration that are consistent with and are logical evolutions of the Approved Development Plans, including, without limitation, plans, specifications, bid proposals, certified stamped engineering drawings and calculations by Tenant's engineer of record or architect of record (including connections to the Building's structural system, modifications to the Building's envelope, non-structural penetrations in slabs or walls, and modifications or tie-ins to life safety systems), work contracts, requests for laydown areas and such other information concerning the nature and cost of the Alterations as Landlord may reasonably request,. As soon as such final plans and specifications ("Alteration Plans") are completed, Tenant shall deliver the same to Landlord for Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed; provided that Tenant shall not commence any such Alterations that require Landlord's consent unless and until Tenant has received the written approval of Landlord of the Alteration Plans and any and all Lenders whose consent is required under any applicable Loan Document. In no event shall Tenant use or Landlord be required to approve any architects, consultants, contractors, subcontractors or material suppliers that Landlord reasonably believes could cause labor disharmony or may not have sufficient experience, in Landlord's reasonable opinion, to perform work in an occupied Class "A" laboratory research building and in tenant-occupied lab areas.

17.2 Notwithstanding anything to the contrary contained in Section 17.1 above, Tenant may make strictly cosmetic changes to the Premises that do not require any permits or more than three (3) total contractors and subcontractors ("Cosmetic Alterations") without Landlord's consent; provided that (y) the cost of any Cosmetic Alterations does not exceed Fifty Thousand Dollars ($50,000) in any one instance or One Hundred Thousand Dollars ($100,000) annually, (z) such Cosmetic Alterations are not reasonably expected to have any material adverse effect on the Project and do not (i) require any structural or other substantial modifications to the Premises, (ii) require any changes to or adversely affect the Building systems, (iii) affect any portion of the Building or Project that is exterior to the Premises or (iv) trigger any requirement under Applicable Laws that would require Landlord to make any alteration or improvement to the Premises, the Building or the Project.

17.3 Tenant shall not construct or permit to be constructed partitions or other obstructions that might interfere with free access to mechanical installation or service facilities of the Building or with other tenants' components located within the Building, or interfere with the moving of Landlord's equipment to or from the enclosures containing such installations or facilities.

17.4 Tenant shall accomplish any work performed on the Premises or the Building in such a manner as to permit any life safety systems to remain fully operable at all times.

17.5 Any work performed on the Premises, the Building or the Project by Tenant or Tenant's contractors shall be done at such times and in such manner as Landlord may from time to time reasonably designate. Tenant covenants and agrees that all work done by Tenant or Tenant's contractors shall be performed in full compliance with Applicable Laws. Within thirty (30) days after completion of any Alterations (other than Cosmetic Alterations), Tenant shall provide Landlord with complete "as built" drawing print sets and electronic CADD files on disc (or files in such other current format in common use as Landlord reasonably approves or requires) showing any changes in the Premises, as well as a commissioning report prepared by a licensed, qualified commissioning agent hired by Tenant and approved by Landlord for all new or affected mechanical, electrical and plumbing systems. Any such "as built" plans shall show the applicable Alterations as an overlay on the Building as-built plans; provided that Landlord provides the Building "as built" plans to Tenant.

17.6 Before commencing any Alterations, Tenant shall (a) give Landlord at least thirty (30) days' prior written notice of the proposed commencement of such work, (b) as soon as reasonably practicable (but in any event at least seven (7) days prior to the commencement of any Alteration), provide Landlord with the names and addresses of the persons supply labor or materials therefor; so that Landlord may enter the Premises to post and keep posted thereon and therein notices or to take any further action that Landlord may reasonably deem proper for the protection of Landlord's interest in the Project and (c) if reasonably required by Landlord, secure, at Tenant's own cost and expense, a completion and lien indemnity bond reasonably satisfactory to Landlord for such work.

17.7 Tenant shall repair any damage to the Premises arising from Tenant's removal of any property from the Premises. During any such restoration period, Tenant shall pay Rent to Landlord as provided herein as if such space were otherwise occupied by Tenant. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

17.8 The Premises plus any Alterations; Signage; Tenant Improvements; attached equipment, decorations, fixtures and trade fixtures; movable laboratory casework and related components, connection valves and lab shelving; and other additions and improvements attached to or built into the Premises made by either of the parties (including all floor and wall coverings; paneling; sinks and related plumbing fixtures; laboratory benches; exterior venting fume hoods; walk-in freezers and refrigerators; ductwork; conduits; electrical panels and circuits; attached machinery and equipment; and built-in furniture and cabinets, in each case, together with all additions and accessories thereto), shall (unless, prior to such construction or installation, Landlord elects otherwise in writing) at all times remain the property of Landlord, shall remain in the Premises and shall (unless, prior to construction or installation thereof, Landlord elects otherwise in writing) be surrendered to Landlord upon the expiration or earlier termination of this Lease. For the avoidance of doubt, the items listed on Exhibit G attached hereto (which Exhibit G may be updated by Tenant from and after the Term Commencement Date, subject to Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed) constitute Tenant's property and shall be removed by Tenant upon the expiration or earlier termination of the Lease.

17.9 Notwithstanding any other provision of this Article to the contrary, in no event shall Tenant remove any improvement from the Premises in which any Lender has a security interest or as to which Landlord contributed payment, including the Tenant Improvements, without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion. In no event shall Tenant be required to remove or restore the Tenant Improvements as of the expiration or earlier termination of this Lease, except for telephone and data systems, security systems, wiring and equipment from the Premises installed by or on behalf of a Tenant Party as set forth in Section 18.2.

17.10 If Tenant shall fail to remove any of its property from the Premises prior to the expiration or earlier termination of this Lease, then Landlord may, at its option, remove the same in any manner that Landlord shall choose and store such effects without liability to Tenant for loss thereof or damage thereto, and Tenant shall pay Landlord, upon demand, any costs and expenses incurred due to such removal and storage or Landlord may, at its sole option and without notice to Tenant, sell such property or any portion thereof at private sale and without legal process for such price as Landlord may obtain and apply the proceeds of such sale against any (a) amounts due by Tenant to Landlord under this Lease and (b) any expenses incident to the removal, storage and sale of such personal property.

17.11 Tenant shall pay to Landlord an amount equal to two percent (2%) of the cost to Tenant of all Alterations to cover Landlord's overhead and expenses for plan review, engineering review, coordination, scheduling and supervision thereof or obtaining any required Lender consent. For purposes of payment of such sum, Tenant shall submit to Landlord copies of all bills, invoices and statements covering the costs of such charges, accompanied by payment to Landlord of the fee set forth in this Section. Tenant shall reimburse Landlord for any extra expenses incurred by Landlord by reason of faulty work done by Tenant or its contractors, or by reason of delays arising from such faulty work, or by reason of inadequate clean-up.

17.12 Within sixty (60) days after final completion of the Tenant Improvements or any Alterations performed by Tenant with respect to the Premises, Tenant shall submit to Landlord documentation showing the amounts expended by Tenant with respect to such Tenant Improvements and Alterations, together with supporting documentation reasonably acceptable to Landlord.

17.13 Tenant shall take, and shall cause its contractors to take, commercially reasonable steps to protect the Premises during the performance of any Alterations or Tenant Improvements, including covering or temporarily removing any window coverings so as to guard against dust, debris or damage.

17.14 Tenant shall require its contractors and subcontractors performing work on the Premises to name Landlord and its affiliates and Lenders as additional insureds on their respective insurance policies.

17.15 Upon completion of any Alterations, and to the extent applicable in connection with the construction of any Alteration, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County in which the Project is located in accordance with Sections 8182, 8184, 9204 and 9208 of the Civil Code of the State of California or any successor statute.

18. Repairs and Maintenance.

18.1 Landlord shall repair and maintain the structural and exterior portions and Common Area of the Building and the Project, including roofing and covering materials; foundations (excluding any architectural slabs, but including any structural slabs); exterior walls; plumbing up to the point of entry to the Building (for purposes of clarity, all plumbing from the point of entry to the Premises and extending into and through the Premises, including plumbing fixtures and plumbing lines, shall be Tenant's obligation to maintain and repair pursuant to Section 18.2 below); fire sprinkler systems (if any); elevators; and base Building electrical systems installed or furnished by Landlord. Tenant hereby waives any and all rights under and benefits of Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect, and Tenant waives the right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code, and under all other similar laws, statutes or ordinances now or hereafter in effect.

18.2 Except for services of Landlord, if any, required by Section 18.1, Tenant shall, at Tenant's sole cost and expense and at all times from and after the date upon which Landlord delivers possession of the Premises to Tenant for the purpose of commencing the Tenant Improvements, maintain, repair and keep the Premises (including but not limited to (i) the HVAC systems exclusively serving the Premises, including the portion of the HVAC system that includes the first damper or isolation valve and extends into and through the Premises, any supplemental HVAC serving the Premises, and any other systems or equipment exclusively serving the Premises and (ii) all plumbing serving the Premises from the point of entry to the Premises and extending into and through the Premises, including plumbing fixtures and plumbing lines) and every part thereof in good condition and repair, damage thereto from ordinary wear and tear excepted, and with the Tenant Improvements in substantially the same condition as existed on the Term Commencement Date, and shall, within ten (10) days after receipt of written notice from Landlord, provide to Landlord any maintenance, repair or replacement records that Landlord reasonably requests. Tenant shall, upon the expiration or sooner termination of the Term, surrender the Premises to Landlord in as good a condition as when received, ordinary wear and tear excepted; and shall, at Landlord's request and Tenant's sole cost and expense, remove all telephone and data systems, wiring and equipment from the Premises (but with respect to wiring, only to the extent installed by or on behalf of a Tenant Party), and repair any damage to the Premises caused thereby. Except as expressly set forth in Section 18.1 above, Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof, other than Landlord's obligation to make available to Tenant the TI Allowance in accordance with this Lease.

18.3 Without limiting the provisions of Section 16.2, Landlord shall not be liable for any failure to make any repairs or to perform any maintenance that is Landlord's obligation pursuant to this Lease unless such failure shall persist for an unreasonable time after Tenant provides Landlord with written notice of the need of such repairs or maintenance. Tenant waives its rights under Applicable Laws now or hereafter in effect to make repairs at Landlord's expense.

18.4 Subject to the provisions of Section 14.4, if any excavation shall be made upon land adjacent to or under the Building, or shall be authorized to be made, then Tenant shall afford to the person causing or authorized to cause such excavation, license to enter the Premises for the purpose of performing such work as such person shall deem necessary or desirable to preserve and protect the Building from injury or damage and to support the same by proper foundations, without any claim for damages or liability against Landlord and without reducing or otherwise affecting Tenant's obligations under this Lease.

18.5 This Article relates to repairs and maintenance arising in the ordinary course of operation of the Building and the Project. In the event of a casualty described in Article 24, Article 24 shall apply in lieu of this Article. In the event of eminent domain, Article 25 shall apply in lieu of this Article.

18.6 Subject to the provisions of Article 9, costs incurred by Landlord pursuant to this Article shall constitute Operating Expenses. Notwithstanding the foregoing, to the extent that the cost of such repairs and maintenance arising from Tenant's acts, neglect, fault or omissions (but not gross negligence or willful misconduct) exceeds the limits of any insurance maintained or required to be maintained by Tenant pursuant to this Lease but are covered by insurance maintained or required to be maintained by Landlord under this Lease, then Landlord shall file a claim for such excess pursuant to Landlord's insurance and Tenant shall reimburse Landlord for the deductible therefor within thirty (30) days after receipt of an invoice therefor (or, if Landlord has not obtained or maintained the insurance it is required to obtain and maintain pursuant to this Lease, Landlord shall pay such excess, other than what the deductible would have been had Landlord obtained and maintained the requisite insurance, which Tenant shall pay to Landlord within thirty (30) days after receipt of an invoice therefor).

19. Liens.

19.1 Subject to the immediately succeeding sentence, Tenant shall keep the Premises, the Building and the Project free from any liens arising from work or services performed, materials furnished to or obligations incurred by Tenant. Tenant further covenants and agrees that any mechanic's or materialman's lien filed against the Premises, the Building or the Project for work or services claimed to have been done for, or materials claimed to have been furnished to, or obligations incurred by Tenant shall be discharged or bonded by Tenant within ten (10) days after the filing thereof, at Tenant's sole cost and expense.

19.2 Should Tenant fail to discharge or bond against any lien of the nature described in Section 19.1, Landlord may, at Landlord's election, pay such claim or post a statutory lien bond or otherwise provide security to eliminate the lien as a claim against title, and Tenant shall immediately reimburse Landlord for the costs thereof as Additional Rent. Tenant shall Indemnify the Landlord Indemnitees from and against any Claims arising from any such liens, including any administrative, court or other legal proceedings related to such liens.

19.3 In the event that Tenant leases or finances the acquisition of office equipment, furnishings or other personal property of a removable nature utilized by Tenant in the operation of Tenant's business, Tenant warrants that any Uniform Commercial Code financing statement shall, upon its face or by exhibit thereto, indicate that such financing statement is applicable only to removable personal property of Tenant located within the Premises. In no event shall the address of the Premises, the Building or the Project be furnished on a financing statement without qualifying language as to applicability of the lien only to removable personal property located in an identified suite leased by Tenant. Should any holder of a financing statement record or place of record a financing statement that appears to constitute a lien against any interest of Landlord or against equipment that may be located other than within an identified suite leased by Tenant, Tenant shall, within ten (10) days after filing such financing statement, cause (a) a copy of the lender security agreement or other documents to which the financing statement pertains to be furnished to Landlord to facilitate Landlord's ability to demonstrate that the lien of such financing statement is not applicable to Landlord's interest and (b) Tenant's lender to amend such financing statement and any other documents of record to clarify that any liens imposed thereby are not applicable to any interest of Landlord in the Premises, the Building or the Project.

20. Estoppel Certificate. Tenant shall, within ten (10) business days after receipt of written notice from Landlord, execute, acknowledge and deliver a statement in writing substantially in the form attached to this Lease as Exhibit H, or on any other commercially reasonable form requested by a current or proposed Lender or encumbrancer or proposed purchaser, (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which rental and other charges are paid in advance, if any, (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (c) setting forth such further information with respect to this Lease or the Premises as may be reasonably requested thereon. Any such statements may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Property. If Tenant fails to timely deliver such statement within the prescribed time, Landlord shall send a second notice and if Tenant fails to respond to such second notice (by delivery of a signed estoppel) within three (3) business days, Tenant's failure to timely deliver such statement shall, at Landlord's option, constitute a Default (as defined below) under this Lease, and, in any event, shall be binding upon Tenant that the Lease is in full force and effect and without modification except as may be represented by Landlord in any certificate prepared by Landlord and delivered to Tenant for execution. Within ten (10) business days of receipt of a written request by Tenant, Landlord shall provide Tenant with a similar commercially reasonable estoppel certificate (but in all cases limited to Landlord's actual knowledge (without any duty of inquiry or investigation)) as Landlord reasonably deems appropriate and as otherwise reasonably modified by Landlord.

21. Hazardous Materials.

21.1 Tenant shall not cause or permit any Hazardous Materials (as defined below) to be brought upon, kept or used in or about the Premises, the Building or the Project in violation of Applicable Laws by Tenant or any of its employees, agents, contractors or invitees (collectively with Tenant, each a "Tenant Party"). If (a) Tenant breaches such obligation, (b) the presence of Hazardous Materials as a result of such a breach results in contamination of the Project, any portion thereof, or any adjacent property, (c) contamination of the Premises otherwise occurs during the Term or any extension or renewal hereof or any holding over by Tenant hereunder or (d) contamination of the Project occurs as a result of Hazardous Materials that are placed on or under or are released into the Project by a Tenant Party, then Tenant shall Indemnify the Landlord Indemnitees from and against any and all Claims of any kind or nature, including (w) diminution in value of the Project or any portion thereof, (x) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Project, (y) damages arising from any adverse impact on marketing of space in the Project or any portion thereof and (z) sums paid in settlement of Claims that arise before, during or after the Term as a result of such breach or contamination. This Indemnification by Tenant includes costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any Governmental Authority because of Hazardous Materials present in the air, soil or groundwater above, on, under or about the Project. Without limiting the foregoing, if the presence of any Hazardous Materials in, on, under or about the Project, any portion thereof or any adjacent property caused or permitted by any Tenant Party results in any contamination of the Project, any portion thereof or any adjacent property, then Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Project, any portion thereof or any adjacent property to its respective condition existing prior to the time of such contamination; provided that Landlord's written approval of such action shall first be obtained, which approval Landlord shall not unreasonably withhold; and provided, further, that it shall be reasonable for Landlord to withhold its consent if such actions could have a material adverse long-term or short-term effect on the Project, any portion thereof or any adjacent property. Tenant's obligations under this Section shall not be affected, reduced or limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Tenant under workers' compensation acts, disability benefit acts, employee benefit acts or similar legislation. Notwithstanding the foregoing, Landlord shall Indemnify the Tenant Parties from and against any and all Claims arising from the presence of Hazardous Materials at the Project in violation of Applicable Laws as of the Execution Date, unless placed at the Project by a Tenant Party.

21.2 Landlord acknowledges that it is not the intent of this Article to prohibit Tenant from operating its business for the Permitted Use. Tenant may operate its business according to the custom of Tenant's industry so long as the use or presence of Hazardous Materials is strictly and properly monitored in accordance with Applicable Laws. As a material inducement to Landlord to allow Tenant to use Hazardous Materials in connection with its business, Tenant agrees to deliver to Landlord (a) a list identifying each type of Hazardous Material to be present at the Premises that is subject to regulation under any environmental Applicable Laws in the form of a Tier II form pursuant to Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986 (or any successor statute) or any other form reasonably requested by Landlord, (b) a list of any and all approvals or permits from Governmental Authorities required in connection with the presence of such Hazardous Material at the Premises and (c) correct and complete copies of (i) notices of violations of Applicable Laws related to Hazardous Materials and (ii) plans relating to the installation of any storage tanks to be installed in, on, under or about the Project (provided that installation of storage tanks shall only be permitted after Landlord has given Tenant its written consent to do so, which consent Landlord may withhold in its sole and absolute discretion) and closure plans or any other documents required by any and all Governmental Authorities for any storage tanks installed in, on, under or about the Project for the closure of any such storage tanks (collectively, "Hazardous Materials Documents"). Tenant shall deliver to Landlord updated Hazardous Materials Documents, within fourteen (14) days after receipt of a written request therefor from Landlord, not more often than once per year, unless (m) there are any changes to the Hazardous Materials Documents or (n) Tenant initiates any Alterations or changes its business, in either case in a way that involves any material increase in the types or amounts of Hazardous Materials, in which case Tenant shall deliver updated Hazardous Materials documents (without Landlord having to request them) before or, if not practicable to do so before, as soon as reasonably practicable after the occurrence of the events in Subsection 21.2(m) or (n). For each type of Hazardous Material listed, the Hazardous Materials Documents shall include (t) the chemical name, (u) the material state (e.g., solid, liquid, gas or cryogen), (v) the concentration, (w) the storage amount and storage condition (e.g., in cabinets or not in cabinets), (x) the use amount and use condition (e.g., open use or closed use), (y) the location (e.g., room number or other identification) and (z) if known, the chemical abstract service number. Notwithstanding anything in this Section to the contrary, Tenant shall not be required to provide Landlord with any documents containing information of a proprietary nature, unless such documents contain a reference to Hazardous Materials or activities related to Hazardous Materials. Landlord may, at Landlord's expense, cause the Hazardous Materials Documents to be reviewed by a person or firm qualified to analyze Hazardous Materials to confirm compliance with the provisions of this Lease and with Applicable Laws. In the event that a review of the Hazardous Materials Documents indicates non-compliance with this Lease or Applicable Laws, Tenant shall, at its expense, diligently take steps to bring its storage and use of Hazardous Materials into compliance. Notwithstanding anything in this Lease to the contrary or Landlord's review into Tenant's Hazardous Materials Documents or use or disposal of hazardous materials, however, Landlord shall not have and expressly disclaims any liability related to Tenant's or other tenants' use or disposal of Hazardous Materials, it being acknowledged by Tenant that Tenant is best suited to evaluate the safety and efficacy of its Hazardous Materials usage and procedures.

21.3 Tenant represents and warrants to Landlord that it is not nor has it been, in connection with the use, disposal or storage of Hazardous Materials, (a) subject to a material enforcement order issued by any Governmental Authority or (b) required to take any remedial action.

21.4 At any time, and from time to time, prior to the expiration of the Term, Landlord shall have the right to conduct appropriate tests of the Project or any portion thereof to demonstrate that Hazardous Materials are present or that contamination has occurred due to the acts or omissions of a Tenant Party. Tenant shall pay all reasonable costs of such tests if such tests reveal that Hazardous Materials exist at the Project in violation of this Lease.

21.5 If underground or other storage tanks storing Hazardous Materials installed or utilized by Tenant are located on the Premises, or are hereafter placed on the Premises by Tenant (or by any other party, if such storage tanks are utilized by Tenant), then Tenant shall monitor the storage tanks, maintain appropriate records, implement reporting procedures, properly close any underground storage tanks, and take or cause to be taken all other steps necessary or required under the Applicable Laws. Tenant shall have no responsibility or liability for underground or other storage tanks installed by anyone other than Tenant unless Tenant utilizes such tanks, in which case Tenant's responsibility for such tanks shall be as set forth in this Section.

21.6 Tenant shall promptly report to Landlord any actual or suspected presence of mold or water intrusion at the Premises of which Tenant becomes aware.

21.7 Tenant's obligations under this Article shall survive the expiration or earlier termination of the Lease. During any period of time needed by Tenant or Landlord after the termination of this Lease to complete the removal from the Premises of any such Hazardous Materials, Tenant shall be deemed a holdover tenant and subject to the provisions of Article 27.

21.8 As used herein, the term "Hazardous Material" means any toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous substance, material or waste that is or becomes regulated by Applicable Laws or any Governmental Authority.

21.9 Notwithstanding anything to the contrary in this Lease, Landlord shall have sole control over the equitable allocation of fire control areas (as defined in the Uniform Building Code as adopted by the city or municipality(ies) in which the Project is located (the "UBC")) within the Project for the storage of Hazardous Materials. Notwithstanding anything to the contrary in this Lease, the quantity of Hazardous Materials allowed by this Section is specific to Tenant and shall not run with the Lease in the event of a Transfer (as defined in Article 29). In the event of a Transfer, if the use of Hazardous Materials by such new tenant ("New Tenant") is such that New Tenant utilizes fire control areas in the Project in excess of New Tenant's Pro Rata Share of the Building or the Project, as applicable, then New Tenant shall, at its sole cost and expense and upon Landlord's written request, establish and maintain a separate area of the Premises classified by the UBC as an "H" occupancy area for the use and storage of Hazardous Materials, or take such other action as is necessary to ensure that its share of the fire control areas of the Building and the Project is not greater than New Tenant's Pro Rata Share of the Building or the Project, as applicable. Notwithstanding anything in this Lease to the contrary, Landlord shall not have and expressly disclaims any liability related to Tenant's or other tenants' use or disposal of fire control areas, it being acknowledged by Tenant that Tenant and other tenants are best suited to evaluate the safety and efficacy of its Hazardous Materials usage and procedures.

22. Odors and Exhaust. Tenant acknowledges that Landlord would not enter into this Lease with Tenant unless Tenant assured Landlord that under no circumstances will any other occupants of the Building or the Project (including persons legally present in any outdoor areas of the Project) be subjected to odors or fumes (whether or not noxious), and that the Building and the Project will not be damaged by any exhaust, in each case from Tenant's operations. Landlord and Tenant therefore agree as follows:

22.1 Tenant shall not cause or permit (or conduct any activities that would cause) any release of any odors or fumes of any kind from the Premises.

22.2 If the Building has a ventilation system that, in Landlord's judgment, is adequate, suitable, and appropriate to vent the Premises in a manner that does not release odors affecting any indoor or outdoor part of the Project, Tenant shall vent the Premises through such system. If Landlord at any time determines that any existing ventilation system is inadequate, or if no ventilation system exists, Tenant shall in compliance with Applicable Laws vent all fumes and odors from the Premises (and remove odors from Tenant's exhaust stream) as Landlord requires. The placement and configuration of all ventilation exhaust pipes, louvers and other equipment shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant acknowledges Landlord's legitimate desire to maintain the Project (indoor and outdoor areas) in an odor-free manner, and Landlord may require Tenant to abate and remove all odors in a manner that goes beyond the requirements of Applicable Laws.

22.3 Tenant shall, at Tenant's sole cost and expense, provide odor eliminators and other devices (such as filters, air cleaners, scrubbers and whatever other equipment may in Landlord's judgment be necessary or appropriate from time to time) to completely remove, eliminate and abate any odors, fumes or other substances in Tenant's exhaust stream that, in Landlord's judgment, emanate from Tenant's Premises. Any work Tenant performs under this Section shall constitute Alterations.

22.4 Tenant's responsibility to remove, eliminate and abate odors, fumes and exhaust shall continue throughout the Term. Landlord's approval of the Tenant Improvements shall not preclude Landlord from requiring additional measures to eliminate odors, fumes and other adverse impacts of Tenant's exhaust stream (as Landlord may designate in Landlord's discretion). Tenant shall install additional equipment as Landlord requires from time to time under the preceding sentence. Such installations shall constitute Alterations.

22.5 If Tenant fails to install satisfactory odor control equipment within ten (10) business days after Landlord's demand made at any time, then Landlord may, without limiting Landlord's other rights and remedies, require Tenant to cease and suspend any operations in the Premises that, in Landlord's determination, cause odors, fumes or exhaust. For example, if Landlord determines that Tenant's production of a certain type of product causes odors, fumes or exhaust, and Tenant does not install satisfactory odor control equipment within ten (10) business days after Landlord's request, then Landlord may require Tenant to stop producing such type of product in the Premises unless and until Tenant has installed odor control equipment satisfactory to Landlord.

23. Insurance.

23.1 Landlord shall maintain insurance for the Building and the Project in amounts equal to full replacement cost (exclusive of the costs of excavation, foundations and footings, engineering costs or such other costs to the extent the same are not incurred in the event of a rebuild and without reference to depreciation taken by Landlord upon its books or tax returns) or such lesser coverage as Landlord may elect, provided that such coverage shall not be less than the amount of such insurance Landlord's Lender, if any, requires Landlord to maintain, providing protection against any peril generally included within the classification "Fire and Extended Coverage," together with insurance against sprinkler damage (if applicable), vandalism and malicious mischief. Landlord, subject to availability thereof, shall further insure, if Landlord deems it appropriate, coverage against flood, environmental hazard, earthquake, loss or failure of building equipment, rental loss during the period of repairs or rebuilding, Workers' Compensation insurance and fidelity bonds for employees employed to perform services. Notwithstanding the foregoing, Landlord may, but shall not be deemed required to, provide insurance for any improvements installed by Tenant or that are in addition to the standard improvements customarily furnished by Landlord, without regard to whether or not such are made a part of or are affixed to the Building.

23.2 In addition, Landlord shall carry Commercial General Liability insurance with limits of not less than One Million Dollars ($1,000,000) per occurrence/general aggregate for bodily injury (including death), or property damage with respect to the Project.

23.3 Tenant shall, at its own cost and expense, procure and maintain during the Term the following insurance for the benefit of Tenant and Landlord (as their interests may appear) with insurers financially acceptable and lawfully authorized to do business in the state where the Premises are located:

(a) Commercial General Liability insurance on a broad-based occurrence coverage form, with coverages including but not limited to bodily injury (including death), property damage (including loss of use resulting therefrom), premises/operations, personal & advertising injury, and contractual liability with limits of liability of not less than $1,000,000 for bodily injury and property damage per occurrence, $2,000,000 general aggregate, which limits may be met by use of excess and/or umbrella liability insurance; provided that such coverage follows form with underlying coverages required herein.

(b) Commercial Automobile Liability insurance covering liability arising from the use or operation of any auto on behalf of Tenant or invited by Tenant (including those owned, hired, rented, leased, borrowed, scheduled or non-owned). Coverage shall be on a broad-based occurrence form in an amount not less than $1,000,000 combined single limit per accident for bodily injury and property damage. Such coverage shall apply to all vehicles and persons, whether accessing the property with active or passive consent.

(c) Commercial Property insurance covering property damage to the full replacement cost value and business interruption. Covered property shall include all tenant improvements in the Premises (to the extent not insured by Landlord pursuant to Section 23.1) and Tenant's Property including personal property, furniture, fixtures, machinery, equipment, stock, inventory and improvements and betterments, which may be owned by Tenant or Landlord and required to be insured hereunder, or which may be leased, rented, borrowed or in the care custody or control of Tenant, or Tenant's agents, employees or subcontractors. Such insurance, with respect only to all Tenant Improvements, Alterations or other work performed on the Premises by Tenant (collectively, "Tenant Work"), shall name Landlord and Landlord's current and future mortgagees as loss payees as their interests may appear. Such insurance shall be written on an "all risk" of physical loss or damage basis including the perils of fire, extended coverage, electrical injury, mechanical breakdown, windstorm, vandalism, malicious mischief, sprinkler leakage, back-up of sewers or drains, earthquake, terrorism and such other risks Landlord may from time to time designate, for the full replacement cost value of the covered items with an agreed amount endorsement with no co-insurance. Business interruption coverage shall have limits sufficient to cover Tenant's lost profits and necessary continuing expenses, including rents due Landlord under the Lease. The minimum period of indemnity for business interruption coverage shall be twenty-four (24) months.

(d) Workers' Compensation in compliance with all Applicable Laws or as may be available on a voluntary basis. Employer's Liability must be at least in the amount of $1,000,000 for bodily injury by accident for each employee, $1,000,000 for bodily injury by disease for each employee, and $1,000,000 bodily injury by disease for policy limit.

(e) Medical malpractice insurance at limits of not less than $1,000,000 each claim during such periods, if any, that Tenant engages in the practice of medicine or clinical trials involving human beings at the Premises.

(f) Pollution Legal Liability insurance is required if Tenant stores, handles, generates or treats Hazardous Materials, as determined solely by Landlord, on or about the Premises. Such coverage shall include bodily injury, sickness, disease, death or mental anguish or shock sustained by any person; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; and defense costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages. Coverage shall apply to both sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this agreement, and coverage is continuously maintained during all periods in which Tenant occupies the Premises. Coverage shall be maintained with limits of not less than $2,000,000 per incident with a $4,000,000 policy aggregate and for a period of two (2) years thereafter.

(g) Umbrella/excess liability insurance with minimum limits of $5,000,000 per occurrence, $5,000,000 general aggregate ad $5,000,000 products/completed operation aggregate. Such policies must provide excess coverage above all policies noted in this Section 23.3 that Tenant is required to obtain (other than any property insurance policy. Coverage shall be at least as broad as the underlying coverages.

(h) The insurance coverages required in Exhibit B-1 in connection with all construction by Tenant (or on behalf of Tenant) at the Premises (including the Tenant Improvements and any Alterations).

23.4 The insurance required of Tenant by this Article shall be with companies at all times having a current rating of not less than A- and financial category rating of at least Class VII in "A.M. Best's Insurance Guide" current edition. Tenant shall obtain for Landlord from the insurance companies/broker or cause the insurance companies/broker to furnish certificates of insurance evidencing all coverages required herein to Landlord. Landlord reserves the right to require complete, certified copies of all required insurance policies including any endorsements. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days' prior written notice to Landlord from Tenant or its insurers (except in the event of non-payment of premium, in which case ten (10) days' written notice shall be given). All such policies shall be written as primary policies, not contributing with and not in excess of the coverage that Landlord may carry. Tenant's required policies shall contain severability of interests clauses stating that, except with respect to limits of insurance, coverage shall apply separately to each insured or additional insured. Tenant shall, on the date of expiration of such policies, furnish Landlord with renewal certificates of insurance or binders. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure such insurance on Tenant's behalf and at its cost to be paid by Tenant as Additional Rent. Commercial General Liability, Commercial Automobile Liability, Umbrella Liability and Pollution Legal Liability insurance as required above shall name Landlord, BioMed Realty LLC, BioMed Realty, L.P., BRE Edison L.P., BRE Edison LLC, BRE Edison Holdings L.P., BRE Edison Holdings LLC, BRE Edison Parent L.P. and their respective officers, employees, agents, general partners, members, subsidiaries, affiliates and Lenders ("Landlord Parties") as additional insureds as respects liability arising from work or operations performed by or on behalf of Tenant, Tenant's use or occupancy of Premises, and ownership, maintenance or use of vehicles by or on behalf of Tenant.

23.5 In each instance where insurance is to name Landlord Parties as additional insureds, Tenant shall, upon Landlord's written request, also designate and furnish certificates evidencing such Landlord Parties as additional insureds to (a) any Lender of Landlord holding a security interest in the Building or the Project, (b) the landlord under any lease whereunder Landlord is a tenant of the real property upon which the Building is located if the interest of Landlord is or shall become that of a tenant under a ground lease rather than that of a fee owner and (c) any management company retained by Landlord to manage the Project.

23.6 Tenant assumes the risk of damage to any fixtures, goods, inventory, merchandise, equipment and leasehold improvements, and Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom, relative to such damage, all as more particularly set forth within this Lease. Tenant shall, at Tenant's sole cost and expense, carry such insurance as Tenant desires for Tenant's protection with respect to personal property of Tenant or business interruption.

23.7 Tenant, on behalf of itself and its insurers, hereby waives any and all rights of recovery against the Landlord Parties with respect to any loss, damage, claims, suits or demands, howsoever caused, that are covered, or should have been covered, by valid and collectible workers' compensation, employer's liability insurance and other liability insurance required to obtained and carried by Tenant pursuant to this Article, including any deductibles or self-insurance maintained thereunder. Tenant agrees to endorse the required workers' compensation, employer's liability and other liability insurance policies to permit waivers of subrogation as required hereunder and hold harmless and indemnify the Landlord Parties for any loss or expense incurred as a result of a failure to obtain such waivers of subrogation from insurers. Such waivers shall continue so long as Tenant's insurers so permit. Any termination of such a waiver shall be by written notice to Landlord, containing a description of the circumstances hereinafter set forth in this Section. Tenant, upon obtaining the policies of workers' compensation, employer's liability and other liability insurance required or permitted under this Lease, shall give notice to its insurance carriers that the foregoing waiver of subrogation is contained in this Lease. If such policies shall not be obtainable with such waiver or shall be so obtainable only at a premium over that chargeable without such waiver, then Tenant shall notify Landlord of such conditions and only in the event that such waiver is not obtainable, Tenant shall not be obligated to obtain such waiver.

23.8 Landlord may require insurance policy limits required under this Lease to be raised to conform with requirements of Landlord's Lender or to bring coverage limits to levels then being required of new tenants within the Project, provided such coverage limits are reasonably consistent with those required by landlords of similarly situated buildings.

23.9 In addition to other insurance required by this Lease to be carried by Tenant, if Tenant sells, merchandises, transfers, gives away or exchanges so-called "alcoholic liquors" in, upon or from any part of the Premises, then Tenant shall, at Tenant's sole cost and expense, purchase and maintain in full force and effect during the Term dram shop insurance in form and substance satisfactory to Landlord, with total limits of liability for bodily injury, loss of means of support and property damage for each occurrence in an amount and with a carrier reasonably acceptable to Landlord, and otherwise in compliance with the general provisions of this Article governing the provision of insurance by Tenant. Such policy shall name Landlord and the Landlord Parties as additional insureds against any liability by virtue of Applicable Laws concerning the use, sale or giving away of alcoholic liquors. If at any time such insurance is for any reason not in force, then during all and any such times no selling, merchandising, transferring, giving away or exchanging of so-called "alcoholic liquors" shall be conducted by Tenant in, upon or from any part of the Premises.

23.10 Any costs incurred by Landlord pursuant to this Article shall constitute a portion of Operating Expenses.

23.11 The provisions of this Article shall survive the expiration or earlier termination of this Lease.

24. Damage or Destruction.

24.1 In the event of a partial destruction of (a) the Premises, (b) the Building, (c) the Common Area or (d) the Project ((a)-(d) collectively, the "Affected Areas") by fire or other perils covered by extended coverage insurance not exceeding twenty-five percent (25%) of the full insurable value thereof, and provided that (w) the damage thereto is such that the Affected Areas may be repaired, reconstructed or restored within a period of six (6) months from the date of the happening of such casualty, (x) Landlord shall receive insurance proceeds from its insurer or Lender sufficient to cover the cost of such repairs, reconstruction and restoration (except for any deductible amount provided by Landlord's policy, which deductible amount, if paid by Landlord, shall constitute an Operating Expense), (y) the repair, reconstruction or restoration of the Affected Areas is permitted by all applicable Loan Documents or otherwise consented to by any and all Lenders whose consent is required thereunder and (z) such casualty was not intentionally caused by a Tenant Party, then Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration of the Affected Areas and this Lease shall continue in full force and effect.

24.2 In the event of any damage to or destruction of the Building or the Project other than as described in Section 24.1, Landlord may elect to repair, reconstruct and restore the Building or the Project, as applicable, in which case this Lease shall continue in full force and effect. If Landlord elects not to repair, reconstruct and restore the Building or the Project, as applicable, then this Lease shall terminate as of the date of such damage or destruction. In the event of any damage or destruction (regardless of whether such damage is governed by Section 24.1 or this Section), if (a) in Landlord's determination as set forth in the Damage Repair Estimate (as defined below), the Affected Areas cannot be repaired, reconstructed or restored within twelve (12) months after the date of the Damage Repair Estimate, (b) subject to Section 24.6, the Affected Areas are not actually repaired, reconstructed and restored within eighteen (18) months after the date of the Damage Repair Estimate, or (c) the damage and destruction occurs within the last twelve (12) months of the then-current Term, then Tenant shall have the right to terminate this Lease, effective as of the date of such damage or destruction, by delivering to Landlord its written notice of termination (a "Termination Notice") (y) with respect to Subsections 24.2(a) and (c), no later than fifteen (15) days after Landlord delivers to Tenant Landlord's Damage Repair Estimate and (z) with respect to Subsection 24.2(b), no later than fifteen (15) days after such eighteen (18) month period (as the same may be extended pursuant to Section 24.6) expires. If Tenant provides Landlord with a Termination Notice pursuant to Subsection 24.2(z), Landlord shall have an additional thirty (30) days after receipt of such Termination Notice to complete the repair, reconstruction and restoration. If Landlord does not complete such repair, reconstruction and restoration within such thirty (30) day period, then Tenant may terminate this Lease by giving Landlord written notice within two (2) business days after the expiration of such thirty (30) day period. If Landlord does complete such repair, reconstruction and restoration within such thirty (30) day period, then this Lease shall continue in full force and effect.

24.3 As soon as reasonably practicable, but in any event within sixty (60) days following the date of damage or destruction, Landlord shall notify Tenant of Landlord's good faith estimate of the period of time in which the repairs, reconstruction and restoration will be completed (the "Damage Repair Estimate"), which estimate shall be based upon the opinion of a contractor reasonably selected by Landlord and experienced in comparable repair, reconstruction and restoration of similar buildings. Additionally, Landlord shall give written notice to Tenant as soon as reasonably practicable, but in any event within sixty (60) days following the date of damage or destruction, of its election not to repair, reconstruct or restore the Building or the Project, as applicable.

24.4 Upon any termination of this Lease under any of the provisions of this Article, the parties shall be released thereby without further obligation to the other from the date possession of the Premises is surrendered to Landlord, except with regard to (a) items occurring prior to the damage or destruction and (b) provisions of this Lease that, by their express terms, survive the expiration or earlier termination hereof.

24.5 In the event of repair, reconstruction and restoration as provided in this Article, all Rent to be paid by Tenant under this Lease shall be abated proportionately based on the extent to which Tenant's use of the Premises is impaired during the period of time commencing on the date of the damage or destruction and continuing until the substantial completion of such repair, reconstruction or restoration, unless Landlord provides Tenant with other space during the period of repair, reconstruction and restoration that, in Tenant's reasonable opinion, is suitable for the temporary conduct of Tenant's business; provided, however, that the amount of such abatement shall be reduced by the amount of Rent that is received by Tenant as part of the business interruption or loss of rental income with respect to the Premises from the proceeds of business interruption or loss of rental income insurance.

24.6 Notwithstanding anything to the contrary contained in this Article, (a) Landlord shall not be required to repair, reconstruct or restore any damage or destruction to the extent that Landlord is prohibited from doing so by any applicable Loan Document or any Lender whose consent is required thereunder withholds its consent, and (b) should Landlord be delayed or prevented from completing the repair, reconstruction or restoration of the damage or destruction to the Premises after the occurrence of such damage or destruction by Force Majeure or delays caused by a Lender or Tenant Party, then the time for Landlord to commence or complete repairs, reconstruction and restoration shall be extended on a day-for-day basis; provided, however, that, at Landlord's election, Landlord shall be relieved of its obligation to make such repairs, reconstruction and restoration.

24.7 If Landlord is obligated to or elects to repair, reconstruct or restore as herein provided, then Landlord shall be obligated to make such repairs, reconstruction or restoration only with regard to (a) those portions of the Premises that were originally provided at Landlord's expense and (b) the Common Area portion of the Affected Areas. The repairs, reconstruction or restoration of improvements not originally provided by Landlord or at Landlord's expense shall be the obligation of Tenant. In the event Tenant has elected to upgrade certain improvements from the Building Standard, Landlord shall, upon the need for replacement due to an insured loss, provide only the Building Standard, unless Tenant again elects to upgrade such improvements and pay any incremental costs related thereto, except to the extent that excess insurance proceeds, if received, are adequate to provide such upgrades, in addition to providing for basic repairs, reconstruction and restoration of the Premises, the Building and the Project.

24.8 Notwithstanding anything to the contrary contained in this Article, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises if the damage resulting from any casualty covered under this Article occurs during the last twenty-four (24) months of the Term or any extension thereof, or to the extent that insurance proceeds are not available therefor.

24.9 Landlord's obligation, should it elect or be obligated to repair, reconstruct or restore, shall be limited to the Affected Areas, and shall be conditioned upon Landlord receiving any permits or authorizations required by Applicable Laws. Tenant shall, at its expense, replace or fully repair all of Tenant's personal property and any Alterations installed by Tenant existing at the time of such damage or destruction. If Affected Areas are to be repaired, reconstructed or restored in accordance with the foregoing, Landlord shall make available to Tenant any portion of insurance proceeds it receives that are allocable to the Alterations constructed by Tenant pursuant to this Lease; provided Tenant is not then in default under this Lease, and subject to the requirements of any Lender of Landlord.

24.10 This Article sets forth the terms and conditions upon which this Lease may terminate in the event of any damage or destruction. Accordingly, the parties hereby waive the provisions of California Civil Code Sections 1932(2) and 1933(4) (and any successor statutes) permitting the parties to terminate this Lease as a result of any damage or destruction.

25. Eminent Domain.

25.1 In the event (a) the whole of all Affected Areas or (b) such part thereof as shall substantially interfere with Tenant's use and occupancy of the Premises for the Permitted Use shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, Tenant or Landlord may terminate this Lease effective as of the date possession is required to be surrendered to such authority, except with regard to (y) items occurring prior to the taking and (z) provisions of this Lease that, by their express terms, survive the expiration or earlier termination hereof.

25.2 In the event of a partial taking of (a) the Building or the Project or (b) drives, walkways or parking areas serving the Building or the Project for any public or quasi-public purpose by any lawful power or authority by exercise of right of appropriation, condemnation, or eminent domain, or sold to prevent such taking, then, without regard to whether any portion of the Premises occupied by Tenant was so taken, Landlord may elect to terminate this Lease (except with regard to (a) items occurring prior to the taking and (b) provisions of this Lease that, by their express terms, survive the expiration or earlier termination hereof) as of such taking if such taking is, in Landlord's sole opinion, of a material nature such as to make it uneconomical to continue use of the unappropriated portion for purposes of renting office or laboratory space.

25.3 To the extent permitted under all applicable Loan Documents or otherwise consented to by any and all Lenders whose consent is required thereunder, Tenant shall be entitled to any award that is specifically awarded as compensation for (a) the taking of Tenant's personal property that was installed at Tenant's expense and (b) the costs of Tenant moving to a new location. Except as set forth in the previous sentence, any award for such taking shall be the property of Landlord.

25.4 If, upon any taking of the nature described in this Article, this Lease continues in effect, then Landlord shall promptly proceed to restore the Affected Areas to substantially their same condition prior to such partial taking. To the extent such restoration is infeasible, as determined by Landlord in its sole and absolute discretion, the Rent shall be decreased proportionately to reflect the loss of any portion of the Premises no longer available to Tenant. Notwithstanding anything to the contrary contained in this Article, Landlord shall not be required to restore the Affected Areas to the extent that Landlord is prohibited from doing so by any applicable Loan Document or any Lender whose consent is required thereunder withholds its consent.

25.5 This Article sets forth the terms and conditions upon which this Lease may terminate in the event of any taking by condemnation or eminent domain. Accordingly, the parties hereby waive the provisions of California Code of Civil Procedure Sections 1230.010 and 1265.130 (and any successor statutes) permitting the parties to terminate this Lease as a result of any taking by condemnation or eminent domain.

26. Surrender.

26.1 At least thirty (30) days prior to Tenant's surrender of possession of any part of the Premises, Tenant shall provide Landlord with a facility decommissioning and Hazardous Materials closure plan for the Premises ("Exit Survey") prepared by an independent third party state-certified professional with appropriate expertise, which Exit Survey must be reasonably acceptable to Landlord. The Exit Survey shall comply with the American National Standards Institute's Laboratory Decommissioning guidelines (ANSI/AIHA Z9.11-2008) or any successor standards published by ANSI or any successor organization (or, if ANSI and its successors no longer exist, a similar entity publishing similar standards). In addition, at least ten (10) days prior to Tenant's surrender of possession of any part of the Premises, Tenant shall (a) provide Landlord with written evidence of all appropriate governmental releases obtained by Tenant in accordance with Applicable Laws, including laws pertaining to the surrender of the Premises, (b) place Laboratory Equipment Decontamination Forms on all decommissioned equipment to assure safe occupancy by future users and (c) conduct a site inspection with Landlord. In addition, Tenant agrees to remain responsible after the surrender of the Premises for the remediation of any recognized environmental conditions set forth in the Exit Survey and comply with any recommendations set forth in the Exit Survey. Tenant's obligations under this Section shall survive the expiration or earlier termination of the Lease.

26.2 No surrender of possession of any part of the Premises shall release Tenant from any of its obligations hereunder, unless such surrender is accepted in writing by Landlord.

26.3 The voluntary or other surrender of this Lease by Tenant shall not effect a merger with Landlord's fee title or leasehold interest in the Premises, the Building, the Property or the Project, unless Landlord consents in writing, and shall, at Landlord's option, operate as an assignment to Landlord of any or all subleases.

26.4 The voluntary or other surrender of any ground or other underlying lease that now exists or may hereafter be executed affecting the Building or the Project, or a mutual cancellation thereof or of Landlord's interest therein by Landlord and its lessor shall not effect a merger with Landlord's fee title or leasehold interest in the Premises, the Building or the Property and shall, at the option of the successor to Landlord's interest in the Building or the Project, as applicable, operate as an assignment of this Lease.

27. Holding Over.

27.1 If, with Landlord's prior written consent, Tenant holds possession of all or any part of the Premises after the Term, Tenant shall become a tenant from month to month after the expiration or earlier termination of the Term, and in such case Tenant shall continue to pay (a) Base Rent in accordance with Article 7, and (b) any amounts for which Tenant would otherwise be liable under this Lease if the Lease were still in effect, including payments for Tenant's Adjusted Share of Operating Expenses. Any such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein.

27.2 Notwithstanding the foregoing, if Tenant remains in possession of the Premises after the expiration or earlier termination of the Term without Landlord's prior written consent, (a) Tenant shall become a tenant at sufferance subject to the terms and conditions of this Lease, except that the monthly rent shall be equal to one hundred fifty percent (150%) of the Rent in effect during the last thirty (30) days of the Term, and (b) Tenant shall be liable to Landlord for any and all damages suffered by Landlord as a result of such holdover, including any lost rent or consequential, special and indirect damages (in each case, regardless of whether such damages are foreseeable).

27.3 Acceptance by Landlord of Rent after the expiration or earlier termination of the Term shall not result in an extension, renewal or reinstatement of this Lease.

27.4 The foregoing provisions of this Article are in addition to and do not affect Landlord's right of reentry or any other rights of Landlord hereunder or as otherwise provided by Applicable Laws.

27.5 The provisions of this Article shall survive the expiration or earlier termination of this Lease.

28. Indemnification and Exculpation.

28.1 Tenant agrees to Indemnify the Landlord Indemnitees from and against any and all Claims of any kind or nature, real or alleged, arising from (a) injury to or death of any person or damage to any property occurring within or about the Premises, the Building, the Property or the Project, arising directly or indirectly out of (i) the presence at or use or occupancy of the Premises or Project by a Tenant Party or (ii) an act or omission on the part of any Tenant Party, (b) a breach or default by Tenant in the performance of any of its obligations hereunder (including any Claim asserted by a Lender against any Landlord Indemnitees under any Loan Document as a direct result of such breach or default by Tenant) or (c) injury to or death of persons or damage to or loss of any property, real or alleged, arising from the serving of alcoholic beverages at the Premises or Project, including liability under any dram shop law, host liquor law or similar Applicable Law, except to the extent directly arising from Landlord's negligence or willful misconduct. Tenant's obligations under this Section shall not be affected, reduced or limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Tenant under workers' compensation acts, disability benefit acts, employee benefit acts or similar legislation. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease. Subject to Sections 23.6, 28.2 and 31.12 and any subrogation provisions contained in the Work Letter, Landlord agrees to Indemnify the Tenant Parties from and against any and all Claims arising from injury to or death of any person or damage to or loss of any physical property occurring within or about the Premises, the Building, the Property or the Project to the extent directly arising from Landlord's gross negligence or willful misconduct.

28.2 Notwithstanding anything in this Lease to the contrary, Landlord shall not be liable to Tenant for and Tenant assumes all risk of (a) damage or losses arising from fire, electrical malfunction, gas explosion or water damage of any type (including broken water lines, malfunctioning fire sprinkler systems, roof leaks or stoppages of lines), unless any such loss is due to Landlord's willful disregard of written notice by Tenant of need for a repair that Landlord is responsible to make for an unreasonable period of time, and (b) damage to personal property or scientific research, including loss of records kept by Tenant within the Premises (in each case, regardless of whether such damages are foreseeable). Tenant further waives any claim for injury to Tenant's business or loss of income relating to any such damage or destruction of personal property as described in this Section. Notwithstanding anything in the foregoing or this Lease to the contrary, except (x) as otherwise provided herein (including Section 27.2), (y) as may be provided by Applicable Laws or (z) in the event of Tenant's breach of Article 21 or Section 26.1, in no event shall Landlord or Tenant be liable to the other for any consequential, special or indirect damages arising from this Lease, including lost profits (provided that this Subsection 28.2(z) shall not limit Tenant's liability for Base Rent or Additional Rent pursuant to this Lease).

28.3 Landlord shall not be liable for any damages arising from any act, omission or neglect of any other tenant in the Building or the Project, or of any other third party.

28.4 Tenant acknowledges that security devices and services, if any, while intended to deter crime, may not in given instances prevent theft or other criminal acts. Landlord shall not be liable for injuries or losses arising from criminal acts of third parties, and Tenant assumes the risk that any security device or service may malfunction or otherwise be circumvented by a criminal. If Tenant desires protection against such criminal acts, then Tenant shall, at Tenant's sole cost and expense, obtain appropriate insurance coverage. Tenant's security programs and equipment for the Premises shall be coordinated with Landlord and subject to Landlord's reasonable approval.

28.5 The provisions of this Article shall survive the expiration or earlier termination of this Lease.

29. Assignment or Subletting.

29.1 Except as hereinafter expressly permitted, none of the following (each, a "Transfer"), either voluntarily or by operation of Applicable Laws, shall be directly or indirectly performed without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed: (a) Tenant selling, hypothecating, assigning, pledging, encumbering or otherwise transferring this Lease or subletting the Premises or (b) a controlling interest in Tenant being sold, assigned or otherwise transferred (other than as a result of shares in Tenant being sold on a public stock exchange). For purposes of the preceding sentence, "control" means (1) owning (directly or indirectly) more than fifty percent (50%) of the stock or other equity interests of another person or (2) possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of such person. Tenant shall have the right, without Landlord's prior written consent, to (y) Transfer Tenant's interest in this Lease or the Premises or any part thereof to any person that (i) acquires all or substantially all of the assets of Tenant (either indirectly through a sale of all or substantially all of Tenant's stock or equity interests or directly), (ii) is a successor to Tenant by merger, consolidation or reorganization or as a result of an initial public offering of Tenant's stock on a nationally recognized stock exchange, or (iii) as of the date of determination and at all times thereafter directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Tenant (the transferee or resulting Tenant described in (i), (ii) or (iii), a "Tenant's Affiliate") and (z) provided that, at all times prior to and after such transfer, Tenant remains the tenant under this Lease and Tenant retains the power to direct or cause the direction of the management and policies of Tenant and Tenant retains fifty-one percent (51%) or more of the voting power of all the stock or other equity interests in Tenant, transfer (directly or indirectly) more than fifty percent (50%) of the stock or equity interests of Tenant as part of a bona fide private equity placement financing (an "Equity Financing Transfer"); provided that, in each case, Tenant shall notify Landlord in writing at least thirty (30) days prior to the effectiveness of such Transfer (any such Transfer described in (y) or (z) in this Section above, an "Exempt Transfer") and otherwise comply with the requirements of this Lease regarding such Transfer; and provided, further, that the person that will be the tenant under this Lease after the Exempt Transfer has a net worth (as of both the day immediately prior to and the day immediately after the Exempt Transfer) that is equal to or greater than the net worth (as of the date of the Exempt Transfer) of the transferring Tenant. For purposes of the immediately preceding sentence, "control" requires both (A) owning (directly or indirectly) more than fifty percent (50%) of the stock or other equity interests of another person and (B) possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of such person. In no event shall Tenant perform a Transfer to or with an entity that is a tenant at the Project or that is in discussions or negotiations with Landlord or an affiliate of Landlord to lease premises at the Project; provided that, Landlord or such affiliate has sufficient space for such entity at the Project. Upon Tenant's written request, Landlord shall execute and deliver a commercially reasonable form of confidentiality agreement with respect to any information disclosed to Landlord in connection with a proposed Transfer or Exempt Transfer. Notwithstanding the foregoing, if Tenant is precluded by Applicable Law or by contract from giving Landlord prior written notice of an Exempt Transfer, then Tenant will provide Landlord with written notice of the Exempt Transfer as soon as Tenant may do so without violating Applicable Law or the terms of the applicable contract, and if Tenant does not know all of the material terms of the Exempt Transfer at least thirty (30) days prior to its effectiveness, then Tenant will provide Landlord with written notice of the Exempt Transfer no later than five (5) days after Tenant knows all of the material terms of the Exempt Transfer.

29.2 In the event Tenant desires to effect a Transfer, then, at least thirty (30) but not more than ninety (90) days prior to the date when Tenant desires the Transfer to be effective (the "Transfer Date"), Tenant shall provide written notice to Landlord (the "Transfer Notice") containing information (including references) concerning the character of the proposed transferee, assignee or sublessee; the Transfer Date; the most recent unconsolidated financial statements of Tenant and of the proposed transferee, assignee or sublessee satisfying the requirements of Section 40.2 ("Required Financials"); any ownership or commercial relationship between Tenant and the proposed transferee, assignee or sublessee; copies of Hazardous Materials Documents for the proposed transferee, assignee or sublessee; and the consideration and all other material terms and conditions of the proposed Transfer, all in such detail as Landlord shall reasonably require.

29.3 Landlord, in determining whether consent should be given to a proposed Transfer, may give consideration to, among other things and without limitation, the following factors which Tenant agrees shall all be factors on which Landlord may reasonably rely in determining whether or not to grant such consent: (a) the financial strength of such transferee, assignee or sublessee (taking into account that Tenant shall remain liable for Tenant's performance), (b) any change in use that such transferee, assignee or sublessee proposes to make in the use of the Premises and (c) Landlord's desire to exercise its rights under Section 29.7 to cancel this Lease. In no event shall Landlord be deemed to be unreasonable for declining to consent to a Transfer if any applicable Loan Document prohibits such assignment or any Lender whose consent is required thereunder withholds its consent, or if the Transfer is to a transferee, assignee or sublessee of poor reputation, lacking financial qualifications or seeking a change in the Permitted Use, or jeopardizing directly or indirectly the status of Landlord or any of Landlord's affiliates as a Real Estate Investment Trust under the Internal Revenue Code of 1986 (as the same may be amended from time to time, the "Revenue Code"). Notwithstanding anything contained in this Lease to the contrary, (w) no Transfer shall be consummated on any basis such that the rental or other amounts to be paid by the occupant, assignee, manager or other transferee thereunder would be based, in whole or in part, on the income or profits derived by the business activities of such occupant, assignee, manager or other transferee; (x) at any time Landlord or any of Landlord's affiliates is a real estate investment trust, Tenant shall not furnish or render any services to an occupant, assignee, manager or other transferee with respect to whom transfer consideration is required to be paid, or manage or operate the Premises or any capital additions so transferred, with respect to which transfer consideration is being paid, to the extent that any of the foregoing would cause Landlord to be in violation of any Applicable Laws or other requirements imposed upon real estate investment trusts or otherwise jeopardizes, directly or indirectly, the status of Landlord or any of Landlord's affiliates as a real estate investment trust; (y) Tenant shall not consummate a Transfer with any person in which Landlord owns an interest, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d)(5) of the Revenue Code); and (z) Tenant shall not consummate a Transfer with any person or in any manner that could cause any portion of the amounts received by Landlord pursuant to this Lease or any sublease, license or other arrangement for the right to use, occupy or possess any portion of the Premises to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Revenue Code, or any similar or successor provision thereto or which could cause any other income of Landlord to fail to qualify as income described in Section 856(c)(2) of the Revenue Code. Notwithstanding anything in this Lease to the contrary, if (a) Tenant or any proposed transferee, assignee or sublessee of Tenant has been required by any prior landlord, Lender or Governmental Authority to take material remedial action in connection with Hazardous Materials contaminating a property if the contamination resulted from such party's action or omission or use of the property in question or (b) Tenant or any proposed transferee, assignee or sublessee is subject to a material enforcement order issued by any Governmental Authority in connection with the use, disposal or storage of Hazardous Materials, then Landlord shall have the right to terminate this Lease in Landlord's sole and absolute discretion (with respect to any such matter involving Tenant), and it shall not be unreasonable for Landlord to withhold its consent to any proposed transfer, assignment or subletting (with respect to any such matter involving a proposed transferee, assignee or sublessee).

29.4 The following are conditions precedent to a Transfer or to Landlord considering a request by Tenant to a Transfer:

(a) Tenant shall remain fully liable under this Lease. Tenant agrees that it shall not be (and shall not be deemed to be) a guarantor or surety of this Lease, however, and waives its right to claim that is it is a guarantor or surety or to raise in any legal proceeding any guarantor or surety defenses permitted by this Lease or by Applicable Laws;

(b) If Tenant or, except with respect to an Exempt Transfer that is an Equity Financing Transfer, a proposed transferee, assignee or sublessee does not or cannot deliver the Required Financials, then Landlord may elect to have either Tenant's ultimate parent company or the proposed transferee's, assignee's or sublessee's ultimate parent company provide a guaranty of the applicable entity's obligations under this Lease, in a form acceptable to Landlord, which guaranty shall be executed and delivered to Landlord by the applicable guarantor prior to the Transfer Date;

(c) In the case of an Exempt Transfer, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord that the Transfer qualifies as an Exempt Transfer;

(d) Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord that the value of Landlord's interest under this Lease shall not be diminished or reduced by the proposed Transfer. Such evidence shall include evidence respecting the relevant business experience and financial responsibility and status of the proposed transferee, assignee or sublessee;

(e) Tenant shall reimburse Landlord for Landlord's actual costs and expenses, including reasonable attorneys' fees, charges and disbursements incurred in connection with the review, processing and documentation of such request, not to exceed Five Thousand Dollars ($5,000) in any one instance;

(f) Except with respect to an Exempt Transfer, if Tenant's transfer of rights or sharing of the Premises provides for the receipt by, on behalf of or on account of Tenant of any consideration of any kind whatsoever (including a premium rental for a sublease or lump sum payment for an assignment, but excluding Tenant's reasonable costs in marketing and subleasing the Premises) in excess of the rental and other charges due to Landlord under this Lease, Tenant shall pay fifty percent (50%) of all of such excess to Landlord, after making deductions for any reasonable marketing expenses, tenant improvement funds expended by Tenant, alterations, cash concessions, brokerage commissions, attorneys' fees and free rent actually paid by Tenant. If such consideration consists of cash paid to Tenant, payment to Landlord shall be made upon receipt by Tenant of such cash payment;

(g) With respect to a Transfer (including an Exempt Transfer) that constitutes a sublease of all or a portion of the Premises or any similar arrangement, the proposed sublessee or transferee shall agree that, in the event Landlord gives such proposed sublessee or transferee notice that Tenant is in default under this Lease, such proposed sublessee or transferee shall thereafter make all rental and other payments otherwise due Tenant directly to Landlord, which payments shall be received by Landlord, without any liability being incurred by Landlord, and applied against the amounts due from Tenant under this Lease, and any such proposed sublessee or transferee shall agree to attorn to Landlord or its successors and assigns should this Lease be terminated for any reason; provided, however, that in no event shall Landlord or its Lenders, successors or assigns be obligated to accept such attornment;

(h) Landlord's consent to any such Transfer shall be effected on Landlord's commercially reasonable forms;

(i) Tenant shall not then be in default hereunder in any respect;

(j) Such proposed transferee, assignee or sublessee's use of the Premises shall be the same as the Permitted Use;

(k) Landlord shall not be bound by any provision of any agreement pertaining to the Transfer, except for Landlord's written consent to the same;

(l) Tenant shall pay all transfer and other taxes (including interest and penalties) assessed or payable for any Transfer;

(m) Landlord's consent (or waiver of its rights) for any Transfer shall not waive Landlord's right to consent or refuse consent to any later Transfer;

(n) Tenant shall deliver to Landlord one executed copy of any and all written instruments evidencing or relating to the Transfer; and

(o) Tenant shall deliver to Landlord a list of Hazardous Materials (as defined below), certified by the proposed transferee, assignee or sublessee to be true and correct, that the proposed transferee, assignee or sublessee intends to use or store in the Premises. Additionally, Tenant shall deliver to Landlord, on or before the date any proposed transferee, assignee or sublessee takes occupancy of the Premises, all of the items relating to Hazardous Materials of such proposed transferee, assignee or sublessee as described in Section 21.2.

29.5 Any Transfer that is not in compliance with the provisions of this Article or with respect to which Tenant does not fulfill its obligations pursuant to this Article shall be void and shall, at the option of Landlord (in Landlord's sole and absolute discretion), be deemed a Default by Tenant under this Lease.

29.6 Notwithstanding any Transfer, Tenant shall remain fully and primarily liable for the payment of all Rent and other sums due or to become due hereunder, and for the full performance of all other terms, conditions and covenants to be kept and performed by Tenant. The acceptance of Rent or any other sum due hereunder, or the acceptance of performance of any other term, covenant or condition thereof, from any person or entity other than Tenant shall not be deemed a waiver of any of the provisions of this Lease or a consent to any Transfer.

29.7 If Tenant delivers to Landlord a Transfer Notice indicating a desire to transfer this Lease to a proposed transferee, assignee or sublessee other than pursuant to an Exempt Transfer, then Landlord shall have the option, exercisable by giving notice to Tenant at any time within thirty (30) days after Landlord's receipt of such Transfer Notice, to terminate this Lease as of the date specified in the Transfer Notice as the Transfer Date, except for those provisions that, by their express terms, survive the expiration or earlier termination hereof. If Landlord exercises such option, then Tenant shall have the right to withdraw such Transfer Notice by delivering to Landlord written notice of such election within five (5) days after Landlord's delivery of notice electing to exercise Landlord's option to terminate this Lease. In the event Tenant withdraws the Transfer Notice as provided in this Section, this Lease shall continue in full force and effect. No failure of Landlord to exercise its option to terminate this Lease shall be deemed to be Landlord's consent to a proposed Transfer.

29.8 If Tenant sublets the Premises or any portion thereof, Tenant hereby immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any such subletting, and appoints Landlord as assignee and attorney-in-fact for Tenant, and Landlord (or a receiver for Tenant appointed on Landlord's application) may collect such rent and apply it toward Tenant's obligations under this Lease; provided that, until the occurrence of a Default (as defined below) by Tenant, Tenant shall have the right to collect such rent.

29.9 In the event that Tenant enters into a sublease for the entire Premises in accordance with this Article that expires within two (2) days of the Term Expiration Date, the term expiration date of such sublease shall, notwithstanding anything in this Lease, the sublease or any consent to the sublease to the contrary, be deemed to be the date that is two (2) days prior to the Term Expiration Date.

30. Subordination and Attornment.

30.1 This Lease shall be subject and subordinate to the lien of any mortgage, deed of trust, or lease in which Landlord is tenant now or hereafter in force against the Building or the Project and to all advances made or hereafter to be made upon the security thereof without the necessity of the execution and delivery of any further instruments on the part of Tenant to effectuate such subordination.

30.2 Notwithstanding the foregoing, Tenant shall execute and deliver upon demand such further commercially reasonable instrument or instruments evidencing such non-disturbance, subordination and attornment of this Lease to the lien of any such mortgage or mortgages or deeds of trust or lease in which Landlord is tenant as may be reasonably required by Landlord, it being expressly understood that any Lender's required form of non-disturbance, subordination and attornment shall be deemed to be a commercially reasonable instrument for purposes of this Section. If any Lender so elects, however, this Lease shall be deemed prior in lien to any such lease, mortgage, or deed of trust upon or including the Premises regardless of date and Tenant shall execute a statement in writing to such effect at Landlord's request. If Tenant fails to execute any document required from Tenant under this Section within ten (10) days after written request therefor, Tenant hereby constitutes and appoints Landlord or its special attorney-in-fact to execute and deliver any such document or documents in the name of Tenant. Such power is coupled with an interest and is irrevocable. For the avoidance of doubt, "Lenders" shall also include historic tax credit investors and new market tax credit investors.

30.3 Intentionally Blank

30.4 In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises, Tenant shall at the election of the purchaser at such foreclosure or sale attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

30.5. During the Term, upon Tenant's written request to Landlord, Landlord shall request a subordination and non-disturbance agreement from any existing or future Lender that holds a deed of trust lien encumbering the portion of the Project on which the Premises is situated (for purposes of clarity, this obligation does not apply with respect to any deed of trust lien that encumbers the Project as of the Execution Date); provided, however, that (a) Landlord shall have no obligation to obtain such subordination and non-disturbance agreement (and Tenant shall have no right or remedy in the event that such Lender refuses to provide, or fails to respond or delays in responding to any request for, such subordination and non-disturbance agreement), (b) Landlord makes no assurance regarding such agreement or the terms thereof (including whether or not same is commercially reasonable) and (c) Tenant shall (i) pay all fees and expenses of any kind (including, without limitation, attorneys' fees) imposed or required by such Lender in connection with such subordination and non-disturbance agreement, and (ii) reimburse Landlord for Landlord's actual costs and expenses, including reasonable attorneys' fees, charges and disbursements incurred in connection with the review, processing and documentation of such subordination and non-disturbance agreement.

31. Defaults and Remedies.

31.1 Late payment by Tenant to Landlord of Rent and other sums due shall cause Landlord to incur costs not contemplated by this Lease, the exact amount of which shall be extremely difficult and impracticable to ascertain. Such costs include processing and accounting charges and late charges that may be imposed on Landlord by the terms of any mortgage or trust deed covering the Premises. Therefore, if any installment of Rent due from Tenant is not received by Landlord within five (5) days after the date such payment is due, Tenant shall pay to Landlord (a) an additional sum of five percent (5%) of the overdue Rent as a late charge plus (b) interest at an annual rate (the "Default Rate") equal to the lesser of (a) ten percent (10%) and (b) the highest rate permitted by Applicable Laws. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord shall incur by reason of late payment by Tenant and shall be payable as Additional Rent to Landlord due with the next installment of Rent or within five (5) business days after Landlord's demand, whichever is earlier, provided Tenant has at least five (5) business days in which to pay such late charge after such charge is incurred. Landlord's acceptance of any Additional Rent (including a late charge or any other amount hereunder) shall not be deemed an extension of the date that Rent is due or prevent Landlord from pursuing any other rights or remedies under this Lease, at law or in equity.

31.2 No payment by Tenant or receipt by Landlord of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease or in equity or at law. If a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord hereunder, Tenant shall have the right to make payment "under protest," such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of Tenant to institute suit for recovery of the payment paid under protest.

31.3 If Tenant fails to pay any sum of money required to be paid by it hereunder or perform any other act on its part to be performed hereunder, in each case within the applicable cure period (if any) described in Section 31.4, then Landlord may (but shall not be obligated to), without waiving or releasing Tenant from any obligations of Tenant, make such payment or perform such act; provided that such failure by Tenant unreasonably interfered with the use of the Building or the Project by any other tenant or with the efficient operation of the Building or the Project, or resulted or could have resulted in a violation of Applicable Laws or the cancellation of an insurance policy maintained by Landlord. Notwithstanding the foregoing, in the event of an emergency, Landlord shall have the right to enter the Premises and act in accordance with its rights as provided elsewhere in this Lease. In addition to the late charge described in Section 31.1, Tenant shall pay to Landlord as Additional Rent all sums so paid or incurred by Landlord, together with interest at the Default Rate, computed from the date such sums were paid or incurred.

31.4 The occurrence of any one or more of the following events shall constitute a "Default" hereunder by Tenant:

(a) Tenant (i) abandons the Premises within the meaning of Section 1951.3 of the California Civil Code; or (ii)(A) Landlord receives notice of Tenant's vacation of or Tenant's intention to vacate the Premises prior to the scheduled expiration or earlier termination of this Lease, other than in accordance with a right expressly granted to Tenant under this Lease, and such vacation (or intention to vacate) is related to financial hardship or Tenant's inability to pay its debts as they become due, a dissolution of Tenant, or the liquidation or winding up of Tenant's business operations; or (B) Tenant vacates the Premises prior to the scheduled expiration or earlier termination of this Lease, other than in accordance with a right expressly granted to Tenant under this Lease, within the one-hundred twenty (120) day period following the filing of any involuntary petition against Tenant or the attachment of Tenant's interest in this Lease (notwithstanding anything to the contrary in Sections 31.4(g) and 31.4(k));

(b) Tenant fails to make any payment of Rent, as and when due, or to satisfy its obligations under Article 19, where such failure shall continue for a period of three (3) business days after written notice thereof from Landlord to Tenant;

(c) Tenant fails to observe or perform any obligation or covenant contained herein (other than described in Sections 31.4(a) and 31.4(b)) to be performed by Tenant, where such failure continues for a period of fifteen (15) days after written notice thereof from Landlord to Tenant; provided that, if the nature of Tenant's default is such that it reasonably requires more than fifteen (15) days to cure, Tenant shall not be deemed to be in Default if Tenant commences such cure within such fifteen (15) day period and thereafter diligently prosecutes the same to completion; provided that such cure is completed no later than forty-five (45) days after Tenant's receipt of written notice from Landlord;

(d) Tenant makes an assignment for the benefit of creditors;

(e) A receiver, trustee or custodian is appointed to or does take title, possession or control of all or substantially all of Tenant's assets;

(f) Tenant files a voluntary petition under the United States Bankruptcy Code or any successor statute (as the same may be amended from time to time, the "Bankruptcy Code") or an order for relief is entered against Tenant pursuant to a voluntary or involuntary proceeding commenced under any chapter of the Bankruptcy Code;

(g) Any involuntary petition is filed against Tenant under any chapter of the Bankruptcy Code and is not dismissed within one hundred twenty (120) days;

(h) Tenant fails to deliver an estoppel certificate within three (3) business days following a second request in accordance with Article 20;

(i) Tenant's interest in this Lease is attached, executed upon or otherwise judicially seized and such action is not released within one hundred twenty (120) days of the action; or

(j) Tenant effects a Transfer that is not in compliance with the provisions of Article 29.

Notices given under this Section shall (i) specify the alleged default, (ii) demand that Tenant performs the provisions of this Lease, pays the Rent that is in arrears, or otherwise cure such default, as the case may be, within the applicable period of time, or quit the Premises, (iii) be in lieu of, and not in addition to, or shall be deemed to be, any notice required under any provision of Applicable Law, including, without limitation, under California Code of Civil Procedure Section 1161 or any similar or successor law, and (iv) not be deemed a forfeiture or a termination of this Lease unless Landlord elects otherwise in such notice.

31.5 In the event of a Default by Tenant, and at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy that Landlord may have, Landlord has the right to do any or all of the following:

(a) Halt any Tenant Improvements and Alterations and order Tenant's contractors, subcontractors, consultants, designers and material suppliers to stop work;

(b) Terminate Tenant's right to possession of the Premises by written notice to Tenant or by any lawful means, in which case Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage that may be occasioned thereby; and

(c) Terminate this Lease, in which event Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage that may be occasioned thereby. In the event that Landlord shall elect to so terminate this Lease, then Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including:

(i) The sum of:

A. The worth at the time of award of any unpaid Rent that had accrued at the time of such termination; plus

B. The worth at the time of award of the amount by which the unpaid Rent that would have accrued during the period commencing with termination of the Lease and ending at the time of award exceeds that portion of the loss of Landlord's rental income from the Premises that Tenant proves to Landlord's reasonable satisfaction could have been reasonably avoided; plus

C. 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 that portion of the loss of Landlord's rental income from the Premises that Tenant proves to Landlord's reasonable satisfaction could have been reasonably avoided; plus

D. Any other amount necessary to compensate Landlord for all the detriment arising from Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including the cost of restoring the Premises to the condition required under the terms of this Lease, including any rent payments not otherwise chargeable to Tenant (e.g., during any "free" rent period or rent holiday); plus

E. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Laws.

As used in Sections 31.5(c)(i)(A) and (B), "worth at the time of award" shall be computed by allowing interest at the Default Rate. As used in Section 31.5(c)(i)(C), the "worth at the time of the award" shall be computed by taking the present value of such amount, using the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one (1) percentage point.

31.6 In addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the remedy described in California Civil Code Section 1951.4 and may continue this Lease in effect after Tenant's Default or abandonment and recover Rent as it becomes due, provided Tenant has the right to sublet or assign, subject only to reasonable limitations. In addition, Landlord shall not be liable in any way whatsoever for its failure or refusal to relet the Premises. For purposes of this Section, the following acts by Landlord will not constitute the termination of Tenant's right to possession of the Premises:

(a) Acts of maintenance or preservation or efforts to relet the Premises, including alterations, remodeling, redecorating, repairs, replacements or painting as Landlord shall consider advisable for the purpose of reletting the Premises or any part thereof; or

(b) The appointment of a receiver upon the initiative of Landlord to protect Landlord's interest under this Lease or in the Premises.

Notwithstanding the foregoing, in the event of a Default by Tenant, Landlord may elect at any time to terminate this Lease and to recover damages to which Landlord is entitled.

31.7 If Landlord does not elect to terminate this Lease as provided in Section 31.5, then Landlord may, from time to time, recover all Rent as it becomes due under this Lease. At any time thereafter, Landlord may elect to terminate this Lease and to recover damages to which Landlord is entitled.

31.8 In the event Landlord elects to terminate this Lease and relet the Premises, Landlord may execute any new lease in its own name. Tenant hereunder shall have no right or authority whatsoever to collect any Rent from such tenant. The proceeds of any such reletting shall be applied as follows:

(a) First, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord, including storage charges or brokerage commissions owing from Tenant to Landlord as the result of such reletting;

(b) Second, to the payment of the costs and expenses of reletting the Premises, including (i) alterations and repairs that Landlord deems reasonably necessary and advisable and (ii) reasonable attorneys' fees, charges and disbursements incurred by Landlord in connection with the retaking of the Premises and such reletting;

(c) Third, to the payment of Rent and other charges due and unpaid hereunder; and

(d) Fourth, to the payment of future Rent and other damages payable by Tenant under this Lease.

31.9 All of Landlord's rights, options and remedies hereunder shall be construed and held to be nonexclusive and cumulative. Landlord shall have the right to pursue any one or all of such remedies, or any other remedy or relief that may be provided by Applicable Laws, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by Landlord of any Rent or other payments due hereunder or any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in such waiver. Notwithstanding any provision of this Lease to the contrary, in no event shall Landlord be required to mitigate its damages with respect to any default by Tenant, except as required by Applicable Laws. Any such obligation imposed by Applicable Laws upon Landlord to relet the Premises after any termination of this Lease shall be subject to the reasonable requirements of Landlord to (a) lease to high quality tenants on such terms as Landlord may from time to time deem appropriate in its discretion and (b) develop the Project in a harmonious manner with a mix of uses, tenants, floor areas, terms of tenancies, etc., as determined by Landlord. Landlord shall not be obligated to relet the Premises to (y) any Tenant's Affiliate or (z) any party (i) unacceptable to a Lender, (ii) that requires Landlord to make improvements to or re-demise the Premises, (iii) that desires to change the Permitted Use, (iv) that desires to lease the Premises for more or less than the remaining Term or (v) to whom Landlord or an affiliate of Landlord may desire to lease other available space in the Project or at another property owned by Landlord or an affiliate of Landlord.

31.10 Landlord's termination of (a) this Lease or (b) Tenant's right to possession of the Premises shall not relieve Tenant of any liability to Landlord that has previously accrued or that shall arise based upon events that occurred prior to the later to occur of (y) the date of Lease termination and (z) the date Tenant surrenders possession of the Premises.

31.11 To the extent permitted by Applicable Laws, Tenant waives any and all rights of redemption granted by or under any present or future Applicable Laws if Tenant is evicted or dispossessed for any cause, or if Landlord obtains possession of the Premises due to Tenant's default hereunder or otherwise.

31.12 Landlord shall not be in default or liable for damages under this Lease unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event shall such failure continue for more than thirty (30) days after written notice from Tenant specifying the nature of Landlord's failure; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event shall Tenant have the right to terminate or cancel this Lease or to withhold or abate rent or to set off any Claims against Rent as a result of any default or breach by Landlord of any of its covenants, obligations, representations, warranties or promises hereunder, except as may otherwise be expressly set forth in this Lease.

31.13 In the event of any default by Landlord, Tenant shall give notice by registered or certified mail to any (a) beneficiary of a deed of trust or (b) mortgagee under a mortgage covering the Premises, the Building or the Project and to any landlord of any lease of land upon or within which the Premises, the Building or the Project is located, and shall offer such beneficiary, mortgagee or landlord a reasonable opportunity to cure the default, including time to obtain possession of the Building or the Project by power of sale or a judicial action if such should prove necessary to effect a cure; provided that Landlord shall furnish to Tenant in writing, upon written request by Tenant, the names and addresses of all such persons who are to receive such notices.

32. Bankruptcy . In the event a debtor, trustee or debtor in possession under the Bankruptcy Code, or another person with similar rights, duties and powers under any other Applicable Laws, proposes to cure any default under this Lease or to assume or assign this Lease and is obliged to provide adequate assurance to Landlord that (a) a default shall be cured, (b) Landlord shall be compensated for its damages arising from any breach of this Lease and (c) future performance of Tenant's obligations under this Lease shall occur, then such adequate assurances shall include any or all of the following, as designated by Landlord in its sole and absolute discretion:

32.1 Those acts specified in the Bankruptcy Code or other Applicable Laws as included within the meaning of "adequate assurance," even if this Lease does not concern a shopping center or other facility described in such Applicable Laws;

32.2 A prompt cash payment to compensate Landlord for any monetary defaults or actual damages arising directly from a breach of this Lease;

32.3 A cash deposit in an amount at least equal to the then-current amount of the Security Deposit; or

32.4 The assumption or assignment of all of Tenant's interest and obligations under this Lease.

33. Brokers.

33.1 Tenant represents and warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease other than Hughes Marino ("Tenant's Broker"), and that it knows of no other real estate broker or agent that is or might be entitled to a commission in connection with this Lease. Landlord shall compensate Tenant's Broker in relation to this Lease pursuant to a separate written agreement between Landlord and Tenant's Broker. Landlord represents and warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease other than Jones Lang LaSalle ("Landlord's Broker"), and that it knows of no real estate broker or agent, other than Tenant's Broker and Landlord's Broker, that is or might be entitled to a commission in connection with this Lease.

33.2 Tenant represents and warrants that no broker or agent has made any representation or warranty relied upon by Tenant in Tenant's decision to enter into this Lease, other than as contained in this Lease.

33.3 Tenant acknowledges and agrees that the employment of brokers by Landlord is for the purpose of solicitation of offers of leases from prospective tenants and that no authority is granted to any broker to furnish any representation (written or oral) or warranty from Landlord unless expressly contained within this Lease. Landlord is executing this Lease in reliance upon Tenant's representations, warranties and agreements contained within Sections 33.1 and 33.2.

33.4 Tenant agrees to Indemnify the Landlord Indemnitees from any and all cost or liability for compensation claimed by any broker or agent, other than Tenant's Broker or Landlord's Broker, employed or engaged by Tenant or claiming to have been employed or engaged by Tenant. Landlord agrees to indemnify Tenant from any and all cost or liability for compensation claimed by any broker or agent employed or engaged by Landlord or claiming to have been employed or engaged by Landlord.

34. Definition of Landlord. With regard to obligations imposed upon Landlord pursuant to this Lease, the term "Landlord," as used in this Lease, shall refer only to Landlord or Landlord's then-current successor-in-interest. In the event of any transfer, assignment or conveyance of Landlord's interest in this Lease or in Landlord's fee title to or leasehold interest in the Property, as applicable, Landlord herein named (and in case of any subsequent transfers or conveyances, the subsequent Landlord) shall be automatically freed and relieved, from and after the date of such transfer, assignment or conveyance, from all liability for the performance of any covenants or obligations contained in this Lease thereafter to be performed by Landlord and, without further agreement, the transferee, assignee or conveyee of Landlord's in this Lease or in Landlord's fee title to or leasehold interest in the Property, as applicable, shall be deemed to have assumed and agreed to observe and perform any and all covenants and obligations of Landlord hereunder during the tenure of its interest in the Lease or the Property. Landlord or any subsequent Landlord may transfer its interest in the Premises or this Lease without Tenant's consent.

35. Limitation of Landlord's Liability.

35.1 If Landlord is in default under this Lease and, as a consequence, Tenant recovers a monetary judgment against Landlord, the judgment shall be satisfied only out of (a) the proceeds of sale received on execution of the judgment and levy against the right, title and interest of Landlord in the Building and the Project, (b) rent or other income from such real property receivable by Landlord or (c) the consideration received by Landlord from the sale, financing, refinancing or other disposition of all or any part of Landlord's right, title or interest in the Building or the Project.

35.2 Neither Landlord nor any of its affiliates, nor any of their respective partners, shareholders, directors, officers, employees, members or agents shall be personally liable for Landlord's obligations or any deficiency under this Lease, and service of process shall not be made against any shareholder, director, officer, employee or agent of Landlord or any of Landlord's affiliates. No partner, shareholder, director, officer, employee, member or agent of Landlord or any of its affiliates shall be sued or named as a party in any suit or action, and service of process shall not be made against any partner or member of Landlord except as may be necessary to secure jurisdiction of the partnership, joint venture or limited liability company, as applicable. No partner, shareholder, director, officer, employee, member or agent of Landlord or any of its affiliates shall be required to answer or otherwise plead to any service of process, and no judgment shall be taken or writ of execution levied against any partner, shareholder, director, officer, employee, member or agent of Landlord or any of its affiliates.

35.3 Each of the covenants and agreements of this Article shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by Applicable Laws and shall survive the expiration or earlier termination of this Lease.

36. Intentionally Omitted.

37. Representations. Tenant guarantees, warrants and represents that (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) Tenant has and is duly qualified to do business in the state in which the Property is located, (c) Tenant has full corporate, partnership, trust, association or other appropriate power and authority to enter into this Lease and to perform all Tenant's obligations hereunder, (d) each person (and all of the persons if more than one signs) signing this Lease on behalf of Tenant is duly and validly authorized to do so and (e) neither (i) the execution, delivery or performance of this Lease nor (ii) the consummation of the transactions contemplated hereby will violate or conflict with any provision of documents or instruments under which Tenant is constituted or to which Tenant is a party. In addition, Tenant guarantees, warrants and represents that none of (x) it, (y) its affiliates or partners nor (z) to the best of its knowledge, its members, shareholders or other equity owners or any of their respective employees, officers, directors, representatives or agents is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) or other similar governmental action.

38. Confidentiality. Tenant shall keep the terms and conditions of this Lease and any information provided to Tenant or its employees, agents or contractors pursuant to Article 9 confidential and shall not (a) disclose to any third party any terms or conditions of this Lease or any other Lease-related document (including subleases, assignments, work letters, construction contracts, letters of credit, subordination agreements, non-disturbance agreements, brokerage agreements or estoppels) or the contents of any documents, reports, surveys or evaluations related to the Project or any portion thereof or (b) provide to any third party an original or copy of this Lease (or any Lease-related document or other document referenced in Subsection 38(a)). Landlord shall not release to any third party any non-public financial information or non-public information about Tenant's ownership structure that Tenant gives Landlord. Notwithstanding the foregoing, confidential information under this Section may be released by Landlord or Tenant under the following circumstances: (x) if required by Applicable Laws or in any judicial proceeding; provided that the releasing party has given the other party reasonable notice of such requirement, if feasible, (y) to a party's attorneys, accountants, brokers, lenders, potential lenders, investors, potential investors and other bona fide consultants or advisers (with respect to this Lease only); provided such third parties agree to be bound by this Section or (z) to bona fide prospective assignees or subtenants of this Lease; provided they agree in writing to be bound by this Section.

39. Notices . Except as otherwise stated in this Lease, any notice, consent, demand, invoice, statement or other communication required or permitted to be given hereunder shall be in writing and shall be given by (a) personal delivery or (b) overnight delivery with a reputable international overnight delivery service, such as FedEx. Any such notice, consent, demand, invoice, statement or other communication shall be deemed delivered (y) upon receipt, if given in accordance with Subsection 39(a); or (z) on the day that is the earlier of (i) actual delivery and (ii) attempted delivery, in either case, as evidenced by the records of the overnight delivery service, if given in accordance with Subsection 39(b). Except as otherwise stated in this Lease, any notice, consent, demand, invoice, statement or other communication required or permitted to be given pursuant to this Lease shall be addressed to Tenant or to Landlord at the addresses shown in Sections 2.9 and 2.10 or 2.11, respectively. Either party may, by notice to the other given pursuant to this Section, specify additional or different addresses for notice purposes.

40. Miscellaneous.

40.1 Landlord reserves the right to change the name of the Building or the Project in its sole discretion.

40.2 To induce Landlord to enter into this Lease, Tenant agrees that it shall furnish to Landlord, from time to time (but no more than two (2) times per calendar year (unless Tenant is in default of this Lease, in which event no such limitation shall apply); provided that, such two (2)-time limitation is in addition to the annual financial statements required without any request described in the immediately succeeding sentence), within ten (10) business days after receipt of Landlord's written request, the most recent year-end unconsolidated financial statements reflecting Tenant's current financial condition audited by a nationally recognized accounting firm. Tenant shall, within one hundred twenty (120) days after the end of Tenant's financial year, furnish Landlord with a certified copy of Tenant's year-end unconsolidated financial statements for the previous year audited by a nationally recognized accounting firm. Tenant represents and warrants that all financial statements, records and information furnished by Tenant to Landlord in connection with this Lease are true, correct and complete in all respects. If audited financials are not otherwise prepared, unaudited financials complying with generally accepted accounting principles and certified by the chief financial officer of Tenant as true, correct and complete in all respects shall suffice for purposes of this Section. If Tenant fails to deliver to Landlord any financial statement within the time period required under this Section, then Tenant shall be required to pay to Landlord an administrative fee equal to Five Hundred Dollars ($500) within five (5) business days after receiving written notice from Landlord advising Tenant of such failure (provided, however, that Landlord's acceptance of such fee shall not prevent Landlord from pursuing any other rights or remedies under this Lease, at law or in equity). The provisions of this Section shall not apply at any time while Tenant is a corporation whose shares are traded on any nationally recognized stock exchange.

40.3 Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for a lease, and shall not be effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

40.4 The terms of this Lease are intended by the parties as a final, complete and exclusive expression of their agreement with respect to the terms that are included herein, and may not be contradicted or supplemented by evidence of any other prior or contemporaneous agreement.

40.5 Neither party shall record this Lease.

40.6 Where applicable in this Lease, the singular includes the plural and the masculine or neuter includes the masculine, feminine and neuter. The words "include," "includes," "included" and "including" mean "'include,' etc., without limitation." The word "shall" is mandatory and the word "may" is permissive. The word "business day" means a calendar day other than any national or local holiday on which federal government agencies in San Diego County, California are closed for business, or any weekend. The section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. Landlord and Tenant have each participated in the drafting and negotiation of this Lease, and the language in all parts of this Lease shall be in all cases construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant.

40.7 Except as otherwise expressly set forth in this Lease, each party shall pay its own costs and expenses incurred in connection with this Lease and such party's performance under this Lease; provided that, if either party commences an action, proceeding, demand, claim, action, cause of action or suit against the other party arising from or in connection with this Lease, then the substantially prevailing party shall be reimbursed by the other party for all reasonable costs and expenses, including reasonable attorneys' fees and expenses, incurred by the substantially prevailing party in such action, proceeding, demand, claim, action, cause of action or suit, and in any appeal in connection therewith (regardless of whether the applicable action, proceeding, demand, claim, action, cause of action, suit or appeal is voluntarily withdrawn or dismissed). In addition, Landlord shall, upon demand, be entitled to all reasonable attorneys' fees and all other reasonable costs incurred in the preparation and service of any notice or demand hereunder, regardless of whether a legal action is subsequently commenced, or incurred in connection with any contested matter or other proceeding in bankruptcy court concerning this Lease.

40.8 Time is of the essence with respect to the performance of every provision of this Lease.

40.9 Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

40.10 Notwithstanding anything to the contrary contained in this Lease, Tenant's obligations under this Lease are independent and shall not be conditioned upon performance by Landlord.

40.11 Whenever consent or approval of either party is required, that party shall not unreasonably withhold, condition or delay such consent or approval, except as may be expressly set forth to the contrary.

40.12 Any provision of this Lease that shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and all other provisions of this Lease shall remain in full force and effect and shall be interpreted as if the invalid, void or illegal provision did not exist.

40.13 Each of the covenants, conditions and agreements herein contained shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective heirs; legatees; devisees; executors; administrators; and permitted successors and assigns. This Lease is for the sole benefit of the parties and their respective heirs, legatees, devisees, executors, administrators and permitted successors and assigns, and nothing in this Lease shall give or be construed to give any other person or entity any legal or equitable rights. Nothing in this Section shall in any way alter the provisions of this Lease restricting assignment or subletting.

40.14 This Lease shall be governed by, construed and enforced in accordance with the laws of the state in which the Premises are located, without regard to such state's conflict of law principles.

40.15 Tenant guarantees, warrants and represents that the individual or individuals signing this Lease have the power, authority and legal capacity to sign this Lease on behalf of and to bind all entities, corporations, partnerships, limited liability companies, joint venturers or other organizations and entities on whose behalf such individual or individuals have signed.

40.16 This Lease may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same document.

40.17 No provision of this Lease may be modified, amended or supplemented except by an agreement in writing signed by Landlord and Tenant.

40.18 No waiver of any term, covenant or condition of this Lease shall be binding upon Landlord unless executed in writing by Landlord. The waiver by Landlord of any breach or default of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of any preceding or subsequent breach or default of such term, covenant or condition or any other term, covenant or condition of this Lease.

40.19 To the extent permitted by Applicable Laws, the parties waive trial by jury in any action, proceeding or counterclaim brought by the other party hereto related to matters arising from or in any way connected with this Lease; the relationship between Landlord and Tenant; Tenant's use or occupancy of the Premises; or any claim of injury or damage related to this Lease or the Premises.

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IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

LANDLORD:

BMR-MODA SORRENTO LP,
a Delaware limited partnership

By: /s/ Marie Lewis
Name: Marie Lewis
Title: Vice President, Legal

TENANT:

CUE HEALTH INC.,
a Delaware corporation

By: /s/ Ayub Khattak
Name: Ayub Khattak
Title: Chief Executive Officer

Exhibit 10.15

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is made this 16th day of January, 2017, between **ARE-SD REGION NO. 25, LLC**, a Delaware limited liability company ("**Landlord**"), and **CUE INC.**, a California corporation ("**Tenant**").

Building: 6225 Nancy Ridge Drive, San Diego, California

Premises: The Building, containing approximately 27,450 rentable square feet, as shown on **Exhibit A**.

Project: The real property on which the Building (and the buildings commonly known as 6175 and 6275 Nancy Ridge Drive, San Diego, California) are located, together with all improvements thereon and appurtenances thereto as described on **Exhibit B**.

Base Rent: $50,782.50 per month

Rentable Area of Premises: 27,450 sq. ft.

Rentable Area of Project: 106,920 sq. ft.

Tenant's Share of Operating Expenses of Building: 100%

Building's Share of Operating Expenses of Project: 25.67%

Security Deposit: $101,565.00

Rent Adjustment Percentage: 3%

Target Commencement Date: May 1, 2017

Base Term: Beginning on the Commencement Date and ending 120 months from the first day of the first full month following the Rent Commencement Date.

Permitted Use: Assembling, manufacturing, distribution, and research and developmental laboratory, related office and other related uses consistent with the character of the Project and otherwise in compliance with the provisions of Section 7 hereof.

Address for Rent Payment:
Alexandria Real Estate Equities, Inc.
Dept. LA 23447
Pasadena, CA 91185-3447

Landlord's Notice Address:
385 E. Colorado Boulevard, Suite 299
Pasadena, CA 91101
Attention: Corporate Secretary

Tenant's Notice Address Prior to the Rent Commencement Date:
Cue Inc.
11100 Roselle Street, Suite A
San Diego, CA 92121
Attention: Clint Sever

Tenant's Notice Address From and After the Rent Commencement Date:
6225 Nancy Ridge Drive
San Diego, CA 92121
Attention: Clint Sever

The following Exhibits and Addenda are attached hereto and incorporated herein by this reference:

[X]**EXHIBIT A** - PREMISES DESCRIPTION
[X]**EXHIBIT B** - DESCRIPTION OF PROJECT
[X]**EXHIBIT C** - WORK LETTER
[X] **EXHIBIT D** - COMMENCEMENT DATE
[X]**EXHIBIT E** - RULES AND REGULATIONS
[X] **EXHIBIT F** - TENANT'S PERSONAL PROPERTY
[X]**EXHIBIT G** - MAINTENANCE OBLIGATIONS

1. **Lease of Premises**. Upon and subject to all of the terms and conditions hereof, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. The portions of the Project which are for the non-exclusive use of tenants of the Project are collectively referred to herein as the "**Common Areas**." The Common Areas shall include, but not be limited to, all common driveways, sidewalks, parking areas and walkways located at the Project. Landlord reserves the right to modify Common Areas, provided that such modifications do not materially adversely affect Tenant's use of the Premises for the Permitted Use, materially adversely affect Tenant's access to or from the Premises, or reduce the number of parking spaces available for Tenant's use other than on a temporary basis. The modifications referred to in the preceding sentence may on a temporary basis affect access and parking at the Project but Tenant shall nonetheless continue during such periods to have the ability to enter and use the Premises. From and after the Commencement Date through the expiration of the Term, Tenant shall have access to the Building, the parking areas serving the Building, designated loading areas serving the Building, and the Premises 24 hours a day, 7 days a week, except in the case of emergencies, as the result of Legal Requirements, the performance by Landlord of any installation, maintenance or repairs, or any other temporary interruptions, and otherwise subject to the terms of this Lease.

2. **Delivery; Acceptance of Premises; Commencement Date**. Landlord shall deliver the Premises to Tenant on or before the Target Commencement Date in the Tenant Improvement Work Readiness Condition for construction by Tenant of the Tenant Improvements ("**Delivery**" or "**Deliver**"). If Landlord fails to timely Deliver the Premises, Landlord shall not be liable to Tenant for any loss or damage resulting therefrom, and this Lease shall not be void or voidable except as provided herein. If Landlord does not Deliver the Premises within 180 days of the Target Commencement Date for any reason other than Force Majeure delays and Tenant Delays, this Lease may be terminated by Tenant by written notice to Landlord, and if so terminated by Tenant: (a) the Security Deposit, or any balance thereof (i.e., after deducting therefrom all amounts to which Landlord is entitled under the provisions of this Lease), shall be returned to Tenant, and (b) neither Landlord nor Tenant shall have any further rights, duties or obligations under this Lease, except with respect to provisions which expressly survive termination of this Lease. As used herein, the terms "**Landlord Delays**", "**Tenant Delays**", "**Tenant Improvement Work Readiness Condition**" and "**Tenant's Improvements**" shall have the meaning set forth for such term in the Work Letter. If Tenant does not elect to terminate this Lease within 5 business days of the lapse of such 180 day period, such right to terminate this Lease shall be waived and this Lease shall remain in full force and effect.

Notwithstanding anything to the contrary contained herein and for the avoidance of any doubt, the termination rights provided for in the preceding paragraph shall terminate on the Commencement Date.

The "**Commencement Date**" shall be the earlier of: (i) the date Landlord Delivers the Premises to Tenant; and (ii) the date Landlord could have delivered the Premises to Tenant but for any Tenant Delays. The "**Rent Commencement Date**" shall be the earlier of: (x) the date that is 6 months after the Commencement Date; and (y) the date Tenant conducts any business in the Premises or any part thereof. If Substantial Completion of the Tenant Improvements is delayed due to Landlord Delays beyond the date that is 6 months after the Commencement Date and Tenant has not commenced doing business in any part of the Premises, the Rent Commencement Date shall be extended to the extent of such Landlord Delays on a day-for-day basis.

Upon request of Landlord, Tenant shall execute and deliver a written acknowledgment of the Commencement Date, the Rent Commencement Date and the expiration date of the Term when such are established in the form of the "Acknowledgement of Commencement Date" attached to this Lease as **Exhibit D**; provided, however, Tenant's failure to execute and deliver such acknowledgment shall not affect Landlord's rights hereunder. The "**Term**" of this Lease shall be the Base Term, as defined above on the first page of this Lease and the Extension Term which Tenant may elect pursuant to Section 39 hereof.

Except as set forth in the Work Letter or as expressly set forth in any representation or warranty of Landlord in this Lease: (i) Tenant shall accept the Premises in their condition as of the Commencement Date, subject to all applicable Legal Requirements (as defined in Section 7 hereof); (ii) Landlord shall have no obligation for any defects in the Premises; and (iii) Tenant's taking possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken. Any access to or occupancy of the Premises by Tenant before the Rent Commencement Date shall be subject to all of the terms and conditions of this Lease, excluding the obligation to pay Base Rent and Operating Expenses.

Tenant agrees and acknowledges that, except as expressly set forth in this Lease, neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of all or any portion of the Premises or the Project, and/or the suitability of the Premises or the Project for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises or the Project are suitable for the Permitted Use. This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof and supersedes any and all prior representations, inducements, promises, agreements, understandings and negotiations which are not contained herein. Landlord in executing this Lease does so in reliance upon Tenant's representations, warranties, acknowledgments and agreements contained herein.

3. **Rent**.

(a) **Base Rent**. Base Rent for the 9th month after the Rent Commencement Date occurs and the Security Deposit shall be due and payable on delivery of an executed copy of this Lease to Landlord. Tenant shall pay to Landlord in advance, without demand, abatement, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month during the Term hereof after the Rent Commencement Date, in lawful money of the United States of America, at the office of Landlord for payment of Rent set forth above, or via federally insured wire transfer pursuant to the wire instructions set forth above, or to such other person or at such other place as Landlord may from time to time designate in writing. Payments of Base Rent for any fractional calendar month shall be prorated. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any Rent (as defined in Section 5) due hereunder except for any abatement as may be expressly provided in this Lease.

Notwithstanding anything to the contrary contained in this Lease, so long as Tenant is not then in Default under this Lease, for the period commencing on the Rent Commencement Date through the last day of the 8th month after the Rent Commencement Date, Tenant shall not be required to pay Base Rent. Tenant shall be required to commence paying full Base Rent on the first day of the 9th month after the Rent Commencement Date.

(b) **Additional Rent**. In addition to Base Rent, Tenant agrees to pay to Landlord as additional rent ("**Additional Rent**"): (i) commencing on the Rent Commencement Date, Tenant's Share of "Operating Expenses" (as defined in Section 5), and (ii) any and all other amounts Tenant assumes or agrees to pay under the provisions of this Lease, including, without limitation, any and all other sums that may become due by reason of any default of Tenant or failure to comply with the agreements, terms, covenants and conditions of this Lease to be performed by Tenant, after any applicable notice and cure period.

4. **Base Rent Adjustments**.

(a) **Annual Adjustments**. Base Rent shall be increased on each annual anniversary of the Rent Commencement Date (each an "**Adjustment Date**") by multiplying the Base Rent payable immediately before such Adjustment Date by the Rent Adjustment Percentage and adding the resulting amount to the Base Rent payable immediately before such Adjustment Date. Base Rent, as so adjusted, shall thereafter be due as provided herein. Base Rent adjustments for any fractional calendar month shall be prorated.

(b) **Additional TI Allowance**. In addition to the Tenant Improvement Allowance (as defined in the Work Letter), Landlord shall, subject to the terms of the Work Letter, make available to Tenant the Additional Tenant Improvement Allowance (as defined in the Work Letter). Commencing on the Rent Commencement Date, and continuing thereafter on the first day of each month during the Base Term, Tenant shall pay the amount necessary to fully amortize the portion of the Additional Tenant Improvement Allowance actually funded by Landlord, if any, in equal monthly payments with interest at a rate of 8% per annum over the Base Term, which interest shall begin to accrue on the date that Landlord first disburses such Additional Tenant Improvement Allowance or any portion(s) thereof. Tenant acknowledges that because the Additional Tenant Improvement Allowance may be disbursed to Tenant in multiple disbursements following the Commencement Date, the Additional Rent payable by Tenant pursuant to this Section 4(b) may be adjusted following each such disbursement. Notwithstanding anything to the contrary contained herein, Tenant may, at Tenant's sole election, accelerate or pre-pay all or any portion of the outstanding and unamortized portion of the Additional Tenant Improvement Allowance that was actually funded by Landlord in full at any time without penalty, in which event the amortizing payments shall be appropriately adjusted. Any of the Additional Tenant Improvement Allowance and applicable interest remaining unpaid as of the expiration or earlier termination of this Lease shall be paid to Landlord in a lump sum at the expiration or earlier termination of this Lease. The Additional Tenant Improvement Allowance shall be available for use by Tenant until the date that is twenty-four (24) months after the Commencement Date. Any portion of the Additional Tenant Improvement Allowance which has not been properly requested by Tenant from Landlord on or before the date that is twenty-four (24) months after the Commencement Date, shall be forfeited and shall not be available for use by Tenant.

5. **Operating Expense Payments**. Landlord shall deliver to Tenant a reasonably detailed written estimate of Operating Expenses for each calendar year during the Term (the "**Annual Estimate**"), which may be revised by Landlord from time to time during such calendar year. Commencing on the Rent Commencement Date and continuing thereafter on the first day of each month, Tenant shall pay Landlord an amount equal to 1/12th of Tenant's Share of the Annual Estimate. Payments for any fractional calendar month shall be prorated.

The term "**Operating Expenses**" means all costs and expenses of any kind or description whatsoever incurred or accrued each calendar year by Landlord with respect to the Building (including the Building's Share of all costs and expenses of any kind or description incurred or accrued by Landlord with respect to the Project which are not specific to the Building or any other building located in the Project) (including, without duplication, Taxes (as defined in Section 9), with, except as provided for in Section 13(b), all capital repairs and improvements in excess of $50,000 being amortized over the useful life of such capital items (as reasonably determined by Landlord taking into account all relevant factors), and the costs of Landlord's third party property manager or, if there is no third party property manager, administration rent in the amount of (and in no event in excess of) 2% of Base Rent (provided that during the Abatement Period, Tenant shall nonetheless be required to pay administration rent each month equal to the amount of the administration rent that Tenant would have been required to pay in the absence of there being an Abatement Period)), excluding only:

(a) the original construction costs of the Project and renovation prior to the date of the Lease and costs of correcting defects in such original construction or renovation;

(b) capital expenditures for expansion of the Project;

(c) interest, principal or any other payments under any Mortgage (as defined in Section 27) debts of Landlord, financing costs and amortization of funds borrowed by Landlord, whether secured or unsecured and all payments of rent (but not taxes or operating expenses) under any ground lease or other underlying lease of all or any portion of the Project;

(d) depreciation of the Project (except for capital improvements, the cost of which are includable in Operating Expenses and are amortized as set forth above);

(e) advertising, marketing, legal and space planning expenses and leasing commissions and other costs and expenses incurred in procuring and leasing space to tenants for the Project, including any leasing office maintained in the Project, free rent and construction allowances for tenants;

(f) legal and other expenses incurred in the negotiation or enforcement of leases;

(g) completing, fixturing, improving, renovating, painting, redecorating or other work, which Landlord pays for or performs for other tenants within their premises, and costs of correcting defects in such work;

(h) costs to be reimbursed by other tenants of the Project or Taxes to be paid directly by Tenant or other tenants of the Project, whether or not actually paid;

(i) salaries, wages, benefits and other compensation paid to (i) personnel of Landlord or its agents or contractors above the position of the person, regardless of title, who has day-to-day management responsibility for the Project or (ii) officers and employees of Landlord or its affiliates who are not assigned in whole or in part to the operation, management, maintenance or repair of the Project; provided, however, that with respect to any such person who does not devote substantially all of his or her employed time to the Project, the salaries, wages, benefits and other compensation of such person shall be prorated to reflect time spent on matters related to operating, managing, maintaining or repairing the Project in comparison to the time spent on matters unrelated to operating, managing, maintaining or repairing the Project;

(j) general organizational, administrative and overhead costs relating to maintaining Landlord's existence, either as a corporation, partnership, or other entity, including general corporate, legal and accounting expenses;

(k) costs (including attorneys' fees and costs of settlement, judgments and payments in lieu thereof) incurred in connection with disputes with tenants, other occupants, or prospective tenants, and costs and expenses, including legal fees, incurred in connection with negotiations or disputes with employees, consultants, management agents, leasing agents, purchasers or mortgagees of the Building;

(l) costs incurred by Landlord due to the violation by Landlord, its employees, agents or contractors or any tenant of the terms and conditions of any lease of space in the Project or any Legal Requirement (as defined in Section 7);

(m) penalties, fines or interest incurred as a result of Landlord's inability or failure to make payment of Taxes and/or to file any tax or informational returns when due, or from Landlord's failure to make any payment of Taxes required to be made by Landlord hereunder before delinquency;

(n) overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to the Project to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis;

(o) costs of Landlord's charitable or political contributions, or of fine art maintained at the Project;

(p) costs in connection with services (including electricity), items or other benefits of a type which are not standard for the Project and which are not available to Tenant without specific charges therefor, but which are provided to another tenant or occupant of the Project, whether or not such other tenant or occupant is specifically charged therefor by Landlord;

(q) costs incurred in the sale or refinancing of the Project;

(r) reserves;

(s) net income taxes of Landlord or the owner of any interest in the Project, franchise, capital stock, gift, estate or inheritance taxes or any federal, state or local documentary taxes imposed against the Project or any portion thereof or interest therein;

(t) items and services which Landlord offers selectively to one or more tenants of the Project (not including Tenant) without reimbursement;

(u) costs of repairs directly resulting from the gross negligence or willful misconduct of Landlord or any Landlord Parties (as defined in Section 17);

(v) any costs incurred to remove, study, test or remediate Hazardous Materials in or about the Building or the Project for which Tenant is not responsible under Section 30 hereof;

(w) the cost of installing or upgrading any utility metering for any part of the Project;

(x) any expenses otherwise includable within Operating Expenses to the extent actually reimbursed by persons other than tenants of the Project under leases for space in the Project.

Notwithstanding anything to the contrary contained in this Lease, (A) Landlord shall not be entitled to collect Operating Expenses from the tenants of the Project in excess of 100% of the total Operating Expenses actually incurred by Landlord nor shall Landlord be entitled to make any profit from Landlord's collection of Operating Expenses, and (B) all Operating Expenses accounting shall be generally consistently applied from year to year.

Notwithstanding anything to the contrary contained herein, any insurance deductible over $25,000 payable by Tenant to Landlord as part of Operating Expenses under this Lease may, at Tenant's option, be paid by Tenant to Landlord in full at the time the deductible expense is incurred by Landlord or amortized (with interest) in equal monthly installments and paid by Tenant to Landlord over the remaining Term.

Within 90 days after the end of each calendar year (or such longer period as may be reasonably required), Landlord shall furnish to Tenant a statement (an "**Annual Statement**") showing in reasonable detail: (a) the total and Tenant's Share of actual Operating Expenses for the previous calendar year, and (b) the total of Tenant's payments in respect of Operating Expenses for such year. If Tenant's Share of actual Operating Expenses for such year exceeds Tenant's payments of Operating Expenses for such year, the excess shall be due and payable by Tenant as Rent within 30 days after delivery of such Annual Statement to Tenant. If Tenant's payments of Operating Expenses for such year exceed Tenant's Share of actual Operating Expenses for such year Landlord shall pay the excess to Tenant within 30 days after delivery of such Annual Statement, except that after the expiration, or earlier termination of the Term or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting all other amounts due Landlord. Landlord's and Tenant's obligations to pay any overpayments or deficiencies due pursuant to this paragraph shall survive the expiration or earlier termination of this Lease.

The Annual Statement shall be final and binding upon Tenant unless Tenant, within 30 days after Tenant's receipt thereof, shall contest any item therein by giving written notice to Landlord, specifying each item contested and the reason therefor. If, during such 30 day period, Tenant reasonably and in good faith questions or contests the accuracy of Landlord's statement of Tenant's Share of Operating Expenses, Landlord will provide Tenant with access to Landlord's books and records relating to the operation of the Project and such information as Landlord reasonably determines to be responsive to Tenant's questions (the "**Expense Information**"). If after Tenant's review of such Expense Information, Landlord and Tenant cannot agree upon the amount of Tenant's Share of Operating Expenses, then Tenant shall have the right to have an independent regionally or nationally recognized public accounting firm selected by Tenant and approved by Landlord (which approval shall not be unreasonably withheld or delayed), working pursuant to a fee arrangement other than a contingent fee (at Tenant's sole cost and expense), audit and/or review the Expense Information for the year in question (the "**Independent Review**"). The results of any such Independent Review shall be binding on Landlord and Tenant. If the Independent Review shows that the payments actually made by Tenant with respect to Operating Expenses for the calendar year in question exceeded Tenant's Share of Operating Expenses for such calendar year, Landlord shall at Landlord's option either (i) credit the excess amount to the next succeeding installments of estimated Operating Expenses or (ii) pay the excess to Tenant within 30 days after delivery of such statement, except that after the expiration or earlier termination of this Lease or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting all other amounts due Landlord. If the Independent Review shows that Tenant's payments with respect to Operating Expenses for such calendar year were less than Tenant's Share of Operating Expenses for the calendar year, Tenant shall pay the deficiency to Landlord within 30 days after delivery of such statement. If the Independent Review shows that Tenant has overpaid with respect to Operating Expenses by more than 5% then Landlord shall reimburse Tenant for all costs incurred by Tenant for the Independent Review. Operating Expenses for the calendar years in which Tenant's obligation to share therein begins and ends shall be prorated.

The rentable square footage of the Building shall be calculated by Level 10 Construction within 90 days after Substantial Completion of the Tenant Improvements, using the exterior gross area as the basis for leasing. The standard of measurement shall be for a single tenant building per, "The Gross Areas of a Building, ANSI/BOMA Z65.3-2009" (the "**Measurement Standard**"). A copy of the letter or report from Level 10 Construction setting forth its calculation using the Measurement Standard, together with all documentary support therefor, shall be furnished to Tenant (the "**Notice of Re-determination of RSF**"). If the actual rentable square footage of the Building as set forth in the Notice of Re-determination of RSF deviates from the amount specified in the definitions of "**Premises**" and "**Rentable Area of Premises**" on page 1 of this Lease, then, promptly after such recalculation, this Lease shall be amended so as to (i) reflect the actual rentable square footage as set forth in the Notice of Re-determination of RSF in the definitions of "**Premises**" and "**Rentable Area of Premises**" and "**Rentable Area of Project**", and (ii) appropriately adjust the amounts set forth in the definitions of "**Building's Share of Operating Expenses of Project**" which were calculated based on the square footages set forth on page 1 of this Lease.

"**Tenant's Share**" shall be the percentage set forth on the first page of this Lease as Tenant's Share as reasonably adjusted by Landlord for changes in the physical size of the Premises or the Project occurring after the Commencement Date. Except as provided for in the preceding paragraph and the preceding sentence, Landlord and Tenant agree that the rentable square footage of the Premises shall not be subject to re-measurement by either party during the Term. Landlord may equitably increase Tenant's Share for any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Project that includes the Premises or that varies with occupancy or use. Base Rent, Tenant's Share of Operating Expenses and all other amounts payable by Tenant to Landlord hereunder are collectively referred to herein as "**Rent**."

6. **Security Deposit**. Tenant shall deposit with Landlord, upon delivery of an executed copy of this Lease to Landlord, a security deposit (the "**Security Deposit**") for the performance of all of Tenant's obligations hereunder in the amount set forth on page 1 of this Lease, which Security Deposit shall be in the form of an unconditional and irrevocable letter of credit (the "**Letter of Credit**"): (i) in form and substance reasonably satisfactory to Landlord, (ii) naming Landlord as beneficiary, (iii) expressly allowing Landlord to draw upon it at any time from time to time by delivering to the issuer notice that Landlord is entitled to draw thereunder, (iv) issued by Comerica Bank or another FDIC-insured financial institution reasonably satisfactory to Landlord, and (v) redeemable by presentation of a sight draft in the state of Landlord's choice. If Tenant does not provide Landlord with a substitute Letter of Credit complying with all of the requirements hereof at least 10 business days before the stated expiration date of any then current Letter of Credit, Landlord shall have the right to draw the full amount of the current Letter of Credit and hold the funds drawn in cash without obligation for interest thereon as the Security Deposit. The Security Deposit shall be held by Landlord as security for the performance of Tenant's obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Upon each occurrence of a Default (as defined in Section 20), Landlord may use all or any part of the Security Deposit to pay delinquent payments due under this Lease, future rent damages under California Civil Code Section 1951.2, and the cost of any damage, injury, expense or liability caused by such Default, without prejudice to any other remedy provided herein or provided by law. Landlord's right to use the Security Deposit under this Section 6 includes the right to use the Security Deposit to pay future rent damages following the termination of this Lease pursuant to Section 21(c) below. Upon any use of all or any portion of the Security Deposit in accordance with the terms of this Lease, Tenant shall pay Landlord on demand the amount that will restore the Security Deposit to the amount set forth on Page 1 of this Lease. Tenant hereby waives the provisions of any law, now or hereafter in force, including, without limitation, California Civil Code Section 1950.7, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any officer, employee, agent or invitee of Tenant. Upon bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for periods prior to the filing of such proceedings. If Tenant shall fully perform every provision of this Lease to be performed by Tenant, the Security Deposit, or any balance thereof (i.e., after deducting therefrom all amounts to which Landlord is entitled under the provisions of this Lease), shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within 60 days after the expiration or earlier termination of this Lease.

If Landlord transfers its interest in the Project or this Lease, Landlord shall either (a) transfer any Security Deposit then held by Landlord to a person or entity assuming Landlord's obligations under this Section 6, or (b) return to Tenant any Security Deposit then held by Landlord and remaining after the deductions permitted herein. Upon such transfer to such transferee or the return of the Security Deposit to Tenant, Landlord shall have no further obligation with respect to the Security Deposit, and Tenant's right to the return of the Security Deposit shall apply solely against Landlord's transferee. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Landlord's obligation respecting the Security Deposit is that of a debtor, not a trustee, and no interest shall accrue thereon.

7. **Use**. The Premises shall be used solely for the Permitted Use set forth in the basic lease provisions on page 1 of this Lease, and in compliance with all laws, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises, and to the use and occupancy thereof, including, without limitation, the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq. (together with the regulations promulgated pursuant thereto, "**ADA**") (collectively, "**Legal Requirements**" and each, a "**Legal Requirement**"). Tenant shall, upon 5 days' written notice from Landlord, discontinue any use of the Premises which is declared by any Governmental Authority (as defined in Section 9) having jurisdiction to be a violation of a Legal Requirement. Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance, increase the insurance risk, or cause the disallowance of any sprinkler or other credits. Tenant shall not permit any part of the Premises to be used as a "place of public accommodation", as defined in the ADA or any similar legal requirement. Tenant shall reimburse Landlord promptly upon demand for any additional premium charged for any such insurance policy by reason of Tenant's failure to comply with the provisions of this Section or otherwise caused by Tenant's use and/or occupancy of the Premises. Tenant will use the Premises in a careful, safe and proper manner and will not commit or permit waste, overload the floor or structure of the Premises, subject the Premises to use that would damage the Premises or obstruct or interfere with the rights of Landlord or other tenants or occupants of the Project, including conducting or giving notice of any auction, liquidation, or going out of business sale on the Premises, or using or allowing the Premises to be used for any unlawful purpose. Tenant shall cause any equipment or machinery to be installed in the Premises so as to reasonably prevent sounds or vibrations from the Premises from extending into Common Areas, or other space in the Project. Tenant shall not place any machinery or equipment which will overload the floor in or upon the Premises or transport or move such items through the Common Areas of the Project or in the Project elevators without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Except as may be provided under the Work Letter, Tenant shall not, without the prior written consent of Landlord, use the Premises in any manner which will require ventilation, air exchange, heating, gas, steam, electricity or water beyond the existing capacity of the Project as proportionately allocated to the Premises based upon Tenant's Share as usually furnished for the Permitted Use.

Landlord shall, at Landlord's sole cost and expense, be responsible for the compliance of the Common Areas of the Project with Legal Requirements required as a result of Landlord's Work or the Tenant Improvements as reflected on the TI Space Plans attached to the Work Letter as **Schedule 2** as of the date of Shell Substantial Completion. Tenant shall be responsible for the compliance of the Premises with Legal Requirements and shall be responsible for the compliance of the Common Areas of the Project with Legal Requirements required as a result of any changes to the TI Space Plans attached to the Work Letter as Schedule 2. Following the date of Shell Substantial Completion, Landlord shall, as an Operating Expense (to the extent such Legal Requirement is generally applicable to similar buildings in the area in which the Project is located) or at Tenant's expense (to the extent such Legal Requirement is applicable by reason of Tenant's, as compared to other tenants of the Project, particular use of the Premises, the Tenant Improvements or Tenant's alterations) make any alterations or modifications to the Common Areas or the exterior of the Building that are required by Legal Requirements. Except as otherwise provided in the 2 immediately preceding sentences, Tenant, at its sole expense, shall make any alterations or modifications to the interior of the Premises that are required by Legal Requirements (including, without limitation, compliance of the Premises with the ADA) related to the Tenant Improvements (as defined in the Work Letter), Tenant's use or occupancy of the Premises or Tenant's Alterations. Notwithstanding any other provision herein to the contrary (other than Landlord's responsibility for the Common Areas as provided for in the first two sentences of this paragraph), Tenant shall be responsible for any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages or judgments, and all reasonable expenses incurred in investigating or resisting the same (including, without limitation, reasonable attorneys' fees, charges and disbursements and costs of suit) (collectively, "**Claims**") arising out of or in connection with Legal Requirements related to the Tenant Improvements, Tenant's use or occupancy of the Premises or Tenant's Alterations, and Tenant shall indemnify, defend, hold and save Landlord harmless from and against any and all Claims arising out of or in connection with any failure of the Premises to comply with any Legal Requirement related to the Tenant Improvements, Tenant's use or occupancy of the Premises or Tenant's Alterations. For purposes of Section 1938 of the California Civil Code, as of the date of this Lease, the Project has not been inspected by a certified access specialist.

8. **Holding Over**. If, with Landlord's express written consent, Tenant retains possession of the Premises after the termination of the Term, (i) unless otherwise agreed in such written consent, such possession shall be subject to immediate termination by Landlord at any time, (ii) all of the other terms and provisions of this Lease (including, without limitation, the adjustment of Base Rent pursuant to Section 4 hereof) shall remain in full force and effect (excluding any expansion or renewal option or other similar right or option) during such holdover period, (iii) Tenant shall continue to pay Base Rent in the amount payable upon the date of the expiration or earlier termination of this Lease or such other amount as Landlord may indicate, in Landlord's sole and absolute discretion, in such written consent, and (iv) all other payments shall continue under the terms of this Lease. If Tenant remains in possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Landlord, (A) Tenant shall become a tenant at sufferance upon the terms of this Lease except that (x) for the first 30 days of such holdover, the monthly rental shall be equal to 125% of Base Rent in effect during the last 30 days of the Term, and (y) for any period of holdover in excess of 30 days, the monthly rental shall be equal to 150% of Base Rent in effect during the last 30 days of the Term, and (B) Tenant shall be responsible for all damages suffered by Landlord resulting from or occasioned by Tenant's holding over beyond the date that is 30 days after the expiration or earlier termination of the Term, including consequential damages. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Section 8 shall not be construed as consent for Tenant to retain possession of the Premises. Acceptance by Landlord of Rent after the expiration of the Term or earlier termination of this Lease shall not result in a renewal or reinstatement of this Lease.

9. **Taxes**. Landlord shall pay, as part of Operating Expenses (except to the extent the cost thereof is excluded from Operating Expenses pursuant to Section 5 hereof), all taxes, levies, fees, assessments and governmental charges of any kind, existing as of the Commencement Date or thereafter enacted (collectively referred to as "**Taxes**"), imposed by any federal, state, regional, municipal, local or other governmental authority or agency, including, without limitation, quasi-public agencies (collectively, "**Governmental Authority**") during the Term, including, without limitation, all Taxes: (i) imposed on or measured by or based, in whole or in part, on rent payable to (or gross receipts received by) Landlord under this Lease and/or from the rental by Landlord of the Project or any portion thereof, or (ii) based on the square footage, assessed value or other measure or evaluation of any kind of the Premises or the Project, or (iii) assessed or imposed by or on the operation or maintenance of any portion of the Premises or the Project, including parking, or (iv) assessed or imposed by, or at the direction of, or resulting from Legal Requirements, or interpretations thereof, promulgated by any Governmental Authority, or (v) imposed as a license or other fee, charge, tax, or assessment on Landlord's business or occupation of leasing space in the Project. Landlord may contest by appropriate legal proceedings the amount, validity, or application of any Taxes or liens securing Taxes. Taxes shall not include any net income taxes imposed on Landlord except to the extent such net income taxes are in substitution for any Taxes payable hereunder. If any such Tax is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall pay, prior to delinquency, any and all Taxes levied or assessed against any personal property or trade fixtures placed by Tenant in the Premises, whether levied or assessed against Landlord or Tenant. If any Taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property, or if the assessed valuation of the Project is increased by a value attributable to improvements in or alterations to the Premises, whether owned by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, higher than the base valuation on which Landlord from time-to-time allocates Taxes to all tenants in the Project, Landlord shall have the right, but not the obligation, to pay such Taxes. Landlord's reasonable determination of any excess assessed valuation shall be binding and conclusive, absent manifest error. The amount of any such payment by Landlord shall constitute Additional Rent due from Tenant to Landlord within 30 days after Tenant's receipt of demand therefor from Landlord.

10. **Parking**. Subject to applicable Legal Requirements, Force Majeure, a Taking (as defined in Section 19 below) and the exercise by Landlord of its rights hereunder, Tenant shall, at no additional cost during the Term, have the exclusive right to use the parking spaces located in the areas designated on **Exhibit B** attached hereto, subject in each case to Landlord's reasonable rules and regulations (which rules and regulations shall be enforced in a non-discriminatory manner); provided, that in no event shall Tenant be entitled to use more than 2.5 parking spaces per 1,000 rentable square feet of the Premises. Ten (10) of the parking spaces allocated to Tenant pursuant to this Section 10 may be marked by Landlord, at Tenant's cost, as designated spaces for Tenant and/or Tenant's guests, which designated spaces shall be in locations reasonably designated by Landlord and reasonably acceptable to Tenant. Tenant shall have no right to park in the areas outside of the exclusive parking use areas designated on **Exhibit B** attached hereto. Notwithstanding anything to the contrary contained in this Lease, Tenant may park up to 10 cargo vans and trucks in those portions of the parking areas described on **Exhibit B** adjacent to the Building on an overnight basis.

11. **Utilities, Services**. Landlord shall provide, subject to the terms of this Section 11, water, electricity, heat, light, power, sewer, and other utilities (including gas and fire sprinklers to the extent the Project is plumbed for such services), refuse and trash collection and janitorial services (collectively, "**Utilities**"). Landlord shall pay, as Operating Expenses or subject to Tenant's reimbursement obligation, for all Utilities used on the Premises, all maintenance charges for Utilities, and any storm sewer charges or other similar charges for Utilities imposed by any Governmental Authority or Utility provider, and any taxes, penalties, surcharges or similar charges thereon. Landlord may cause, at Tenant's expense, any Utilities to be separately metered or charged directly to Tenant by the provider. Tenant shall pay directly to the Utility provider, prior to delinquency, any separately metered Utilities and services which may be furnished to Tenant or the Premises during the Term. Tenant shall pay, as part of Operating Expenses, its share of all charges for jointly metered Utilities based upon consumption, as reasonably determined by Landlord. No interruption or failure of Utilities, from any cause whatsoever other than Landlord's willful misconduct, shall result in eviction or constructive eviction of Tenant, termination of this Lease or the abatement of Rent. Tenant agrees to limit use of water and sewer with respect to Common Areas to normal restroom use. Tenant shall be responsible for obtaining and paying for its own janitorial services for the Premises.

Subject to Tenant complying with all of the provisions of this Lease including without limitation, Section 12 hereof, and all applicable Legal Requirements and Landlord's reasonable rules and regulations (which rules and regulations shall be enforced in a non-discriminatory manner), Tenant shall have the right to install one or more emergency generators of a size and wattage reasonably acceptable to Landlord (the "**Emergency Generators**") in locations reasonably acceptable to Landlord and Tenant (collectively, the "**Generator Areas**"). Tenant shall have all of the obligations under this Lease with respect to the Generator Areas as though the Generator Areas were part of the Premises including, without limitation, the delivery of a Surrender Plan with respect to the Generator Areas pursuant to Section 28. The number of parking spaces available to Tenant under this Lease shall be reduced by the number of parking spaces impacted by the Generator Areas, if any. All such improvements to the Generator Areas shall be of a design and type and with screening and landscaping acceptable to Landlord, in Landlord's reasonable discretion. Landlord shall have the right, in its sole and absolute discretion, to require Tenant to remove any such Emergency Generators installed by Tenant at the expiration or earlier termination of the Term. If the Emergency Generators are removed by Tenant, Tenant will restore the Generator Areas to their original use and condition. Notwithstanding anything to the contrary contained herein, Tenant shall surrender the Generator Areas free of any debris and trash and free of any Hazardous Materials upon the expiration or earlier termination of the Term. Landlord shall have no obligation to make any repairs or improvements to the Emergency Generators or the Generator Areas and Tenant shall maintain the same, at Tenant's sole cost and expense, in good repair and condition during the Term as though the same were part of the Premises.

Notwithstanding anything to the contrary set forth herein, if (i) a stoppage of an Essential Service (as defined below) to the Premises shall occur and such stoppage is due solely to the gross negligence or willful misconduct of Landlord and not due in any part to any act or omission on the part of Tenant or any Tenant Party or any matter beyond Landlord's reasonable control (any such stoppage of an Essential Service being hereinafter referred to as a "**Service Interruption**"), and (ii) such Service Interruption continues for more than 3 consecutive business days after Landlord shall have received written notice thereof from Tenant, and (iii) as a result of such Service Interruption, the conduct of Tenant's normal operations in the Premises are materially and adversely affected, then there shall be an abatement of one day's Base Rent for each day during which such Service Interruption continues after such 3 business day period; provided, however, that if any part of the Premises is reasonably useable for Tenant's normal business operations or if Tenant conducts all or any part of its operations in any portion of the Premises notwithstanding such Service Interruption, then the amount of each daily abatement of Base Rent shall only be proportionate to the nature and extent of the interruption of Tenant's normal operations or ability to use the Premises. The rights granted to Tenant under this paragraph shall be Tenant's sole and exclusive remedy resulting from a failure of Landlord to provide services, and Landlord shall not otherwise be liable for any loss or damage suffered or sustained by Tenant resulting from any failure or cessation of services. For purposes hereof, the term "**Essential Services**" shall mean the following services: access to the Premises, HVAC service, water, sewer and electricity, but in each case only to the extent that Landlord has an obligation to provide same to Tenant under this Lease.

12. **Alterations and Tenant's Property**. Any alterations, additions, or improvements made to the Premises by or on behalf of Tenant, including additional locks or bolts of any kind or nature upon any doors or windows in the Premises, but excluding installation, removal or realignment of furniture systems (other than removal of furniture systems owned or paid for by Landlord) not involving any modifications to the structure or connections (other than by ordinary plugs or jacks) to Building Systems (as defined in Section 13) ("**Alterations**") shall be subject to Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion if any such Alteration materially or adversely affects the structure or Building Systems and shall not be otherwise unreasonably withheld. Tenant may construct nonstructural, cosmetic Alterations in the Premises without Landlord's prior approval if the aggregate cost of all such work in any 12 month period does not exceed $50,000 (excluding paint and carpet)(a "**Notice-Only Alteration**"), provided Tenant notifies Landlord in writing of such intended Notice-Only Alteration, and such notice shall be accompanied by plans, specifications, work contracts and such other information concerning the nature and cost of the Notice-Only Alteration as may be reasonably requested by Landlord, which notice and accompanying materials shall be delivered to Landlord not less than 15 business days in advance of any proposed construction. If Landlord approves any Alterations, Landlord may impose such reasonable conditions on Tenant in connection with the commencement, performance and completion of such Alterations as Landlord may deem appropriate in Landlord's reasonable discretion. Any request for approval shall be in writing, delivered not less than 15 business days in advance of any proposed construction, and accompanied by plans, specifications, bid proposals, work contracts and such other information concerning the nature and cost of the alterations as may be reasonably requested by Landlord, including the identities and mailing addresses of all persons performing work or supplying materials. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to ensure that such plans and specifications or construction comply with applicable Legal Requirements. Tenant shall cause, at its sole cost and expense, all Alterations to comply with insurance requirements and with Legal Requirements and shall implement at its sole cost and expense any alteration or modification required by Legal Requirements as a result of any Alterations. Except with respect to Notice-Only Alterations, Tenant shall pay to Landlord, as Additional Rent, on demand an amount equal to 3% of all charges incurred by Tenant or its contractors or agents in connection with any Alteration to cover Landlord's overhead and expenses for plan review, coordination, scheduling and supervision. Before Tenant begins any Alteration, Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall reimburse Landlord for, and indemnify and hold Landlord harmless from, any expense incurred by Landlord by reason of faulty work done by Tenant or its contractors, delays caused by such work, or inadequate cleanup.

Tenant shall furnish security or make other arrangements reasonably satisfactory to Landlord to assure payment for the completion of all Alterations work free and clear of liens, and shall provide (and cause each contractor or subcontractor to provide) certificates of insurance for workers' compensation and other coverage in amounts and from an insurance company reasonably satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Alterations, Tenant shall deliver to Landlord: (i) sworn statements setting forth the names of all contractors and subcontractors who did the work and final lien waivers from all such contractors and subcontractors; and (ii) if available, "as built" plans for any such Alteration.

Except for Removable Installations (as hereinafter defined) and Tenant's Property, all Installations (as hereinafter defined) shall be and shall remain the property of Landlord during the Term and following the expiration or earlier termination of the Term, shall not be removed by Tenant at any time during the Term, and shall remain upon and be surrendered with the Premises as a part thereof. Notwithstanding the foregoing, Landlord may, at the time its approval of any Alterations is requested, or at the time it receives notice of a Notice-Only Alteration (but, if the Notice-Only Alteration, is carpet, paint or floor covering, Landlord shall not require those items to be removed), notify Tenant that Landlord requires that Tenant remove such Alteration upon the expiration or earlier termination of the Term, in which event Tenant shall remove such Alterations in accordance with the immediately succeeding sentence. Upon the expiration or earlier termination of the Term, Tenant shall remove (i) all wires, cables or similar equipment which Tenant has installed in the Premises or in the risers or plenums of the Building unless such wires, cables or similar equipment are viable for the next tenant and do not interfere with the wire, cable and equipment needs of the next tenant, all as reasonably determined by Landlord within a reasonable period following receipt by Landlord of a written inquiry from Tenant, (ii) any Alterations for which Landlord has given Tenant notice of removal in accordance with the immediately preceding sentence, and (iii) all of Tenant's Property (as hereinafter defined), and Tenant shall restore and repair any damage caused by or occasioned as a result of such removal, including, without limitation, capping off all such connections behind the walls of the Premises and repairing any holes. During any restoration period beyond the expiration or earlier termination of the Term, Tenant shall pay Rent to Landlord as provided herein as if said space were otherwise occupied by Tenant. If Landlord is requested by Tenant or any lender, lessor or other person or entity claiming an interest in any of Tenant's Property to waive any lien Landlord may have against any of Tenant's Property, and Landlord consents to such waiver, then Landlord shall be entitled to be paid as administrative rent a fee of $1,000 per occurrence for its time and effort in preparing and negotiating such a waiver of lien.

For purposes of this Lease, (x) "**Removable Installations**" means any items listed on **Exhibit F** attached hereto and any items agreed by Landlord in writing (which agreement shall not be unreasonably withheld, conditioned or delayed) to be included on **Exhibit F** in the future, (y) "**Tenant's Property**" means Removable Installations and, other than Installations, any personal property or equipment of Tenant that may be removed without material damage to the Premises, and (z) "**Installations**" means all property of any kind paid for with the TI Fund, all Alterations, all fixtures, and all partitions, hardware, built-in machinery, built-in casework and cabinets and other similar additions, equipment, property and improvements built into the Premises so as to become an integral part of the Premises, including, without limitation, fume hoods which penetrate the roof or plenum area, built-in cold rooms, built-in warm rooms, walk-in cold rooms, walk-in warm rooms, deionized water systems, glass washing equipment, autoclaves, chillers, built-in plumbing, electrical and mechanical equipment and systems, and any power generator and transfer switch.

Tenant shall not be required to remove the Tenant Improvements at the expiration or earlier termination of the Term nor shall Tenant have any right to remove any of the Tenant Improvements at any time.

13. **Landlord's Repairs**. Landlord shall, at Landlord's sole expense (and not as an Operating Expense), be responsible for capital repairs and replacements of the roof (not including the roof membrane), exterior walls and foundation of the Building ("**Structural Items**") unless the need for such repairs or replacements is (a) required by changes in Legal Requirements, in which case the cost thereof shall be included as part of Operating Expenses and shall be amortized pursuant to Section 5 hereof, or (b) caused by Tenant or any Tenant Parties, in which case Tenant shall bear the full cost to repair or replace such Structural Items. Landlord shall, as an Operating Expense, be responsible for the routine maintenance and repair of such Structural Items. Landlord, as an Operating Expense, shall maintain, repair and replace the roof membrane and all of the exterior, parking and other Common Areas of the Project, including HVAC, plumbing, fire sprinklers and all other building systems serving the Premises and other portions of the Project ("**Building Systems**"), in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, or by any of Tenant's agents, servants, employees, invitees and contractors (collectively, "**Tenant Parties**") excluded. Losses and damages caused by Tenant or any Tenant Party shall be repaired by Landlord, to the extent not covered by insurance, at Tenant's sole cost and expense. Landlord reserves the right to stop Building Systems services when necessary (i) by reason of accident or emergency, or (ii) for planned repairs, alterations or improvements, which are, in the judgment of Landlord, desirable or necessary to be made, until said repairs, alterations or improvements shall have been completed. Landlord shall have no responsibility or liability for failure to supply Building Systems services during any such period of interruption; provided, however, that Landlord shall, except in case of emergency, give Tenant 2 business days' advance notice of any planned stoppage of Building Systems services for routine maintenance, repairs, alterations or improvements. Landlord shall use reasonable efforts to coordinate any planned stoppages of Building Systems with Tenant to minimize interference with Tenant's operations in the Premises during any such planned stoppages of Building Systems. Tenant shall promptly give Landlord written notice of any repair required by Landlord pursuant to this Section, after which Landlord shall make a commercially reasonable effort to effect such repair. Landlord shall not be liable for any failure to make any repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after Tenant's written notice of the need for such repairs or maintenance. Tenant waives its rights under any state or local law to terminate this Lease or to make such repairs at Landlord's expense and agrees that the parties' respective rights with respect to such matters shall be solely as set forth herein. Repairs required as the result of fire, earthquake, flood, vandalism, war, or similar cause of damage or destruction shall be controlled by Section 18.

Notwithstanding anything to the contrary contained in this Lease, as of the Rent Commencement Date, the maintenance and repair obligations for the Building shall be allocated between Landlord and Tenant as set forth on **Exhibit G** attached hereto. The maintenance obligations allocated to Tenant pursuant to **Exhibit G** (the "**Tenant Maintenance Obligations**") shall be performed by Tenant at Tenant's sole cost and expense. The Tenant Maintenance Obligations shall include the procurement and maintenance of contracts, in form and substance reasonably satisfactory to Landlord, with copies to Landlord, for and with contractors reasonably acceptable to Landlord specializing and experienced in the respective Tenant Maintenance Obligations. During any period where Tenant is responsible for the Tenant Maintenance Obligations as provided for in this paragraph, Landlord shall, notwithstanding anything to the contrary contained in this Lease, have no obligation to perform any Tenant Maintenance Obligations. The Tenant Maintenance Obligations shall not include the right or obligation on the part of Tenant to make any structural and/or capital repairs or improvements to the Project, and Landlord shall, during any period that Tenant is responsible for the Tenant Maintenance Obligations, continue to be responsible, as part of Operating Expenses (except as otherwise set forth above with respect to Structural Items), for capital repairs and replacements required, in Landlord's reasonable discretion, to be made to the Project. If Tenant fails to maintain any portion of the Building in a manner reasonably acceptable to Landlord within the requirements of this Lease, Landlord shall have the right, but not the obligation, to provide Tenant with written notice thereof and to assume the Tenant Maintenance Obligations if Tenant does not cure Tenant's failure within 30 days after receipt of such notice.

14. **Tenant's Repairs**. Subject to Section 13 hereof, Tenant, at its expense, shall repair, replace and maintain in good condition all portions of the Premises, including, without limitation, entries, doors, ceilings, interior windows, interior walls, and the interior side of demising walls. Should Tenant fail to make any such repair or replacement or fail to maintain the Premises, Landlord shall give Tenant notice of such failure. If Tenant fails to commence cure of such failure within 10 days of Landlord's notice, and thereafter diligently prosecute such cure to completion, Landlord may perform such work and shall be reimbursed by Tenant within 10 days after demand therefor; provided, however, that if such failure by Tenant creates or could create an emergency, Landlord may immediately commence cure of such failure and shall thereafter be entitled to recover the costs of such cure from Tenant. Subject to Sections 17 and 18, Tenant shall bear the full uninsured cost of any repair or replacement to any part of the Project that results from damage caused by Tenant or any Tenant Party.

15. **Mechanic's Liens**. Tenant shall discharge, by bond or otherwise, any mechanic's lien filed against the Premises or against the Project for work claimed to have been done for, or materials claimed to have been furnished to, Tenant within 15 days after Tenant receives notice of the filing thereof, at Tenant's sole cost and shall otherwise keep the Premises and the Project free from any liens arising out of work performed, materials furnished or obligations incurred by Tenant. Should Tenant fail to discharge any lien described herein within the period provided for above, Landlord shall have the right, but not the obligation, to pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title to the Project and the cost thereof shall be immediately due from Tenant as Additional Rent. If Tenant shall lease or finance the acquisition of office equipment, furnishings, or other personal property of a removable nature utilized by Tenant in the operation of Tenant's business, Tenant warrants that any Uniform Commercial Code Financing Statement filed as a matter of public record by any lessor or creditor of Tenant will upon its face or by exhibit thereto indicate that such Financing Statement is applicable only to removable personal property of Tenant located within the Premises. In no event shall the address of the Project be furnished on the statement without qualifying language as to applicability of the lien only to removable personal property, located in an identified suite held by Tenant.

16. **Indemnification**. Tenant hereby indemnifies and agrees to defend, save and hold Landlord harmless from and against any and all Claims for injury or death to persons or damage to property occurring within or about the Premises, arising directly or indirectly out of use or occupancy of the Premises or a breach or default by Tenant in the performance of any of its obligations hereunder, except to the extent caused by the willful misconduct or gross negligence of Landlord. Landlord shall not be liable to Tenant for, and Tenant assumes all risk of damage to, personal property (including, without limitation, loss of records kept within the Premises). Tenant further waives any and all Claims for injury to Tenant's business or loss of income relating to any such damage or destruction of personal property (including, without limitation, any loss of records). Landlord shall not be liable for any damages arising from any act, omission or neglect of any tenant in the Project or of any other third party.

Subject to all of the other provisions of this Lease including, without limitation, the waivers provided for in Section 17, Landlord hereby indemnifies and agrees to defend, save and hold Tenant harmless from and against any and all third party Claims for injury or death to persons or damage to property occurring at the Project (outside the Premises) to the extent caused by the willful misconduct or gross negligence of Landlord.

17. **Insurance**. Landlord shall maintain all risk property and, if applicable, sprinkler damage insurance covering the full replacement cost of the Project. Landlord shall further procure and maintain commercial general liability insurance with a single loss limit of not less than $2,000,000 for bodily injury and property damage with respect to the Project. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, flood, environmental hazard and earthquake, loss or failure of building equipment, errors and omissions, rental loss during the period of repair or rebuilding, workers' compensation insurance and fidelity bonds for employees employed to perform services and insurance for any improvements installed by Tenant or which are in addition to the standard improvements customarily furnished by Landlord without regard to whether or not such are made a part of the Project. All such insurance shall be included as part of the Operating Expenses. The Project may be included in a blanket policy (in which case the cost of such insurance allocable to the Project will be determined by Landlord based upon the insurer's cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance which Landlord reasonably deems necessary as a result of Tenant's use of the Premises.

Tenant, at its sole cost and expense, shall maintain during the Term: all risk property insurance or special form property insurance with business interruption and extra expense coverage, covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense; workers' compensation insurance with no less than the minimum limits required by law; employer's liability insurance with such limits as required by law; and commercial general liability insurance, with a minimum limit of not less than $5,000,000 per occurrence for bodily injury and property damage with respect to the Premises, which coverage amount may be satisfied through a combination of primary and umbrella policies. The commercial general liability insurance policy shall name Alexandria Real Estate Equities, Inc., and Landlord, its officers, directors, employees, managers, agents, invitees and contractors (collectively, "**Landlord Parties**"), as additional insureds; insure on an occurrence and not a claims-made basis; be issued by insurance companies which have a rating of not less than policyholder rating of A and financial category rating of at least Class X in "Best's Insurance Guide"; shall not be cancelable for nonpayment of premium unless 30 days prior written notice shall have been given to Landlord from the insurer; not contain a hostile fire exclusion; contain a contractual liability endorsement; and provide primary coverage to Landlord (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess over Tenant's policies). Copies of such policies (if requested by Landlord), or certificates of insurance showing the limits of coverage required hereunder and showing Landlord as an additional insured, along with reasonable evidence of the payment of premiums for the applicable period, shall be delivered to Landlord by Tenant prior to (i) the earlier to occur of (x) the Commencement Date, or (y) the date that Tenant accesses the Premises under this Lease, and (ii) each renewal of said insurance. Tenant's policy may be a "blanket policy" with an aggregate per location endorsement which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Tenant shall, at least 5 days prior to the expiration of such policies, furnish Landlord with renewal certificates.

In each instance where insurance is to name Landlord as an additional insured, Tenant shall upon written request of Landlord also designate and furnish certificates so evidencing Landlord as additional insured to: (i) any lender of Landlord holding a security interest in the Project or any portion thereof, (ii) the landlord under any lease wherein Landlord is tenant of the real property on which the Project is located, if the interest of Landlord is or shall become that of a tenant under a ground or other underlying lease rather than that of a fee owner, and/or (iii) any management company retained by Landlord to manage the Project.

The property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, and their respective officers, directors, employees, managers, agents, invitees and contractors ("**Related Parties**"), in connection with any loss or damage thereby insured against. Neither party nor its respective Related Parties shall be liable to the other for loss or damage caused by any risk insured against under property insurance required to be maintained hereunder, and each party waives any claims against the other party, and its respective Related Parties, for such loss or damage. The failure of a party to insure its property shall not void this waiver. Landlord and its respective Related Parties shall not be liable for, and Tenant hereby waives all claims against such parties for, business interruption and losses occasioned thereby sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or the Project from any cause whatsoever. If the foregoing waivers shall contravene any law with respect to exculpatory agreements, the liability of Landlord or Tenant shall be deemed not released but shall be secondary to the other's insurer.

Landlord may require insurance policy limits to be raised to conform with requirements of Landlord's lender and/or to bring coverage limits to levels then being generally required of new tenants within the Project.

18. **Restoration**. If, at any time during the Term, the Project or the Premises are damaged or destroyed by a fire or other insured casualty, Landlord shall notify Tenant within 60 days after discovery of such damage as to the amount of time Landlord reasonably estimates it will take to restore the Project or the Premises, as applicable (the "**Restoration Period**"). If the Restoration Period is estimated to exceed 12 months (the "**Maximum Restoration Period**"), Landlord may, in such notice, elect to terminate this Lease as of the date that is 75 days after the date of discovery of such damage or destruction; provided, however, that notwithstanding Landlord's election to restore, Tenant may elect to terminate this Lease by written notice to Landlord delivered within 5 business days of receipt of a notice from Landlord estimating a Restoration Period for the Premises longer than the Maximum Restoration Period. Unless either Landlord or Tenant so elects to terminate this Lease, Landlord shall, subject to receipt of sufficient insurance proceeds (with any deductible (which may be amortized as provided in Section 5) to be treated as a current Operating Expense), promptly restore the Premises (excluding the improvements installed by Tenant or by Landlord and paid for by Tenant), subject to delays arising from the collection of insurance proceeds, from Force Majeure events or as needed to obtain any license, clearance or other authorization of any kind required to enter into and restore the Premises issued by any Governmental Authority having jurisdiction over the use, storage, handling, treatment, generation, release, disposal, removal or remediation of Hazardous Materials (as defined in Section 30) in, on or about the Premises (collectively referred to herein as "**Hazardous Materials Clearances**"); provided, however, that if repair or restoration of the Premises is not substantially complete as of the end of the Maximum Restoration Period or, if longer, the Restoration Period, Landlord may, in its sole and absolute discretion, elect not to proceed with such repair and restoration, or Tenant may by written notice to Landlord delivered within 5 business days of the expiration of the Maximum Restoration Period or, if longer, the Restoration Period, elect to terminate this Lease, in which event Landlord shall be relieved of its obligation to make such repairs or restoration and this Lease shall terminate as of the date that is 75 days after the later of: (i) discovery of such damage or destruction, or (ii) the date all required Hazardous Materials Clearances are obtained, but Landlord shall retain any Rent paid and the right to any Rent payable by Tenant prior to such election by Landlord or Tenant.

Tenant, at its expense, shall promptly perform, subject to delays arising from the collection of insurance proceeds, from Force Majeure (as defined in Section 34) events or to obtain Hazardous Material Clearances, any repairs or restoration Tenant wishes to have performed that are not required to be done by Landlord and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Notwithstanding the foregoing, either Landlord or Tenant may terminate this Lease upon written notice to the other if the Premises are damaged during the last year of the Term and Landlord reasonably estimates that it will take more than 2 months to repair such damage; provided, however, that such notice is delivered within 10 business days after the date that Landlord provides Tenant with written notice of the estimated Restoration Period. Notwithstanding anything to the contrary contained herein, Landlord shall also have the right to terminate this Lease if insurance proceeds are not available for such restoration. Rent shall be abated from the date all required Hazardous Material Clearances are obtained until the Premises are repaired and restored, in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises, unless Landlord provides Tenant with other space during the period of repair that is suitable for the temporary conduct of Tenant's business. In the event that no Hazardous Material Clearances are required to be obtained by Tenant with respect to the Premises, rent abatement shall commence on the date of discovery of the damage or destruction. Such abatement shall be the sole remedy of Tenant, and except as provided in this Section 18, Tenant waives any right to terminate this Lease by reason of damage or casualty loss.

The provisions of this Lease, including this Section 18, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, or any other portion of the Project, and any statute or regulation which is now or may hereafter be in effect shall have no application to this Lease or any damage or destruction to all or any part of the Premises or any other portion of the Project, the parties hereto expressly agreeing that this Section 18 sets forth their entire understanding and agreement with respect to such matters.

19. **Condemnation**. If the whole or any material part of the Premises or the Project is taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "**Taking**" or "**Taken**"), and the Taking would in Landlord's reasonable judgment, either prevent or materially interfere with Tenant's use of the Premises or materially interfere with or impair Landlord's ownership or operation of the Project then upon written notice by Landlord this Lease shall terminate and Rent shall be apportioned as of said date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, Landlord shall promptly restore the Premises and the Project as nearly as is commercially reasonable under the circumstances to their condition prior to such partial Taking and the rentable square footage of the Building, the rentable square footage of the Premises, Tenant's Share of Operating Expenses and the Rent payable hereunder during the unexpired Term shall be reduced to such extent as may be fair and reasonable under the circumstances. Upon any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's trade fixtures, if a separate award for such items is made to Tenant. Tenant hereby waives any and all rights it might otherwise have pursuant to any provision of state law to terminate this Lease upon a partial Taking of the Premises or the Project.

20. **Events of Default**. Each of the following events shall be a default ("**Default**") by Tenant under this Lease:

(a) **Payment Defaults**. Tenant shall fail to pay (i) any installment of Base Rent, Operating Expenses or any other regularly scheduled payment of Rent hereunder when due; provided, however, that Landlord will give Tenant notice and an opportunity to cure such failure to pay Rent within 5 days of any such notice and Tenant agrees that such notice shall be in lieu of and not in addition to, or shall be deemed to be, any notice required by law; provided, however, that Landlord shall not be required to deliver and Tenant shall not be entitled to receive a notice and opportunity to cure pursuant to this Section 20(a)(i) more than twice in any 12 month period, or (ii) any non-recurring payment of Rent hereunder when due; provided, however, that Landlord will give Tenant notice and an opportunity to cure any failure to pay such non-recurring payment of Rent within 5 days of any such notice not more than twice in any 12 month period and Tenant agrees that such notice shall be in lieu of and not in addition to, or shall be deemed to be, any notice required by law.

(b) **Insurance**. Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled or terminated or shall expire or shall be reduced or materially changed, or Landlord shall receive a notice of nonrenewal of any such insurance and Tenant shall fail to obtain replacement insurance at least 20 days before the expiration of the current coverage.

(c) **Abandonment**. Tenant shall abandon the Premises. Tenant shall not be deemed to have abandoned the Premises if (i) Tenant provides Landlord with reasonable advance notice prior to vacating and, at the time of vacating the Premises, Tenant completes Tenant's obligations with respect to the Surrender Plan in compliance with Section 28, (ii) Tenant has made reasonable arrangements with Landlord for the security of the Premises for the balance of the Term, and (iii) Tenant continues during the balance of the Term to satisfy all of its obligations under this Lease as they come due.

(d) **Improper Transfer**. Tenant shall assign, sublease or otherwise transfer or attempt to transfer all or any portion of Tenant's interest in this Lease or the Premises except as expressly permitted herein, or Tenant's interest in this Lease shall be attached, executed upon, or otherwise judicially seized and such action is not released within 90 days of the action.

(e) **Liens**. Tenant shall fail to discharge or otherwise obtain the release of any lien placed upon the Premises in violation of this Lease within 15 days after Tenant's receipt of notice that any such lien is filed against the Premises.

(f) **Insolvency Events**. Tenant or any guarantor or surety of Tenant's obligations hereunder shall: (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "**Proceeding for Relief**"); (C) become the subject of any Proceeding for Relief which is not dismissed within 90 days of its filing or entry; or (D) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

(g) **Estoppel Certificate or Subordination Agreement**. Tenant fails to execute any document required from Tenant under Sections 23 or 27 within 5 days after a second notice requesting such document.

(h) **Other Defaults**. Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Section 20, and, except as otherwise expressly provided herein, such failure shall continue for a period of 30 days after written notice thereof from Landlord to Tenant.

Any notice given under Section 20(h) hereof shall: (i) specify the alleged default, (ii) demand that Tenant cure such default, (iii) be in lieu of, and not in addition to, or shall be deemed to be, any notice required under any provision of applicable law, and (iv) not be deemed a forfeiture or a termination of this Lease unless Landlord elects otherwise in such notice; provided that if the nature of Tenant's default pursuant to Section 20(h) is such that it cannot be cured by the payment of money and reasonably requires more than 30 days to cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said 30 day period and thereafter diligently prosecutes the same to completion; provided, however, that such cure shall be completed no later than 120 days from the date of Landlord's notice.

21. **Landlord's Remedies**.

(a) **Payment By Landlord; Interest**. Upon a Default by Tenant hereunder, Landlord may, without waiving or releasing any obligation of Tenant hereunder, make such payment or perform such act. All sums so paid or incurred by Landlord, together with interest thereon, from the date such sums were paid or incurred, at the annual rate equal to 12% per annum or the highest rate permitted by law (the "**Default Rate**"), whichever is less, shall be payable to Landlord on demand as Additional Rent. Nothing herein shall be construed to create or impose a duty on Landlord to mitigate any damages resulting from Tenant's Default hereunder.

(b) **Late Payment Rent**. Late payment by Tenant to Landlord of Rent and other sums due will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord under any Mortgage covering the Premises. Therefore, if any installment of Rent due from Tenant is not received by Landlord within 5 days after the date such payment is due, Tenant shall pay to Landlord an additional sum equal to 6% of the overdue Rent as a late charge. Notwithstanding the foregoing, before assessing a late charge the first time in any calendar year, Landlord shall provide Tenant written notice of the delinquency and will waive the right if Tenant pays such delinquency within 5 business days thereafter. The parties agree that this late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. In addition to the late charge, Rent not paid when due shall bear interest at the Default Rate from the 5th day after the date due until paid.

(c) **Remedies**. Upon the occurrence of a Default, Landlord, at its option, without further notice or demand to Tenant, shall have in addition to all other rights and remedies provided in this Lease, at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

(i) Terminate this Lease, or at Landlord's option, Tenant's right to possession only, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor;

(ii) Upon any termination of this Lease, whether pursuant to the foregoing Section 21(c)(i) or otherwise, Landlord may recover from Tenant the following:

(A) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(B) 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 Tenant proves could have been reasonably avoided; plus

(C) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(D) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including, but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(E) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "**rent**" as used in this Section 21 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 21(c)(ii)(A) and (B), above, the "**worth at the time of award**" shall be computed by allowing interest at the Default Rate. As used in Section 21(c)(ii)(C) above, the "**worth at the time of award**" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

(iii) Landlord may continue this Lease in effect after Tenant's Default and recover rent as it becomes due (Landlord and Tenant hereby agreeing that Tenant has the right to sublet or assign hereunder, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease following a Default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies hereunder, including the right to recover all Rent as it becomes due.

(iv) Whether or not Landlord elects to terminate this Lease following a Default by Tenant, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. Upon Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

(v) Independent of the exercise of any other remedy of Landlord hereunder or under applicable law, Landlord may conduct an environmental test of the Premises as generally described in Section 30(d) hereof, at Tenant's expense.

(d) **Effect of Exercise**. Exercise by Landlord of any remedies hereunder or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, it being understood that such surrender and/or termination can be effected only by the express written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same and shall not be deemed a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of Rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter, re-take or otherwise obtain possession of the Premises as provided in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. Any reletting of the Premises or any portion thereof shall be on such terms and conditions as Landlord in its sole discretion may determine. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting or otherwise to mitigate any damages arising by reason of Tenant's Default.

22. **Assignment and Subletting**.

(a) **General Prohibition**. Without Landlord's prior written consent subject to and on the conditions described in this Section 22 (including those set forth in Section 22(b) below), Tenant shall not, directly or indirectly, voluntarily or by operation of law, assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises, and any attempt to do any of the foregoing shall be void and of no effect. If Tenant is a corporation, partnership or limited liability company, the shares or other ownership interests thereof which are not actively traded upon a stock exchange or in the over-the-counter market, a transfer or series of transfers whereby 25% or more of the issued and outstanding shares or other ownership interests of such corporation are, or voting control is, transferred (but excepting transfers upon deaths of individual owners) from a person or persons or entity or entities which were owners thereof at time of execution of this Lease to persons or entities who were not owners of shares or other ownership interests of the corporation, partnership or limited liability company at time of execution of this Lease, shall be deemed an assignment of this Lease requiring the consent of Landlord as provided in this Section 22. Notwithstanding the foregoing, Tenant shall have the right to obtain financing from institutional investors (including venture capital funding and corporate partners) which regularly invest in private biotechnology companies or undergo a public offering which results in a change in control of Tenant without such change of control constituting an assignment under this Section 22 requiring Landlord consent, provided that (i) Tenant notifies Landlord in writing of the financing at least 5 business days prior to the closing of the financing ((x) unless Tenant is prohibited from providing such notice by applicable Legal Requirements in which case Tenant shall notify Landlord promptly thereafter, and (y) if the transaction is subject to confidentiality requirements, Tenant's advance notification shall be subject to Landlord's execution of a non-disclosure agreement reasonably acceptable to Landlord and Tenant), and (ii) provided that in no event shall such financing result in a change in use of the Premises from the use contemplated by Tenant at the commencement of the Term.

(b) **Permitted Transfers**. If Tenant desires to assign, sublease, hypothecate or otherwise transfer this Lease or sublet the Premises other than pursuant to a Permitted Assignment (as defined below), then at least 15 business days, but not more than 45 business days, before the date Tenant desires the assignment or sublease to be effective (the "**Assignment Date**"), Tenant shall give Landlord a notice (the "**Assignment Notice**") containing such information about the proposed assignee or sublessee, including the proposed use of the Premises and any Hazardous Materials proposed to be used, stored handled, treated, generated in or released or disposed of from the Premises, the Assignment Date, any relationship between Tenant and the proposed assignee or sublessee, and all material terms and conditions of the proposed assignment or sublease, including a copy of any proposed assignment or sublease in its final form, and such other information as Landlord may deem reasonably necessary or appropriate to its consideration whether to grant its consent. Landlord may, by giving written notice to Tenant within 15 business days after receipt of the Assignment Notice: (i) grant such consent (provided that Landlord shall further have the right to review and reasonably approve or disapprove the proposed form of sublease prior to the effective date of any such subletting), (ii) refuse such consent, in its reasonable discretion; or (iii) terminate this Lease with respect to the space described in the Assignment Notice as of the Assignment Date (an "**Assignment Termination**"). **Among other reasons, it shall be reasonable for** Landlord **to withhold its consent in any of these instances: (1) the proposed assignee or subtenant is a governmental agency; (2) in** Landlord**'s reasonable judgment, the use of the Premises by the proposed assignee or subtenant would entail any** alterations **that would lessen the value of the leasehold improvements in the Premises, or would require increased services by** Landlord**; (3)** in Landlord's reasonable judgment, the proposed assignee or subtenant is engaged in areas of scientific research or other business concerns that are controversial such that they may (i) attract or cause negative publicity for or about the Building or the Project, (ii) negatively affect the reputation of the Building, the Project or Landlord, (iii) attract protestors to the Building or the Project, or (iv) lessen the attractiveness of the Project to any tenants or prospective tenants, purchasers or lenders; (4) in Landlord's reasonable judgment, the proposed assignee or subtenant lacks the creditworthiness to support the financial obligations it will incur under the proposed assignment or sublease**; (5) in** Landlord**'s reasonable judgment, the character, reputation, or business of the proposed assignee or subtenant is inconsistent with the quality of other tenancies in the Project or is inconsistent with the type and quality of the nature of the Building; (6) in** Landlord**'s reasonable judgment,** Landlord **has received from any prior** landlord **to the proposed assignee or subtenant a negative report concerning such prior** landlord**'s experience with the proposed assignee or subtenant; (7)** Landlord **has experienced previous defaults by or is in litigation with the proposed assignee or subtenant; (8) the use of the Premises by the proposed assignee or subtenant will violate any applicable Legal Requirement; (9) the proposed assignee or subtenant, or any entity that, directly or indirectly, controls, is controlled by, or is under common control with the proposed assignee or subtenant, is then an occupant of the Project and** Landlord **has other available space for** lease **at the Project; (10) the proposed assignee or subtenant is an entity with whom** Landlord **is negotiating to** lease **space in the Project; or (11) the assignment or sublease is prohibited by** Landlord**'s lender.** If Landlord delivers notice of its election to exercise an Assignment Termination, Tenant shall have the right to withdraw such Assignment Notice by written notice to Landlord of such election within 5 business days after Landlord's notice electing to exercise the Assignment Termination. If Tenant withdraws such Assignment Notice, this Lease shall continue in full force and effect. If Tenant does not withdraw such Assignment Notice, this Lease, and the term and estate herein granted, shall terminate as of the Assignment Date with respect to the space described in such Assignment Notice. No failure of Landlord to exercise any such option to terminate this Lease, or to deliver a timely notice in response to the Assignment Notice, shall be deemed to be Landlord's consent to the proposed assignment, sublease or other transfer. Tenant shall pay to Landlord a fee equal to One Thousand Five Hundred Dollars ($1,500) in connection with its consideration of any Assignment Notice and/or its preparation or review of any consent documents. Notwithstanding the foregoing, Landlord's consent to an assignment of this Lease or a subletting of any portion of the Premises to any entity controlling, controlled by or under common control with Tenant (a "**Control Permitted Assignment**") shall not be required, provided that Landlord shall have the right to approve the form of any such sublease or assignment. In addition, Tenant shall have the right to assign this Lease, upon 30 days prior written notice to Landlord ((x) unless Tenant is prohibited from providing such notice by applicable Legal Requirements in which case Tenant shall notify Landlord promptly thereafter, and (y) if the transaction is subject to confidentiality requirements, Tenant's advance notification shall be subject to Landlord's execution of a non-disclosure agreement reasonably acceptable to Landlord and Tenant) but without obtaining Landlord's prior written consent, to a corporation or other entity which is a successor-in-interest to Tenant, by way of merger, consolidation or corporate reorganization, or by the purchase of all or substantially all of the assets or the ownership interests of Tenant provided that (i) such merger or consolidation, or such acquisition or assumption, as the case may be, is for a good business purpose and not principally for the purpose of transferring this Lease, and (ii) the net worth (as determined in accordance with generally accepted accounting principles ("**GAAP**")) of the assignee is not less than the net worth (as determined in accordance with GAAP) of Tenant as of the date of Tenant's most current quarterly or annual financial statements, and (iii) if following such assignment, the Tenant under this Lease is other than the Tenant immediately before such assignment, such assignee shall agree in writing to assume all of the terms, covenants and conditions of this Lease (a "**Corporate Permitted Assignment**"). Control Permitted Assignments and Corporate Permitted Assignments are hereinafter referred to as "**Permitted Assignments**."

(c) **Additional Conditions**. As a condition to any such assignment or subletting, whether or not Landlord's consent is required, Landlord may require:

(i) that any assignee or subtenant agree, in writing at the time of such assignment or subletting, that if Landlord gives such party notice that Tenant is in default under this Lease, such party shall thereafter make all payments otherwise due Tenant directly to Landlord, which payments will be received by Landlord without any liability except to credit such payment against those due under this Lease, and any such third party shall agree to attorn to Landlord or its successors and assigns should this Lease be terminated for any reason; provided, however, in no event shall Landlord or its successors or assigns be obligated to accept such attornment; and

(ii) A list of Hazardous Materials, certified by the proposed assignee or sublessee to be true and correct, which the proposed assignee or sublessee intends to use, store, handle, treat, generate in or release or dispose of from the Premises, together with copies of all documents relating to such use, storage, handling, treatment, generation, release or disposal of Hazardous Materials by the proposed assignee or subtenant in the Premises or on the Project, prior to the proposed assignment or subletting, including, without limitation: permits; approvals; reports and correspondence; storage and management plans; plans relating to the installation of any storage tanks to be installed in or under the Project (provided, said installation of tanks shall only be permitted after Landlord has given its written consent to do so, which consent may be withheld in Landlord's sole and absolute discretion); and all closure plans or any other documents required by any and all federal, state and local Governmental Authorities for any storage tanks installed in, on or under the Project for the closure of any such tanks. Neither Tenant nor any such proposed assignee or subtenant is required, however, to provide Landlord with any portion(s) of the such documents containing information of a proprietary nature which, in and of themselves, do not contain a reference to any Hazardous Materials or hazardous activities.

(d) **No Release of Tenant, Sharing of Excess Rents**. Notwithstanding any assignment or subletting, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times remain fully and primarily responsible and liable for the payment of Rent and for compliance with all of Tenant's other obligations under this Lease. Except in connection with a Permitted Assignment, if the Rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto in any form) exceeds the sum of the rental payable under this Lease, (excluding however, any Rent payable under this Section) and actual and reasonable brokerage fees, legal costs and any design or construction fees directly related to and required pursuant to the terms of any such sublease ("**Excess Rent**"), then Tenant shall be bound and obligated to pay Landlord as Additional Rent hereunder 50% of such Excess Rent within 10 days following receipt thereof by Tenant. If Tenant shall sublet the Premises or any part thereof, Tenant hereby immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any such subletting, and Landlord as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of a Default, Tenant shall have the right to collect such rent.

(e) **No Waiver**. The consent by Landlord to an assignment or subletting shall not relieve Tenant or any assignees of this Lease or any sublessees of the Premises from obtaining the consent of Landlord to any further assignment or subletting nor shall it release Tenant or any assignee or sublessee of Tenant from full and primary liability under this Lease. The acceptance of Rent hereunder, or the acceptance of performance of any other term, covenant, or condition thereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to any subletting, assignment or other transfer of the Premises.

(f) **Prior Conduct of Proposed Transferee**. Notwithstanding any other provision of this Section 22, if (i) the proposed assignee or sublessee of Tenant has been required by any prior landlord, lender or Governmental Authority to take remedial action in connection with Hazardous Materials contaminating a property, where the contamination resulted from such party's action or use of the property in question, (ii) the proposed assignee or sublessee is subject to an enforcement order issued by any Governmental Authority in connection with the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials (including, without limitation, any order related to the failure to make a required reporting to any Governmental Authority), or (iii) because of the existence of a pre-existing environmental condition in the vicinity of or underlying the Project, the risk that Landlord would be targeted as a responsible party in connection with the remediation of such pre-existing environmental condition would be materially increased or exacerbated by the proposed use of Hazardous Materials by such proposed assignee or sublessee, Landlord shall have the absolute right to refuse to consent to any assignment or subletting to any such party.

23. **Estoppel Certificate**. Tenant shall, within 10 business days of written notice from Landlord, execute, acknowledge and deliver a statement in writing in any form reasonably requested by a proposed lender or purchaser, (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any, (ii) acknowledging that, to Tenant's actual knowledge, there are not any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iii) setting forth such further information with respect to the status of this Lease or the Premises as may be reasonably requested thereon. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part. Tenant's failure to deliver such statement within such time shall, at the option of Landlord, constitute a Default under this Lease, and, in any event, shall be conclusive upon Tenant that this Lease is in full force and effect and without modification except as may be represented by Landlord in any certificate prepared by Landlord and delivered to Tenant for execution.

24. **Quiet Enjoyment**. So long as Tenant is not in Default under this Lease, Tenant shall, subject to the terms of this Lease, at all times during the Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

25. **Prorations**. All prorations required or permitted to be made hereunder shall be made on the basis of a 360 day year and 30 day months.

26. **Rules and Regulations**. Tenant shall, at all times during the Term and any extension thereof, comply with all reasonable non-discriminatory rules and regulations at any time or from time to time established by Landlord covering use of the Premises and the Project. The current rules and regulations are attached hereto as **Exhibit E**. If there is any conflict between said rules and regulations and other provisions of this Lease, the terms and provisions of this Lease shall control. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Project and shall not enforce such rules and regulations in a discriminatory manner.

27. **Subordination**. This Lease and Tenant's interest and rights hereunder are hereby made and shall be subject and subordinate at all times to the lien of any Mortgage now existing or hereafter created on or against the Project or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant; provided, however that so long as there is no Default hereunder, Tenant's right to possession of the Premises shall not be disturbed by the Holder of any such Mortgage. Tenant agrees, at the election of the Holder of any such Mortgage, to attorn to any such Holder. Tenant agrees upon demand to execute, acknowledge and deliver such instruments, confirming such subordination, and such instruments of attornment as shall be requested by any such Holder, provided any such instruments contain appropriate non-disturbance provisions assuring Tenant's quiet enjoyment of the Premises as set forth in Section 24 hereof. Notwithstanding the foregoing, any such Holder may at any time subordinate its Mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution, delivery or recording and in that event such Holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such Mortgage and had been assigned to such Holder. The term "**Mortgage**" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "**Holder**" of a Mortgage shall be deemed to include the beneficiary under a deed of trust. Landlord represents and warrants to Tenant that, as of the date of this Lease, there is no existing Mortgage encumbering the Project.

28. **Surrender**. Upon the expiration of the Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, subject to any Alterations or Installations permitted by Landlord to remain in the Premises, free of Hazardous Materials brought upon, kept, used, stored, handled, treated, generated in, or released or disposed of from, the Premises by any person other than a Landlord Party (collectively, "**Tenant HazMat Operations**") and released of all Hazardous Materials Clearances, broom clean, ordinary wear and tear and casualty loss and condemnation covered by Sections 18 and 19 excepted. At least 3 months prior to the surrender of the Premises, Tenant shall deliver to Landlord a narrative description of the actions proposed (or required by any Governmental Authority) to be taken by Tenant in order to surrender the Premises (including any Installations permitted by Landlord to remain in the Premises) at the expiration or earlier termination of the Term, free from any residual impact from the Tenant HazMat Operations and otherwise released for unrestricted use and occupancy (the "**Surrender Plan**"). For the avoidance of any doubt, the reference to unrestricted use and occupancy in the preceding sentence means that following Tenant's surrender of the Premises there are no restrictions on the use or occupancy of the Premises arising from or related in any way to Tenant's or any Tenant Parties' access to, use and/or occupancy of the Premises or Tenant's Hazmat Operations. Such Surrender Plan shall be accompanied by a current listing of (i) all Hazardous Materials licenses and permits held by or on behalf of any Tenant Party with respect to the Premises, and (ii) all Hazardous Materials used, stored, handled, treated, generated, released or disposed of from the Premises, and shall be subject to the review and approval of Landlord's environmental consultant. In connection with the review and approval of the Surrender Plan, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such additional non-proprietary information concerning Tenant HazMat Operations as Landlord shall reasonably request. On or before such surrender, Tenant shall deliver to Landlord evidence that the approved Surrender Plan shall have been satisfactorily completed and Landlord shall have the right, subject to reimbursement at Tenant's expense as set forth below, to cause Landlord's environmental consultant to inspect the Premises and perform such additional procedures as may be deemed reasonably necessary to confirm that the Premises are, as of the effective date of such surrender or early termination of this Lease, free from any residual impact from Tenant HazMat Operations. Tenant shall reimburse Landlord, as Additional Rent, for the actual out-of-pocket expense incurred by Landlord for Landlord's environmental consultant to review and approve the Surrender Plan and to visit the Premises and verify satisfactory completion of the same, which cost shall not exceed $2,500. Landlord shall have the unrestricted right to deliver such Surrender Plan and any report by Landlord's environmental consultant with respect to the surrender of the Premises to third parties.

If Tenant shall fail to prepare or submit a Surrender Plan approved by Landlord, or if Tenant shall fail to complete the approved Surrender Plan, or if such Surrender Plan, whether or not approved by Landlord, shall fail to adequately address any residual effect of Tenant HazMat Operations in, on or about the Premises, Landlord shall have the right to take such actions as Landlord may deem reasonable or appropriate to assure that the Premises and the Project are surrendered free from any residual impact from Tenant HazMat Operations, the cost of which actions shall be reimbursed by Tenant as Additional Rent, without regard to the limitation set forth in the first paragraph of this Section 28.

Tenant shall immediately return to Landlord all keys and/or access cards to parking, the Project, restrooms or all or any portion of the Premises furnished to or otherwise procured by Tenant. If any such access card or key is lost, Tenant shall pay to Landlord, at Landlord's election, either the cost of replacing such lost access card or key or the cost of reprogramming the access security system in which such access card was used or changing the lock or locks opened by such lost key. Any Tenant's Property, Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and/or disposition of such property. All obligations of Tenant hereunder not fully performed as of the termination of the Term, including the obligations of Tenant under Section 30 hereof, shall survive the expiration or earlier termination of the Term, including, without limitation, indemnity obligations, payment obligations with respect to Rent and obligations concerning the condition and repair of the Premises.

29. **Waiver of Jury Trial**. TO THE EXTENT PERMITTED BY LAW, TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

30. **Environmental Requirements**.

(a) **Prohibition/Compliance/Indemnity**. Tenant shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, kept, used, stored, handled, treated, generated in or about, or released or disposed of from, the Premises or the Project in violation of applicable Environmental Requirements (as hereinafter defined) by Tenant or any Tenant Party. If Tenant breaches the obligation stated in the preceding sentence, or if the presence of Hazardous Materials in the Premises during the Term or any holding over results in contamination of the Premises, the Project or any adjacent property or if contamination of the Premises, the Project or any adjacent property by Hazardous Materials brought into, kept, used, stored, handled, treated, generated in or about, or released or disposed of from, the Premises by anyone other than Landlord and Landlord's employees, agents and contractors otherwise occurs during the Term or any holding over, Tenant hereby indemnifies and shall defend and hold Landlord, its officers, directors, employees, agents and contractors harmless from any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including, without limitation, punitive damages and damages based upon diminution in value of the Premises or the Project, or the loss of, or restriction on, use of the Premises or any portion of the Project), expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, or contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses (collectively, "**Environmental Claims**") which arise during or after the Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by any federal, state or local Governmental Authority because of Hazardous Materials present in the air, soil or ground water above, on, or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises, the Building, the Project or any adjacent property caused or permitted by Tenant or any Tenant Party results in any contamination of the Premises, the Building, the Project or any adjacent property, Tenant shall promptly take all actions at its sole expense and in accordance with applicable Environmental Requirements as are necessary to return the Premises, the Building, the Project or any adjacent property to the condition existing prior to the time of such contamination, provided that Landlord's approval of such action shall first be obtained, which approval shall not unreasonably be withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises, the Building or the Project. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be responsible for, and the indemnification and hold harmless obligations of Tenant set forth in this Lease shall not apply to (i) contamination in the Premises which Tenant can prove existed in the Premises immediately prior to the Commencement Date, or (ii) the presence of any Hazardous Materials in the Premises which Tenant can prove migrated from outside of the Premises into the Premises, unless in any case, the presence of such Hazardous Materials (x) is the result of a breach by Tenant of any of its obligations under this Lease, or (y) was caused, contributed to or exacerbated by Tenant or any Tenant Party.

(b) **Business**. Landlord acknowledges that it is not the intent of this Section 30 to prohibit Tenant from using the Premises for the Permitted Use. Tenant may operate its business according to prudent industry practices so long as the use or presence of Hazardous Materials is strictly and properly monitored according to all then applicable Environmental Requirements. As a material inducement to Landlord to allow Tenant to use Hazardous Materials in connection with its business, Tenant agrees to deliver to Landlord prior to the Commencement Date a list identifying each type of Hazardous Materials to be brought upon, kept, used, stored, handled, treated, generated on, or released or disposed of from, the Premises and setting forth any and all governmental approvals or permits required in connection with the presence, use, storage, handling, treatment, generation, release or disposal of such Hazardous Materials on or from the Premises ("**Hazardous Materials List**"). Tenant shall deliver to Landlord an updated Hazardous Materials List at any additional time that Tenant is required to deliver a Hazardous Materials List to any Governmental Authority (e.g., the fire department). To the extent related to the Premises, Tenant shall deliver to Landlord true and correct copies of the following documents (the "**Haz Mat Documents**") relating to the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials prior to the Commencement Date, or if unavailable at that time, concurrent with the receipt from or submission to a Governmental Authority: permits; approvals; reports and correspondence; storage and management plans, notice of violations of any Legal Requirements; plans relating to the installation of any storage tanks to be installed in or under the Project (provided, said installation of tanks shall only be permitted after Landlord has given Tenant its written consent to do so, which consent may be withheld in Landlord's sole and absolute discretion); all closure plans or any other documents required by any and all federal, state and local Governmental Authorities for any storage tanks installed in, on or under the Project for the closure of any such tanks; and a Surrender Plan (to the extent surrender in accordance with Section 28 cannot be accomplished in 3 months). Tenant is not required, however, to provide Landlord with any portion(s) of the Haz Mat Documents containing information of a proprietary nature which, in and of themselves, do not contain a reference to any Hazardous Materials or hazardous activities. It is not the intent of this Section to provide Landlord with information which could be detrimental to Tenant's business should such information become known to Tenant's competitors.

(c) **Tenant Representation and Warranty**. Tenant hereby represents and warrants to Landlord that (i) neither Tenant nor any of its legal predecessors has been required by any prior landlord, lender or Governmental Authority at any time to take remedial action in connection with Hazardous Materials contaminating a property which contamination was permitted by Tenant of such predecessor or resulted from Tenant's or such predecessor's action or use of the property in question, and (ii) Tenant is not subject to any enforcement order issued by any Governmental Authority in connection with the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials (including, without limitation, any order related to the failure to make a required reporting to any Governmental Authority). If Landlord determines that this representation and warranty was not true as of the date of this lease, Landlord shall have the right to terminate this Lease in Landlord's sole and absolute discretion.

(d) **Testing**. Landlord shall have the right to conduct annual tests of the Premises to determine whether any contamination of the Premises or the Project has occurred as a result of Tenant's use. Tenant shall be required to pay the cost of such annual test of the Premises if there is a violation of this Section 30 or if contamination for which Tenant is responsible under this Section 30 is identified; provided, however, that if Tenant conducts its own tests of the Premises using third party contractors and test procedures acceptable to Landlord which tests are certified to Landlord, Landlord shall accept such tests in lieu of the annual tests to be paid for by Tenant. In addition, at any time, and from time to time, prior to the expiration or earlier termination of the Term, Landlord shall have the right to conduct appropriate tests of the Premises and the Project to determine if contamination has occurred as a result of Tenant's use of the Premises. In connection with such testing, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such non-proprietary information concerning the use of Hazardous Materials in or about the Premises by Tenant or any Tenant Party. If contamination has occurred for which Tenant is liable under this Section 30, Tenant shall pay all costs to conduct such tests. If no such contamination is found, Landlord shall pay the costs of such tests (which shall not constitute an Operating Expense). Landlord shall provide Tenant with a copy of all third party, non-confidential reports and tests of the Premises made by or on behalf of Landlord during the Term without representation or warranty and subject to a confidentiality agreement. Tenant shall, at its sole cost and expense, promptly and satisfactorily remediate any environmental conditions identified by such testing for which Tenant is responsible under this Section 30 in accordance with all Environmental Requirements. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights which Landlord may have against Tenant.

(e) **Intentionally Omitted**.

(f) **Underground Tanks**. Tenant shall have no right to use or install any underground or other storage tanks at the Project.

(g) **Tenant's Obligations**. Tenant's obligations under this Section 30 shall survive the expiration or earlier termination of this Lease. During any period of time after the expiration or earlier termination of this Lease required by Tenant or Landlord to complete the removal from the Premises of any Hazardous Materials for which Tenant is responsible under this Lease (including, without limitation, the release and termination of any licenses or permits restricting the use of the Premises and the completion of the approved Surrender Plan), Tenant shall continue to pay the full Rent in accordance with this Lease for any portion of the Premises not relet by Landlord in Landlord's sole discretion, which Rent shall be prorated daily.

(h) **Definitions**. As used herein, the term "**Environmental Requirements**" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any Governmental Authority regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the Project, or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. As used herein, the term "**Hazardous Materials**" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, or regulated by reason of its impact or potential impact on humans, animals and/or the environment under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "**operator**" of Tenant's "**facility**" and the "**owner**" of all Hazardous Materials brought on the Premises by Tenant or any Tenant Party, and the wastes, by-products, or residues generated, resulting, or produced therefrom.

31. **Tenant's Remedies/Limitation of Liability**. Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within 30 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 30 days, then after such period of time as is reasonably necessary). Upon any default by Landlord, Tenant shall give notice by registered or certified mail to any Holder of a Mortgage covering the Premises and to any landlord of any lease of property in or on which the Premises are located and Tenant shall offer such Holder and/or landlord a reasonable opportunity to cure the default, including time to obtain possession of the Project by power of sale or a judicial action if such should prove necessary to effect a cure; provided Landlord shall have furnished to Tenant in writing the names and addresses of all such persons who are to receive such notices. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder.

All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "**Landlord**" in this Lease shall mean only the owner for the time being of the Premises. Upon the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Term upon each new owner for the duration of such owner's ownership.

32. **Inspection and Access**. Landlord and its agents, representatives, and contractors may enter the Premises at any reasonable time to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord and Landlord's representatives may enter the Premises during business hours on not less than 48 hours advance written notice (except in the case of emergencies in which case no such notice shall be required and such entry may be at any time) for the purpose of effecting any such repairs, inspecting the Premises, showing the Premises to prospective purchasers and, during the last year of the Term, to prospective tenants or for any other business purpose. Landlord may erect a suitable sign on the Premises stating that the Project is available for sale and/or, during the last 12 months of the Term, that the Premises are available for lease. Landlord may grant easements, make public dedications, designate Common Areas and create restrictions on or about the Premises, provided that no such easement, dedication, designation or restriction materially, adversely affects (i) Tenant's use of the Premises for the Permitted Use, (ii) Tenant's occupancy of or Tenant's access to or from the Premises, or (iii) Tenant's parking rights under Section 10. At Landlord's request, Tenant shall execute such instruments as may be necessary for such easements, dedications or restrictions. Tenant shall at all times, except in the case of emergencies, have the right to escort Landlord or its agents, representatives, contractors or guests while the same are in the Premises, provided such escort does not materially and adversely affect Landlord's access rights hereunder.

33. **Security**. Tenant acknowledges and agrees that security devices and services, if any, while intended to deter crime may not in given instances prevent theft or other criminal acts and that Landlord is not providing any security services with respect to the Premises. Tenant agrees that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises. Tenant shall be solely responsible for the personal safety of Tenant's officers, employees, agents, contractors, guests and invitees while any such person is in, on or about the Premises and/or the Project. Tenant shall at Tenant's cost obtain insurance coverage to the extent Tenant desires protection against such criminal acts.

34. **Force Majeure**. Except for the payment of Rent, neither Landlord nor Tenant shall be responsible or liable for delays in the performance of its obligations hereunder when caused by, related to, or arising out of acts of God, sinkholes or subsidence, strikes, lockouts, or other labor disputes, embargoes, quarantines, weather, national, regional, or local disasters, calamities, or catastrophes, inability to obtain labor or materials (or reasonable substitutes therefor) at reasonable costs or failure of, or inability to obtain, utilities necessary for performance, governmental restrictions, orders, limitations, regulations, or controls, national emergencies, delay in issuance or revocation of permits, enemy or hostile governmental action, terrorism, insurrection, riots, civil disturbance or commotion, fire or other casualty, and other causes or events beyond their reasonable control ("**Force Majeure**").

35. **Brokers**. Landlord and Tenant each represents and warrants that it has not dealt with any broker, agent or other person (collectively, "**Broker**") in connection with this transaction and that no Broker brought about this transaction, other than Hughes Marino and Cushman & Wakefield. Landlord and Tenant each hereby agree to indemnify and hold the other harmless from and against any claims by any Broker, other than the broker, if any named in this Section 35, claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this leasing transaction.

36. **Limitation on Landlord's Liability**. NOTWITHSTANDING ANYTHING SET FORTH HEREIN OR IN ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT TO THE CONTRARY: (A) LANDLORD SHALL NOT BE LIABLE TO TENANT OR ANY OTHER PERSON FOR (AND TENANT AND EACH SUCH OTHER PERSON ASSUME ALL RISK OF) LOSS, DAMAGE OR INJURY, WHETHER ACTUAL OR CONSEQUENTIAL TO: TENANT'S PERSONAL PROPERTY OF EVERY KIND AND DESCRIPTION, INCLUDING, WITHOUT LIMITATION TRADE FIXTURES, EQUIPMENT, INVENTORY, SCIENTIFIC RESEARCH, SCIENTIFIC EXPERIMENTS, LABORATORY ANIMALS, PRODUCT, SPECIMENS, SAMPLES, AND/OR SCIENTIFIC, BUSINESS, ACCOUNTING AND OTHER RECORDS OF EVERY KIND AND DESCRIPTION KEPT AT THE PREMISES AND ANY AND ALL INCOME DERIVED OR DERIVABLE THEREFROM; (B) THERE SHALL BE NO PERSONAL RECOURSE TO LANDLORD FOR ANY ACT OR OCCURRENCE IN, ON OR ABOUT THE PREMISES OR ARISING IN ANY WAY UNDER THIS LEASE OR ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT WITH RESPECT TO THE SUBJECT MATTER HEREOF AND ANY LIABILITY OF LANDLORD HEREUNDER SHALL BE STRICTLY LIMITED SOLELY TO LANDLORD'S INTEREST IN THE PROJECT OR ANY PROCEEDS FROM SALE OR CONDEMNATION THEREOF AND ANY INSURANCE PROCEEDS PAYABLE IN RESPECT OF LANDLORD'S INTEREST IN THE PROJECT OR IN CONNECTION WITH ANY SUCH LOSS; AND (C) IN NO EVENT SHALL ANY PERSONAL LIABILITY BE ASSERTED AGAINST LANDLORD IN CONNECTION WITH THIS LEASE NOR SHALL ANY RECOURSE BE HAD TO ANY OTHER PROPERTY OR ASSETS OF LANDLORD OR ANY OF LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS. UNDER NO CIRCUMSTANCES SHALL LANDLORD OR ANY OF LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS BE LIABLE FOR INJURY TO TENANT'S BUSINESS OR FOR ANY LOSS OF INCOME OR PROFIT THEREFROM.

Notwithstanding any contrary provision of this Lease, neither party shall be liable to the other party for any consequential damages arising under this Lease; provided that this sentence shall not apply to Landlord's damages (x) as expressly provided for in Section 8, and/or (y) in connection with Tenant's obligations as more fully set forth in Section 30. In no event shall the foregoing limit the damages to which Landlord is entitled under Section 21(c)(ii)(A)-(E).

37. **Severability**. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in effect to such illegal, invalid or unenforceable clause or provision as shall be legal, valid and enforceable.

38. **Signs; Exterior Appearance**. Tenant shall not, without the prior written consent of Landlord, which may be granted or withheld in Landlord's reasonable discretion: (i) attach any awnings, exterior lights, decorations, balloons, flags, pennants, banners, painting or other projection to any outside wall of the Project, (ii) use any curtains, blinds, shades or screens other than Landlord's standard window coverings, (iii) coat or otherwise sunscreen the interior or exterior of any windows, (iv) place any bottles, parcels, or other articles on the window sills, (v) place any equipment, furniture or other items of personal property on any exterior balcony, or (vi) paint, affix or exhibit on any part of the Premises or the Project any signs, notices, window or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises (other than as expressly required by Legal Requirements).

Tenant shall have the exclusive right to display, at Tenant's cost and expense, a sign bearing Tenant's name and/or logo (a "**Building Sign**") at a location on the top of the Building selected by Tenant and reasonably acceptable to Landlord. Notwithstanding the foregoing, Tenant acknowledges and agrees that each Building Sign including, without limitation, the size, color and type, shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, shall be consistent with Landlord's signage program at the Project and shall be subject to any and all other required approvals and applicable Legal Requirements. Tenant shall be responsible, at Tenant's sole cost and expense, for the maintenance of the Building Sign, for the removal of the Building Sign at the expiration or earlier termination of this Lease and for the repair of all damage resulting from such removal. The Building Sign shall be personal to Cue, Inc., except that such right may be assigned in connection with any Permitted Assignment.

Tenant shall, at Tenant's sole cost and expense, have the exclusive right to install a sign bearing Tenant's name on the monument sign serving the Building (each, a "**Monument Sign**"). Tenant acknowledges and agrees that Tenant's signage on each Monument Sign including, without limitation, the location, size, color and type shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, shall be subject to and consistent with Landlord's signage program at the Project and shall be subject to any and all other required approvals and applicable Legal Requirements. Tenant shall be responsible, at Tenant's sole cost and expense, for the maintenance of Tenant's signage on each Monument Sign, for the removal of Tenant's signage from each Monument Sign at the expiration or earlier termination of this Lease and for the repair of all damage resulting from such removal. The Monument Sign shall be personal to Cue, Inc., except that such right may be assigned in connection with any Permitted Assignment.

39. **Right to Extend Term**. Tenant shall have the right to extend the Term of this Lease upon the following terms and conditions:

(a) **Extension Rights**. Tenant shall have 1 right (the "**Extension Right**") to extend the term of this Lease for 5 years (the "**Extension Term**") on the same terms and conditions as this Lease (other than with respect to Base Rent and the Work Letter) by giving Landlord written notice of its election to exercise each Extension Right ("**Election Notice**") at least 12 months prior to the expiration of the Base Term of this Lease ("**Exercise Date**").

Upon the commencement of the Extension Term, Base Rent shall be payable at the Market Rate (as defined below). Base Rent shall thereafter be adjusted on each annual anniversary of the commencement of such Extension Term by a percentage as determined by Landlord and agreed to by Tenant at the time the Market Rate is determined. As used herein, "**Market Rate**" shall mean the rate that comparable landlords of Class A buildings have accepted in current transactions from non-equity (i.e., not being offered equity in the buildings) and nonaffiliated tenants of similar financial strength for space of comparable size, quality (including all Tenant Improvements, Alterations and other improvements) and floor height in comparable laboratory/office buildings in the central San Diego submarkets for a comparable term, with the determination of the Market Rate to take into account all relevant factors, including tenant inducements, views, available amenities (including, without limitation, the Alexandria Regional Amenities (as defined in Section 40 below), age of the Building, age of mechanical systems serving the Premises, parking costs, leasing commissions, allowances or concessions, if any.

Tenant shall exercise the Extension Right, if at all, as follows: (i) Tenant shall deliver written notice to Landlord (the "**Interest Notice**") not more than 15 months nor less than 14 months prior to the expiration of the Base Term of the Lease stating that Tenant may be interested in exercising its Extension Right; (ii) Landlord shall deliver written notice (the "**Option Rent Notice**") to Tenant within 30 days after Landlord's receipt of the Interest Notice setting forth Landlord's good faith determination of the Market Rate and escalations; and (iii) if Tenant wishes to exercise its Extension Right, Tenant shall, on or before the Exercise Date, exercise the Extension Right by delivering an Election Notice to Landlord. Concurrently with Tenant's delivery of the Election Notice to Landlord, Tenant may object, in writing (the "**Objection Notice**"), to Landlord's determination of the Market Rate set forth in the Option Rent Notice, in which event such Market Rate shall be determined by arbitration pursuant to Section 39(b) below). If Tenant does not deliver an Objection Notice pursuant to the immediately preceding sentence, Tenant shall be deemed to have accepted Landlord's determination of the Market Rate set forth in the Option Rent Notice. Tenant acknowledges and agrees that, if Tenant has delivered an Election Notice to Landlord pursuant to this paragraph, Tenant shall have no right thereafter to rescind such Election Notice or elect not to extend the term of the Lease for the Extension Term subject to the Election Notice.

(b) **Arbitration**.

(i) Within 10 days of Tenant's notice to Landlord of its election (or deemed election) to arbitrate Market Rate and escalations, each party shall deliver to the other a proposal containing the Market Rate and escalations that the submitting party believes to be correct ("**Extension Proposal**"). If either party fails to timely submit an Extension Proposal, the other party's submitted proposal shall determine the Base Rent and escalations for the Extension Term. If both parties submit Extension Proposals, then Landlord and Tenant shall meet within 7 days after delivery of the last Extension Proposal and make a good faith attempt to mutually appoint a single Arbitrator (and defined below) to determine the Market Rate and escalations. If Landlord and Tenant are unable to agree upon a single Arbitrator, then each shall, by written notice delivered to the other within 10 days after the meeting, select an Arbitrator. If either party fails to timely give notice of its selection for an Arbitrator, the other party's submitted proposal shall determine the Base Rent for the Extension Term. The 2 Arbitrators so appointed shall, within 5 business days after their appointment, appoint a third Arbitrator. If the 2 Arbitrators so selected cannot agree on the selection of the third Arbitrator within the time above specified, then either party, on behalf of both parties, may request such appointment of such third Arbitrator by application to any state court of general jurisdiction in the jurisdiction in which the Premises are located, upon 10 days prior written notice to the other party of such intent.

(ii) The decision of the Arbitrator(s) shall be made within 30 days after the appointment of a single Arbitrator or the third Arbitrator, as applicable. The decision of the single Arbitrator shall be final and binding upon the parties. The arbitrator(s) must choose between the Landlord's Extension Proposal and the Tenant's Extension Proposal and may not compromise between the two or select some other amount. Each party shall pay the fees and expenses of the Arbitrator appointed by or on behalf of such party and the fees and expenses of the third Arbitrator shall be borne equally by both parties. If the Market Rate and escalations are not determined by the first day of the Extension Term, then Tenant shall pay Landlord Base Rent in an amount equal to the Base Rent in effect immediately prior to the Extension Term and increased by the Rent Adjustment Percentage until such determination is made. After the determination of the Market Rate and escalations, the parties shall make any necessary adjustments to such payments made by Tenant. Landlord and Tenant shall then execute an amendment recognizing the Market Rate and escalations for the Extension Term.

(iii) An "**Arbitrator**" shall be any person appointed by or on behalf of either party or appointed pursuant to the provisions hereof and: (i) shall be (A) a member of the American Institute of Real Estate Appraisers with not less than 10 years of experience in the appraisal of improved office and high tech industrial real estate in the greater San Diego metropolitan area, or (B) a licensed commercial real estate broker with not less than 15 years' experience representing landlords and/or tenants in the leasing of high tech or life sciences space in the greater San Diego metropolitan area, (ii) devoting substantially all of their time to professional appraisal or brokerage work, as applicable, at the time of appointment and (iii) be in all respects impartial and disinterested.

(c) **Rights Personal**. The Extension Right is personal to Tenant and is not assignable without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in this Lease, except that they may be assigned in connection with any Permitted Assignment of this Lease.

(d) **Exceptions**. Notwithstanding anything set forth above to the contrary, the Extension Right shall, at Landlord's option, not be in effect and Tenant may not exercise the Extension Right:

(i) during any period of time that Tenant is in Default under any provision of this Lease; or

(ii) if Tenant has been in Default under any provision of this Lease 3 or more times, whether or not the Defaults are cured, during the 12 month period immediately prior to the date that Tenant intends to exercise the Extension Right, whether or not the Defaults are cured.

(e) **No Extensions**. The period of time within which the Extension Right may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Extension Right.

(f) **Termination**. The Extension Right shall, at Landlord's option, terminate and be of no further force or effect even after Tenant's due and timely exercise of the Extension Right, if, after such exercise, but prior to the commencement date of the Extension Term, (i) Tenant fails to timely cure any default by Tenant under this Lease; or (ii) Tenant has Defaulted 3 or more times during the period from the date of the exercise of the Extension Right to the date of the commencement of the Extension Term, whether or not such Defaults are cured.

40. **The Alexandria Regional Amenities**.

(a) **Generally**. Located at project commonly known as 10996 Torreyana Road, San Diego, California ("**The Alexandria**"), which is owned by an affiliate of Landlord ("**The Alexandria Landlord**"), are certain amenities which include, without limitation, shared conference facilities (the "**The Alexandria Shared Conference Facilities**"), a fitness center and restaurant (collectively, the "**The Alexandria Amenities**"). Located at the project commonly known as 10290 Campus Point and 10300 Campus Point Drive, San Diego, California (collectively, the "**Campus Point Project**"), which is owned by another affiliate or affiliates of Landlord (collectively, the "**Campus Point Landlord**"), are certain amenities which include, without limitation, shared conference facilities (the "**Campus Point Shared Conference Facilities**"), a fitness center and restaurant (collectively, the "**Campus Point Amenities**"). The Alexandria Shared Conference Facilities and the Campus Point Shared Conference Facilities may be collectively referred to herein as the "**Shared Conference Facilities**." The Alexandria Amenities and the Campus Point Amenities may be collectively referred to herein as the "**Alexandria Regional Amenities**." The Alexandria Regional Amenities are available for non-exclusive use by (a) Tenant, (b) other tenants of the Project, (c) Landlord, (d) the tenants of The Alexandria Landlord and the Campus Point Landlord, (e) The Alexandria Landlord, (f) other affiliates of Landlord, The Alexandria Landlord, the Campus Point Landlord and Alexandria Real Estate Equities, Inc. ("**ARE**"), (g) the tenants of such other affiliates of Landlord, The Alexandria Landlord, the Campus Point Landlord and ARE, and (h) any other parties permitted by The Alexandria Landlord and Campus Point Landlord (collectively, "**Users**"). Landlord, The Alexandria Landlord, Campus Point Landlord, ARE, and all affiliates of Landlord, Torreyana and ARE may be referred to collectively herein as the "**ARE Parties**." Notwithstanding anything to the contrary contained herein, Tenant acknowledges and agrees that (i) The Alexandria Landlord shall have the right, at the sole discretion of The Alexandria Landlord, to not make The Alexandria Amenities available for use by some or all currently contemplated Users (including Tenant), and Campus Point Landlord shall have the right, at the sole discretion of Campus Point Landlord, to not make the Campus Point Amenities available for use by some or all currently contemplated Users (including Tenant). The Alexandria Landlord and Campus Point Landlord shall have the sole right to determine all matters related to The Alexandria Amenities and the Campus Point Amenities, respectively, including, without limitation, relating to the reconfiguration, relocation, modification or removal of any of The Alexandria Amenities or the Campus Point Amenities, respectively, and/or to revise, expand or discontinue any of the services (if any) provided in connection with The Alexandria Amenities or the Campus Point Amenities, respectively. Tenant acknowledges and agrees that Landlord has not made any representations or warranties regarding the availability of the Alexandria Regional Amenities and that Tenant is not entering into this Lease relying on the continued availability of the Alexandria Regional Amenities to Tenant.

(b) **License**. Commencing on the Rent Commencement Date, and so long as The Alexandria, the Campus Point Project and the Project continue to be owned by affiliates of ARE, Tenant shall have the non-exclusive right to the use of the available Alexandria Regional Amenities in common with other Users pursuant to the terms of this Section 40. Fitness center passes shall be issued to Tenant for all full time employees of Tenant employed at the Premises. Commencing on the Rent Commencement Date, Tenant shall commence paying Landlord a fixed fee during the Base Term equal to $0.08 per rentable square foot of the Premises per month ("**Amenities Fee**"), which Amenities Fee shall by payable on the first day of each month during the Term whether or not Tenant elects to use any or all of the Alexandria Regional Amenities. The Amenities Fee shall be increased annually on each anniversary of the Rent Commencement Date by 3%. With respect to the Extension Term, if exercised by Tenant, Landlord may impose a market fee in connection with the Alexandria Regional Amenities. If both the Shared Conference Facilities and the fitness center at The Alexandria become materially unavailable for use by Tenant (for any reason other than a Default by Tenant under this Lease or the default by Tenant of any agreement(s) relating to the use of the Amenities by Tenant) for a period in excess of 30 consecutive days, then, commencing on the date that both the Shared Conference Facilities and the fitness center at The Alexandria in their entirety become materially unavailable for use by Tenant and continuing for the period that both the Shared Conference Facilities and the fitness center at The Alexandria in their entirety remain materially unavailable for use by Tenant, the Amenities Fee then-currently payable by Tenant shall be abated.

(c) **Shared Conference Facilities**. Use by Tenant of Shared Conference Facilities, the restaurant at The Alexandria and the restaurant at the Campus Point Project shall be in common with other Users with scheduling procedures reasonably determined by The Alexandria Landlord and the Campus Point Landlord, respectively. The Alexandria Landlord and the Campus Point Landlord, respectively, reserve the right to exercise their reasonable discretion in the event of conflicting scheduling requests among Users. Tenant hereby acknowledges that (i) Biocom/San Diego, a California non-profit corporation ("**Biocom**") has the right to reserve The Alexandria Shared Conference Facilities and any reservable dining area(s) included within The Alexandria Amenities for up to 50% of the time that The Alexandria Shared Conference Facilities and reservable dining area(s) are available for use by Users each calendar month, and (ii) Illumina, Inc., a Delaware corporation, has the exclusive use of the main conference room within The Alexandria Shared Conference Facilities for up to 4 days per calendar month.

Any vendors engaged by Tenant in connection with Tenant's use of the Shared Conference Facilities shall be professional licensed vendors. The Alexandria Landlord and the Campus Point Landlord, respectively, shall have the right to approve any vendors utilized by Tenant in connection with Tenant's use of the Shared Conference Facilities. Prior to any entry by any such vendor onto The Alexandria or the Campus Point Project, Tenant shall deliver to Landlord a copy of the contract between Tenant and such vendor and certificates of insurance from such vendor evidencing industry standard commercial general liability, automotive liability, and workers' compensation insurance. Tenant shall cause all such vendors utilized by Tenant to provide a certificate of insurance naming Landlord, ARE, The Alexandria Landlord and the Campus Point Landlord as additional insureds under the vendor's liability policies. Notwithstanding the foregoing, Tenant shall be required to use the food service operator used by The Alexandria Landlord at The Alexandria and by the Campus Point Landlord at the Campus Point Project for any food service or catered events held by Tenant in the respective Shared Conference Facilities.

Tenant shall, at Tenant's sole cost and expense, (i) be responsible for the set-up of the Shared Conference Facilities in connection with Tenant's use (including, without limitation ensuring that Tenant has a sufficient number of chairs and tables and the appropriate equipment), and (ii) surrender the Shared Conference Facilities after each time that Tenant uses the Shared Conference Facilities free of Tenant's personal property, in substantially the same set up and same condition as received, and free of any debris and trash. If Tenant fails to restore and surrender the Shared Conference Facilities as required by sub-section (ii) of the immediately preceding sentence, such failure shall constitute a "**Shared Facilities Default**." Each time that Landlord reasonably determines that Tenant has committed a Shared Facilities Default, Tenant shall be required to pay Landlord a penalty within 5 days after notice from Landlord of such Shared Facilities Default. The penalty payable by Tenant in connection with the first Shared Facilities Default shall be $200. The penalty payable shall increase by $50 for each subsequent Shared Facilities Default (for the avoidance of doubt, the penalty shall be $250 for the second Shared Facilities Default, shall be $300 for the third Shared Facilities Default, etc.). In addition to the foregoing, Tenant shall be responsible for reimbursing The Alexandria Landlord, the Campus Point Landlord or Landlord, as applicable, for all costs expended by The Alexandria Landlord, the Campus Point Landlord or Landlord, as applicable, in repairing any damage to the Shared Conference Facilities, the Alexandria Regional Amenities, The Alexandria or the Campus Point Project caused by Tenant or any Tenant Related Party. The provisions of this Section 40(c) shall survive the expiration or earlier termination of this Lease.

(d) **Rules and Regulations**. Tenant shall be solely responsible for paying for any and all ancillary services (e.g., audio visual equipment) provided to Tenant, all food services operators and any other third party vendors providing services to Tenant at The Alexandria or the Campus Point Project. Tenant shall use the Alexandria Regional Amenities (including, without limitation, The Alexandria Shared Conference Facilities and the Campus Point Shared Conference Facilities) in compliance with all applicable Legal Requirements and any rules and regulations imposed by The Alexandria Landlord or the Campus Point Landlord, respectively, or Landlord from time to time and in a manner that will not interfere with the rights of other Users. The use of the Alexandria Regional Amenities other than the Shared Conference Facilities by employees of Tenant shall be in accordance with the terms and conditions of the standard licenses, indemnification and waiver agreement required by The Alexandria Landlord, the Campus Point Landlord or any operator of the Alexandria Regional Amenities, as applicable, to be executed by all persons wishing to use such Alexandria Regional Amenities. Neither The Alexandria Landlord, the Campus Point Landlord nor Landlord (nor, if applicable, any other affiliate of Landlord) shall have any liability or obligation for the breach of any rules or regulations by other Users with respect to the Alexandria Regional Amenities. Tenant shall not make any alterations, additions, or improvements of any kind to any of the Alexandria Regional Amenities, The Alexandria or the Campus Point Project.

Tenant acknowledges and agrees that The Alexandria Landlord and the Campus Point Landlord, shall have the right at any time and from time to time to reconfigure, relocate, modify or remove any of the Alexandria Regional Amenities at The Alexandria or the Campus Point Project, respectively, and/or to revise, expand or discontinue any of the services (if any) provided in connection with the Alexandria Regional Amenities.

(e) **Waiver of Liability and Indemnification**. Tenant warrants that it will use reasonable care to prevent damage to property and injury to persons while on The Alexandria or the Campus Point Project. Tenant waives any claims it or any Tenant Parties may have against any ARE Parties relating to, arising out of or in connection with the use by Tenant and/or any Tenant Parties of the Alexandria Regional Amenities and any entry by Tenant and/or any Tenant Parties onto The Alexandria of the Campus Point Project, and Tenant releases and exculpates all ARE Parties from any liability relating to, arising out of or in connection with the Alexandria Regional Amenities and any entry by Tenant and/or any Tenant Parties onto The Alexandria and/or the Campus Point Project, except, in each case, to the extent caused by the willful misconduct or gross negligence of any ARE Party. Tenant hereby agrees to indemnify, defend, and hold harmless the ARE Parties from any claim of damage to property or injury to person relating to, arising out of or in connection with (i) the use of the Alexandria Regional Amenities by Tenant or any Tenant Parties, and (ii) any entry by Tenant and/or any Tenant Parties onto The Alexandria and/or the Campus Point Project, except to the extent caused by the willful misconduct or negligence of any ARE Party. The provisions of this Section 40 shall survive the expiration or earlier termination of this Lease.

(f) **Insurance**. As of the Rent Commencement Date, Tenant shall cause The Alexandria Landlord and the Campus Point Landlord to be named as additional insureds under the commercial general liability policy of insurance that Tenant is required to maintain pursuant to Section 17 of this Lease.

41. **Roof Equipment**. Tenant shall have the right at its sole cost and expense, subject to compliance with all Legal Requirements, to install, maintain, and remove on the top of the roof of the Building one or more satellite dishes, communication antennae, or other equipment (all of which having a diameter and height acceptable to Landlord) for the transmission or reception of communication of signals as Tenant may from time to time desire (collectively, "**Roof Equipment**") on the following terms and conditions:

(a) **Requirements**. Tenant shall submit to Landlord (i) the plans and specifications for the installation of the Roof Equipment, (ii) copies of all required governmental and quasi-governmental permits, licenses, and authorizations that Tenant will and must obtain at its own expense, with the cooperation of Landlord, if necessary for the installation and operation of the Roof Equipment, and (iii) an insurance policy or certificate of insurance evidencing insurance coverage as required by this Lease and any other insurance as reasonably required by Landlord for the installation and operation of the Roof Equipment. Landlord shall not unreasonably withhold or delay its approval for the installation and operation of the Roof Equipment; provided, however, that Landlord may reasonably withhold its approval if the installation or operation of the Roof Equipment (A) may damage the structural integrity of the Building, (B) may void, terminate, or invalidate any applicable roof warranty, (C) may reduce the leasable space in the Building, or (D) is not properly screened from the viewing public.

(b) **No Damage to Roof**. If installation of the Roof Equipment requires Tenant to make any roof cuts or perform any other roofing work, such cuts shall only be made in the manner designated in writing by Landlord; and any such installation work (including any roof cuts or other roofing work) shall be performed by Tenant, at Tenant's sole cost and expense by a roofing contractor designated by Landlord. If Tenant or its agents shall otherwise cause any damage to the roof during the installation, operation, and removal of the Roof Equipment such damage shall be repaired promptly at Tenant's expense and the roof shall be restored in the same condition it was in before the damage. Landlord shall not charge Tenant Additional Rent for the installation and use of the Roof Equipment. If, however, Landlord's insurance premium or Tax assessment increases as a result of the Roof Equipment, Tenant shall pay such increase as Additional Rent within ten (10) days after receipt of a reasonably detailed invoice from Landlord. Tenant shall not be entitled to any abatement or reduction in the amount of Rent payable under this Lease if for any reason Tenant is unable to use the Roof Equipment. In no event whatsoever shall the installation, operation, maintenance, or removal of the Roof Equipment by Tenant or its agents void, terminate, or invalidate any applicable roof warranty.

(c) **Protection**. The installation, operation, and removal of the Roof Equipment shall be at Tenant's sole risk. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims, costs, damages, liabilities and expenses (including, but not limited to, attorneys' fees) of every kind and description that may arise out of or be connected in any way with Tenant's installation, operation, or removal of the Roof Equipment.

(d) **Removal**. At the expiration or earlier termination of this Lease or the discontinuance of the use of the Roof Equipment by Tenant, Tenant shall, at its sole cost and expense, remove the Roof Equipment from the Building. Tenant shall leave the portion of the roof where the Roof Equipment was located in good order and repair, reasonable wear and tear excepted. If Tenant does not so remove the Roof Equipment, Tenant hereby authorizes Landlord to remove and dispose of the Roof Equipment and charge Tenant as Additional Rent for all costs and expenses incurred by Landlord in such removal and disposal. Tenant agrees that Landlord shall not be liable for any Roof Equipment or related property disposed of or removed by Landlord.

(e) **No Interference**. The Roof Equipment shall not interfere with the proper functioning of any telecommunications equipment or devices that have been installed or will be installed by Landlord.

(f) **Relocation**. Landlord shall have the right, at its expense and after 60 days prior notice to Tenant, to relocate the Roof Equipment to another site on the roof of the Building as long as such site reasonably meets Tenant's sight line and interference requirements and does not unreasonably interfere with Tenant's use and operation of the Roof Equipment.

(g) **Access**. Landlord grants to Tenant the right of ingress and egress on a 24 hour 7 day per week basis to install, operate, and maintain the Roof Equipment. Before receiving access to the roof of the Building, Tenant shall give Landlord at least 24 hours' advance written or oral notice, except in emergency situations, in which case 2 hours' advance oral notice shall be given by Tenant. Landlord shall supply Tenant with the name, telephone, and pager numbers of the contact individual(s) responsible for providing access during emergencies.

(h) **Appearance**. If permissible by Legal Requirements, the Roof Equipment shall be painted the same color as the Building so as to render the Roof Equipment virtually invisible from ground level.

(i) **No Assignment**. The right of Tenant to use and operate the Roof Equipment shall be personal solely to Cue Inc., and (i) no other person or entity shall have any right to use or operate the Roof Equipment, other than in connection with a Permitted Assignment, and (ii) Tenant shall not assign, convey, or otherwise transfer to any person or entity any right, title, or interest in all or any portion of the Roof Equipment or the use and operation thereof, other than in connection with a Permitted Assignment.

42. **Miscellaneous**.

(a) **Notices**. All notices or other communications between the parties shall be in writing and shall be deemed duly given upon delivery or refusal to accept delivery by the addressee thereof if delivered in person, or upon actual receipt if delivered by reputable overnight guaranty courier, addressed and sent to the parties at their addresses set forth above. Landlord and Tenant may from time to time by written notice to the other designate another address for receipt of future notices.

(b) **Joint and Several Liability**. If and when included within the term "**Tenant**," as used in this instrument, there is more than one person or entity, each shall be jointly and severally liable for the obligations of Tenant.

(c) **Financial Information**. Tenant shall furnish Landlord with true and complete copies of (i) Tenant's most recent audited annual financial statements within 90 days of the end of each of Tenant's fiscal years during the Term, (ii) Tenant's most recent unaudited quarterly financial statements within 45 days of the end of each of Tenant's first three fiscal quarters of each of Tenant's fiscal years during the Term, (iii) at Landlord's request from time to time, updated business plans, including cash flow projections and/or pro forma balance sheets and income statements, all of which shall be treated by Landlord as confidential information belonging to Tenant, and (iv) any other financial information or summaries that Tenant typically provides to its lenders or shareholders. Notwithstanding the foregoing, in no event shall Tenant be required to provide any financial information to Landlord which Tenant does not otherwise prepare (or cause to be prepared) for its own purposes. Landlord shall treat Tenant's financial information as confidential information belonging to Tenant and will not disclose the same to other than on a need-to-know basis (and with instructions that such information is to be treated as confidential) to Landlord's affiliates, legal, financial or tax advisors, consultants, potential lenders and potential purchasers and as required by Legal Requirements.

(d) **Recordation**. Neither this Lease nor a memorandum of lease shall be filed by or on behalf of Tenant in any public record. Landlord may prepare and file, and upon request by Landlord Tenant will execute, a memorandum of lease.

(e) **Interpretation**. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(f) **Not Binding Until Executed**. The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(g) **Limitations on Interest**. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(h) **Choice of Law**. Construction and interpretation of this Lease shall be governed by the internal laws of the state in which the Premises are located, excluding any principles of conflicts of laws.

(i) **Time**. Time is of the essence as to the performance of Tenant's obligations under this Lease.

(j) **OFAC**. Tenant and Landlord are currently (a) in compliance with and shall at all times during the Term of this Lease remain in compliance with the regulations of the Office of Foreign Assets Control ("**OFAC**") of the U.S. Department of Treasury and any statute, executive order, or regulation relating thereto (collectively, the "**OFAC Rules**"), (b) not listed on, and shall not during the term of this Lease be listed on, the Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, or the Sectoral Sanctions Identification List, which are all maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order, or regulation, and (c) not a person or entity with whom a U.S. person is prohibited from conducting business under the OFAC Rules.

(k) **Incorporation by Reference**. All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this Lease, such exhibits or addenda shall control, except with respect to a conflict between **Exhibit E** and this Lease in which case this Lease shall control.

(l) **Entire Agreement**. This Lease, including the exhibits attached hereto, constitutes the entire agreement between Landlord and Tenant pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, letters of intent, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements, express or implied, made to either party by the other party in connection with the subject matter hereof except as specifically set forth herein.

(m) **No Accord and Satisfaction**. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Base Rent or any Additional Rent will be other than on account of the earliest stipulated Base Rent and Additional Rent, nor will any endorsement or statement on any check or letter accompanying a check for payment of any Base Rent or Additional Rent be an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue any other remedy provided in this Lease.

(n) **Hazardous Activities**. Notwithstanding any other provision of this Lease, Landlord, for itself and its employees, agents and contractors, reserves the right to refuse to perform any repairs or services in any portion of the Premises which, pursuant to Tenant's routine safety guidelines, practices or custom or prudent industry practices, require any form of protective clothing or equipment other than safety glasses. In any such case, Tenant shall contract with parties who are acceptable to Landlord, in Landlord's reasonable discretion, for all such repairs and services, and Landlord shall, to the extent required, equitably adjust Tenant's Share of Operating Expenses in respect of such repairs or services to reflect that Landlord is not providing such repairs or services to Tenant.

(o) **Redevelopment of Project**. Tenant acknowledges that Landlord, in its sole discretion, may, subject to the terms set forth in the fourth sentence of Section 1, from time to time expand, renovate and/or reconfigure the Project as the same may exist from time to time and, in connection therewith or in addition thereto, as the case may be, from time to time without limitation: (a) change the shape, size, location, number and/or extent of any improvements, buildings, structures, lobbies, hallways, entrances, exits, parking and/or parking areas relative to any portion of the Project; (b) modify, eliminate and/or add any buildings, improvements, and parking structure(s) either above or below grade, to the Project, the Common Areas and/or any other portion of the Project and/or make any other changes thereto affecting the same; and (c) make any other changes, additions and/or deletions in any way affecting the Project and/or any portion thereof as Landlord may elect from time to time, including without limitation, additions to and/or deletions from the land comprising the Project, the Common Areas and/or any other portion of the Project; provided, however, in no event may Landlord make any changes to the Building or, other than on a temporary basis, reduce the number of parking spaces available to Tenant. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have no right to seek damages (including abatement of Rent) or to cancel or terminate this Lease because of any proposed changes, expansion, renovation or reconfiguration of the Project nor shall Tenant have the right to restrict, inhibit or prohibit any such changes, expansion, renovation or reconfiguration; provided, however, Landlord shall not change the size, dimensions, location or Tenant's Permitted Use of the Premises.

(p) **EV Charging Stations**. Landlord shall not unreasonably withhold its consent to Tenant's written request to install 1 or more electric vehicle car charging stations ("EV Stations") in the parking area exclusively serving the Premises; provided, however, that Tenant complies with all reasonable requirements, standards, rules and regulations which may be imposed by Landlord, at the time Landlord's consent is granted, in connection with Tenant's installation, maintenance, repair and operation of such EV Stations, which may include, without limitation, Landlord's designation of the location of Tenant's EV Stations, and Tenant's payment of all costs whether incurred by Landlord or Tenant in connection with the installation, maintenance, repair and operation of each Tenant's EV Station(s). Nothing contained in this paragraph is intended to increase the number of parking spaces which Tenant is otherwise entitled to use at the Project under Section 10 of this Lease nor impose any additional obligations on Landlord with respect to Tenant's parking rights at the Project.

(q) **Non-Recurring Payments**. If a time frame for the payment by Tenant of a non-recurring charge, cost or expense payable by Tenant pursuant to this Lease is not set forth in this Lease, such non-recurring charge, cost or expense shall be due within 30 days after Landlord's delivery to Tenant of written demand therefor.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT:

CUE INC.,
a California corporation

By: /s/ Ayub Khattak
Its: Chief Executive Officer

LANDLORD:

ARE-SD REGION NO. 25, LLC,
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership, managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: /s/ Gary Dean
Its: Senior Vice President RE Legal Affairs

STANDARD FORM INDUSTRIAL NET LEASE
(Single Tenant)

Summary of Basic Lease Terms

A. **Parties:** This Lease ("**Lease**"), effective October 9, 2020 ("**Effective Date**"), is made by and between **WESTCORE CG COMMERCE, LLC**, a Delaware limited liability company ("**Landlord**"), and **CUE HEALTH INC.**, a Delaware corporation ("**Tenant**"), (collectively the "**Parties**," or individually a "**Party**").

B. **Premises:** That certain real property, including all improvements therein, including that certain building consisting of approximately one hundred ninety seven thousand one hundred four (197,104) rentable square feet (the "**Building**"), commonly known by the street address of 2620 Commerce Way, Vista, California, as outlined on Exhibit A-1 attached hereto, and legally described on Exhibit A-2 attached hereto ("**Premises**").

C. **Parking**: Tenant shall be entitled to the use, at no additional charge, of all vehicle parking spaces located within the Premises ("**Parking Spaces**"). (Also see Paragraph 1.6.)

D. **Term:** The term of this Lease shall be for a period of sixty-four (64) full calendar months ("**Original Term**") commencing on April 1, 2021 ("**Commencement Date**"). The term "**Expiration Date**" shall mean July 31, 2026. For purposes of this Lease, the "**Term**" of this Lease shall refer to the Original Term, as it may be extended or renewed by any properly exercised options granted hereunder. (Also see Paragraph 2.)

E. **Early Possession**: Tenant shall have the right to occupy the Premises for the purpose of installing the Leasehold Improvements (as defined below) in the Premises in accordance with the Leasehold Improvement Exhibit attached as Exhibit B to this Lease, installing all furniture, fixtures and equipment and opening for and operating its business in the Premises from and after the date of the mutual execution and delivery of this Lease by the Parties and Tenant's delivery to Landlord of advance rent required under Paragraph G below, the Security Deposit required under Paragraph H below and the insurance certificates required under Paragraph 7 below (the "**Early Possession Date**"). Tenant acknowledges that the Parking Spaces are subject to the rights of Tesla, Inc. ("**Tesla**") to use 150 parking spaces under that certain Parking License by and between Landlord and Tesla (the "**Tesla Parking License**"), which Tesla Parking License has been terminated by Landlord effective no later than November 12, 2020. (Also see Paragraphs 2.2 and 2.3.)

F. **Base Rent:** Payable monthly, on the first day of each month during the Term, in the amount described below ("**Base Rent**"), and commencing on the Commencement Date. (Also see Paragraph 3.)

Period	Monthly Installment of Base Rent
April 1, 2021 – March 31, 2022*	$169,509.44
April 1, 2022 – March 31, 2023	$174,594.72
April 1, 2023 – March 31, 2024	$179,832.57
April 1, 2024 – March 31, 2025	$185,227.54
April 1, 2025 – March 31, 2026	$190,784.37
April 1, 2026 – July 31, 2026	$196,507.90

*Subject to abatement of monthly Base Rent for the four (4) month period commencing on April 1, 2021 and ending on July 31, 2021 as provided in Paragraph 3.1 of this Lease.

Tenant's Initial /s/ AK
Landlord's Initial /s/ DA

G. **Advance Rent:** Concurrently with Tenant's execution and delivery of this Lease, Tenant shall pay to Landlord the amount of One Hundred Sixty Nine Thousand Five Hundred Nine and 44/100 Dollars ($169,509.44) representing Tenant's first installment of Base Rent due for the Original Term.

H. **Security Deposit:** One Hundred Sixty Nine Thousand Five Hundred Nine and 44/100 Dollars ($169,509.44) ("**Security Deposit**"). (Also see Paragraph 4.)

I. **Permitted Use:** Tenant shall use and occupy the Premises solely for the purpose of general office, research and development, manufacturing and distribution uses and any ancillary uses, as may be permitted under existing laws governing the Premises and for no other use or purpose ("**Permitted Use**"). (Also see Paragraph 5.)

J. **Brokers:** The following real estate broker(s) (collectively, the "**Brokers**") and brokerage relationships exist in this transaction and are consented to by the Parties (check applicable boxes):

☑ CBRE represents Landlord exclusively ("**Landlord's Broker**");

☑ Hughes Marino represents Tenant exclusively ("**Tenant's Broker**"); or

☐ Neither Party is represented by a Broker. (Also see Paragraph 14.)

Following the execution of this Lease by both Parties, Landlord shall pay to said Broker(s) jointly, or in such separate shares as they may mutually designate in writing, a fee as set forth in a separate written agreement between Landlord and said Broker(s).

K. **Guarantor(s):** None.

L. **Tenant Insurance Coverage Minimums**:

(a) **Liability**: $2,000,000 per occurrence/$2,000,000 general aggregate

(b) **Property**: Full Replacement Cost

(c) **Umbrella**: $5,000,000.00

(d) **Business Interruption**: 12 months

(e) **Automobile Liability**: $1,000,000.00

(f) **Workers' Compensation**: As required by law

(g) **Employer's Liability**: $1,000,000.00

M. **Exhibits.** Attached hereto are Exhibits A through J, all of which constitute a part of this Lease.

This Summary of Basic Lease Terms (the "**Summary**") is intended to supplement and/or summarize the provisions set forth in the balance of this Lease. If there is any conflict between any provisions contained in this Summary and the balance of this Lease, the Summary shall control. The Summary and the balance of this Lease are, and shall be construed as, a single instrument.

Tenant's Initial /s/ AK
Landlord's Initial /s/ DA

1. **Premises and Parking**

1.1 **Letting.** Landlord leases to Tenant, and Tenant leases from Landlord, the Premises, for the Term, at the Rent (defined below), and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of square footage set forth in this Lease, or that may have been used in calculating Base Rent is an approximation which Landlord and Tenant agree is reasonable and the Base Rent based thereon is not subject to revision whether the actual square footage is more or less. For purposes of this Lease, Landlord and Tenant agree that the square footage of the Premises shall be deemed to be as set forth in Paragraph B of the Summary.

1.2 **Condition**. Tenant agrees (i) to accept the Premises on the date possession is delivered to Tenant by Landlord, and by taking possession of the Premises, Tenant shall be deemed to have accepted the Premises as then being suitable for Tenant's intended use and in good operating order, condition and repair in its then existing "AS-IS" condition, except as otherwise set forth in this Paragraph 1 and Exhibit B hereto, and (ii) that neither Landlord nor any of Landlord's agents, representatives or employees (collectively, the "**Landlord Representatives**") has made any representations as to the suitability, fitness or condition of the Premises for the conduct of Tenant's business or for any other purpose. The Leasehold Improvements (defined in Exhibit B) shall be installed in accordance with the terms and provisions of Exhibit B. Notwithstanding anything to the contrary in this Lease, Landlord shall, at its sole cost (and any expenses incurred by Landlord to comply with the provisions of this sentence shall not be included in Operating Expenses that may be charged to Tenant in any manner under this Lease), deliver the Premises to Tenant clean and free of debris on the date Landlord tenders possession of the Premises to Tenant (the "**Delivery Date**"), with the roof, all existing air conditioning and heating systems, electrical, lighting, fire sprinkler, plumbing and other systems, exterior doors and loading doors in the Premises (collectively, the "**Building Systems**"), in good operating condition on the Delivery Date and Landlord warrants that the Building Systems shall continue to operate in good working order for the period ending on the date one hundred eighty (180) days after the Delivery Date (the "**Warranty Period**"), except to the extent such failure in the Building Systems to operate in good working order is caused by Tenant's misuse or alterations to the Premises or failure to properly maintain the Building Systems as required by this Lease. If a non-compliance with such warranty exists at any time prior to the expiration of the Warranty Period, Landlord shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, commence to rectify same at Landlord's expense. If Tenant does not give Landlord written notice of a non-compliance on or before the expiration of the Warranty Period, correction of that non-compliance shall be the obligation of Tenant at Tenant's sole cost and expense.

1.3 **Compliance with Covenants, Restrictions and Building Code**. Notwithstanding anything to the contrary contained in this Lease, Landlord warrants to Tenant that (a) the Premises comply with all Applicable Laws (as defined below) in effect (and as generally enforced) on the Delivery Date, and (b) if the Premises do not comply with such warranty, Landlord shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, take such action, at Landlord's expense (and not as an Operating Expense), as may be reasonable or appropriate to rectify the non-compliance to the extent required under Applicable Laws. Provided that unless such compliance is required or triggered as a result of Tenant's specific use or Leasehold Improvements or Alterations to the Premises, Landlord shall, to the extent required by any governmental agency having jurisdiction, promptly comply, at Landlord's cost and expense except as otherwise provided herein (i.e. reimbursement of Operating Expenses under Paragraph 3.2 below), with all Applicable Laws (including, without limitation, the ADA [as defined below] and all "path of travel" requirements) which require changes to the exterior areas of the Premises (i.e., located outside of the Building).

Tenant warrants that any improvements, the Leasehold Improvements, Alterations or Utility Installations (both, as defined below) (other than those constructed by Landlord or at Landlord's direction) on or in the Premises, which are constructed or installed by Tenant (collectively, the "**Tenant Improvements**"), shall comply with all Applicable Laws (as defined in Paragraph 1.4 below) in effect (and as generally enforced) as of the construction thereof. If the Tenant Improvements or the Premises because of such Tenant Improvements do not comply with all Applicable Laws, Tenant shall, within thirty (30) days after receipt of written notice from Landlord or any governmental authority, take all necessary action to rectify the non-compliance. Landlord makes no warranty that the Permitted Use in Paragraph I of the Summary is permitted for the Premises under Applicable Laws.

1.4 **Acceptance of Premises**. Tenant acknowledges that it has made such investigations as it deems necessary with respect to the condition of the Premises (including, without limitation, the electrical and fire sprinkler systems, security, environmental aspects, seismic and earthquake requirements) and compliance with the Americans With Disabilities Act (the "**ADA**") and all applicable Federal, State, County and City zoning, environmental, municipal, county, state and federal laws, ordinances and regulations and any covenants or restrictions of record (collectively, "**Applicable Laws**") as of the Effective Date or otherwise in accordance with the provisions of Paragraph 39 below and the present and future suitability of the Premises for Tenant's intended use and is satisfied with reference thereto, and assumes all responsibility therefor as the same relate to Tenant's occupancy of the Premises and/or the terms of this Lease. Tenant acknowledges that neither Landlord nor any Landlord Representative has made any representations, warranty, estimation or promise of any kind or nature whatsoever relating to the physical condition of the Building or the Premises, and Tenant expressly warrants and represents that Tenant has relied solely on its own investigation and inspection of the Premises and the Building in its decision to enter into this Lease and let the Premises in an "AS-IS" condition.

1.5 **Tenant as Prior Owner/Occupant**. Intentionally deleted.

1.6 **Vehicle Parking**. At no additional charge, Tenant shall be entitled to use all Parking Spaces in accordance with Paragraph C of the Summary.

2. **Term**

2.1 **Term**. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in the Summary. After the Commencement Date, upon Landlord's request, Tenant shall promptly execute a "Notice of Lease Term Dates" in the form attached hereto as Exhibit E to this Lease, which shall specify the Commencement Date, the Expiration Date and certain other matters specified therein. If Tenant fails to execute a Notice of Term Dates, such failure shall not affect Tenant's obligation to commence paying Rent upon the occurrence of the Commencement Date.

2.2 **Early Possession**. Tenant shall be entitled to early occupancy of the Premises (as specified in Paragraph E of the Summary) for the purpose of installing the Leasehold Improvements and Tenant's furniture, fixtures, equipment and otherwise preparing the Premises for Tenant's occupancy and opening for and operating its business in the Premises; provided, however, that neither Landlord nor Tenant shall unreasonably interfere with the other with respect to (a) Landlord's obligations set forth in Paragraph 1.2 and (b) Tenant's rights set forth in the Leasehold Improvement Exhibit attached as Exhibit B to this Lease. Landlord and Tenant shall coordinate their respective work to be performed at the Premises during Tenant's early occupancy. Tenant shall not be obligated to pay Base Rent or Tenant's Share of Operating Expenses during such early possession period and prior to the Commencement Date. All other terms of this Lease, however (including, without limitation, the obligations to pay for all utilities and to carry the insurance required by Paragraph 7), shall be in effect during such period. Any such early possession shall not affect nor advance the Expiration Date of the Term.

2.3 **Delay in Possession**. Intentionally deleted.

2.4 **Option to Extend**. Tenant shall have two (2) options (each, an "**Option**" and, collectively, the "**Options**") to extend the Term for a period of five (5) years each (each, an "**Option Term**" and, collectively, the "**Option Terms**"), which Options shall be exercisable by written notice delivered by Tenant to Landlord as provided in this Paragraph 2.4, provided that Tenant is not then in Breach under this Lease. The Options shall be exercisable only by the originally named Tenant under this Lease (the "**Original Tenant**") or any Permitted Transferee and only if the Original Tenant and/or any Permitted Transfer is in possession of one hundred percent (100%) of the Premises.

(a) **Exercise of Option**. The Options may be exercised by Tenant, if at all, by delivering written notice (the "**Option Notice**") to Landlord not more than twelve (12) months, nor less than nine (9) months, prior to the expiration of the then Term, stating that Tenant is exercising an Option. In the event that Tenant fails to exercise an Option by timely written notice, the Options shall lapse and be of no further force or effect. Landlord, after receipt of Tenant's notice, shall deliver notice (the "**Option Rent Notice**") to Tenant within thirty (30) days of Landlord's receipt of the Option Notice setting forth the "Option Rent," as that term is defined in subparagraph (b) below, which shall be applicable to the Lease during the applicable Option Term. On or before the date ten (10) business days after Tenant's receipt of the Option Rent Notice, Tenant may, at its option, object to the Option Rent contained in the Option Rent Notice by delivering written notice thereof to Landlord, in which case the Parties shall follow the procedure, and the Option Rent shall be determined, as set forth in subparagraph (c) below. If Tenant does not so object within such ten (10) business day period, the Option Rent applicable during the Option Term shall be the amount set forth in the Option Rent Notice and the Option Rent Notice shall be binding upon Tenant.

(b) **Option Rent**. The Base Rent payable by Tenant during the Option Term (the "**Option Rent**") shall be equal to the prevailing annual market rental value for comparable industrial space in the Vista industrial submarket with approximately ten percent (10%) to twenty percent (20%) of the square feet of the Premises improved for office use and the remainder for improved for warehouse and/or manufacturing use (including additional rent and considering any "base year" or "expense stop" applicable thereto), including all escalations, at which tenants, as of the commencement of the Option Term, are leasing non-sublease, non-renewal, non-encumbered, non-equity space in comparable buildings for a comparable term, but without any consideration to specialized capital improvements made to the Premises by Tenant at its sole cost and expense. The size of the Premise and the credit of Tenant shall also be considered in determining the Option Rent.

(c) **Determination of Option Rent**. In the event Tenant timely and appropriately objects to the Option Rent, Landlord and Tenant shall attempt to agree upon the Option Rent using their best good-faith efforts. If Landlord and Tenant fail to reach agreement within ten (10) days following Tenant's objection to the Option Rent (the "**Outside Agreement Date**"), then Tenant may give written notice to Landlord that either (1) Tenant is withdrawing its exercise of the Option (the "**Revocation Notice**"), in which event the Option shall be null and void and of no further force or effect, or (2) Tenant desires to have the Option Rent determined by appraisal pursuant to the procedures set forth in subparagraphs (i) through (iv) below ("**Appraisal Notice**"). If Tenant fails to give the Appraisal Notice or the Revocation Notice on or before the Outside Agreement Date, the Option Rent applicable during the Option Term shall be the amount set forth in the Option Rent Notice.

(i) Within ten (10) days after Landlord's receipt of the Appraisal Notice in accordance with this Paragraph, Landlord and Tenant shall agree upon a list of three (3) independent, unaffiliated real estate brokers with at least ten (10) years' full-time experience brokering commercial properties within ten (10) miles of the Industrial Center. Within five (5) days after agreement upon the list of brokers, Landlord and Tenant shall meet and each shall have the right to disqualify one (1) of the brokers until only one (1) broker (the "**Arbitrator**") has not been disqualified by either Landlord or Tenant.

(ii) Within fifteen (15) days after the appointment of the Arbitrator, the Parties shall each submit their determination of the Option Rent to the Arbitrator and the Arbitrator shall independently determine the Option Rent. The Option Rent shall equal the Option Rent submitted by Landlord or Tenant that is closest to the Option Rent determined by the Arbitrator. The Arbitrator shall not divulge to Landlord or Tenant the Option Rent determined by the Arbitrator until both Parties instruct it to do so in writing. The determination of the Arbitrator in accordance with this subparagraph (c) shall be final and binding on the Parties and a judgment may be rendered thereon in a court of competent jurisdiction.

(iii) If the Parties fail to select the three (3) qualified brokers or the Arbitrator, either Landlord or Tenant by giving ten (10) days' notice to the other Party, can apply to the American Arbitration Association office in the county in which the Premises is located for the selection of the Arbitrator who meets the qualifications stated in this Paragraph.

(iv) The cost of arbitration shall be paid by Landlord and Tenant equally.

During the period requiring the adjustment of monthly Base Rent to Option Rent, Tenant shall pay, as monthly Base Rent pending such determination, one hundred five percent (105%) of the monthly Base Rent in effect for the Premises immediately prior to such adjustment; provided, however, that upon the determination of the Option Rent, Tenant shall pay Landlord the difference between the amount of monthly Base Rent Tenant actually paid and Option Rent immediately upon the determination of the Option Rent. Any amount of Base Rent Tenant has actually paid to Landlord which exceeds the Option Rent determined in accordance herewith shall be credited against Tenant's future Option Rent obligations.

3. **Rent**.

3.1 **Base Rent**. Tenant shall pay Base Rent and other rent or charges (collectively referred to from time to time as "**Rent**"), as the same may be adjusted from time to time, to Landlord in lawful money of the United States, without notice, offset or deduction, on or before the day on which it is due under the terms of this Lease. Rent for any period during the Term hereof which is for less than one (1) full month shall be prorated on the basis of a thirty (30) day month. Payment of Rent shall be made to Landlord at its address stated in, and in accordance with, the Rent Payment Instructions attached as Exhibit H to this Lease or to such other persons or at such other addresses as Landlord may from time to time designate in writing to Tenant (provided that in all events Tenant may at its election pay any Rent by electronic transfer). Notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant hereby agree that for the four (4) month period commencing on April 1, 2021 and ending on July 31, 2021, the monthly Base Rent due hereunder shall be abated; provided, that (i) Tenant is at no time in Breach under any of the terms or provisions of this Lease, and (ii) Tenant agrees that notwithstanding the foregoing abatement of monthly Base Rent, Tenant shall observe and perform all of the other terms, covenants and provisions set forth in this Lease, including without limitation, payment of all other Rent required to be paid by Tenant under this Lease.

3.2 **Operating Expenses**. Tenant shall pay to Landlord during the Term hereof, in addition to the Base Rent, all Operating Expenses, as defined below, during each calendar year of the Term of this Lease, in accordance with the following provisions:

(a) "**Operating Expenses**" are defined, for purposes of this Lease, as all costs incurred by Landlord relating to the ownership and operation of the Premises, including, without limitation, the following: (i) The costs of management, administration and operation of the Premises, including, without limitation, (A) a property management fee, accounting, and legal and accounting costs, (B) any fees or charges under any covenants, conditions and restrictions or reciprocal easement agreements recorded against the Premises and all fees, licenses and permits related to the ownership, operation and management of the Premises, and (C) the cost or repairs and replacements to the exterior areas of the Premises, including the parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, lighting facilities, fences and gates, and the roof; (ii) the cost of water systems serving the Premises, except to the extent paid directly by Tenant pursuant to Paragraph 10; (iii) security services (including security alarm systems and telephone lines), fire/life safety systems, including fire alarm and/or smoke detection, and the costs of any environmental inspections; (iv) Real Property Taxes (as defined in Paragraph 9.2) to be paid by Landlord under Paragraph 9 hereof; (v) the costs of the premiums for the insurance policies maintained by Landlord under Paragraph 7 hereof; (vi) any commercially reasonable deductible portion of an insured loss concerning the Premises (and notwithstanding anything to the contrary in this Lease, in no event shall Operating Expenses include any other deductible); (vii) replacing and/or adding improvements mandated by any governmental agency and any repairs or removals necessitated thereby amortized over its useful life according to sound accounting principles (including interest on the un-amortized balance at eight percent per annum); and (viii) the cost of any capital improvements made to the Premises necessary in order to keep the Premises in good working order or which are intended to reduce the utility expenses of the Building and then only to the extent of the actual reductions, amortized over its useful life according to sound accounting principles (including interest on the un-amortized balance as is then reasonable in the judgment of Landlord's accountants). The improvements, facilities and services identified in this Subparagraph 3.2(a) shall not impose an obligation upon Landlord to either have said improvements or facilities or to provide those services unless the Premises already has the same, Landlord already provides the services, or Landlord has agreed elsewhere in this Lease to provide the same.

Notwithstanding the foregoing, Operating Expense shall not include (1) management fees in excess of three percent (3%) of the Base Rent due under the Lease, (2) costs incurred in connection with upgrading the Building to comply with Applicable Laws in effect and being generally enforced prior to the Effective Date, except to the extent such obligations are triggered by Tenant's specific use of the Premises or Tenant Improvements in the Premises; provided, however, that a change in the manner for generally enforcing an existing law will be the equivalent of a new law, (3) except as permitted under subparagraph (vii) above with respect to Applicable Laws enacted (or generally enforced in a materially different manner) after the Effective Date, any capital expenditures relating to the structural portions of the roof (but not the roof membrane), foundation, concrete subflooring, structural components of the floor slab (not caused by Tenant's excessive load beyond slab rating), structural columns, structural walls, exterior walls of the Building and underground utilities to the point of connection to the Building (collectively, "**Structural Elements**"), (4) the cost of any capital improvements except (collectively, "**Permitted Capital Expenditures**"): (A) as permitted under subparagraphs (vii) and (viii) above, subject to paragraph (2) above, and (B) which are intended to reduce the utility expenses of the Building and then only to the extent of the actual reductions, (5) reserves of any kind, (6) costs relating to any Hazardous Substance (as defined below) which was in existence in, on or under the Building or the Premises prior to the Delivery Date; and costs incurred to remove, remedy, contain, or treat Hazardous Substances, which Hazardous Substance is brought into the Building or onto the Premises after the date hereof by Landlord, (7) wages, salaries, benefits, office rent and any other direct costs associated with Landlord's ownership or management of the Building, (8) original construction costs of the Premises and renovation prior to the date of this Lease and costs of correcting defects in such original construction or renovation, (9) interest, principal or any other payments under any mortgage or similar debts of Landlord, financing costs and amortization of funds borrowed by Landlord, whether secured or unsecured and all payments of rent under any ground lease or other underlying lease of all or any portion of the Premise, (10) depreciation, (11) salaries, wages, benefits and other compensation paid to officers and employees of Landlord, (12) general organizational, administrative and overhead costs, (13) overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to the Premise to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis, (14) costs of Landlord's charitable or political contributions, or of fine art maintained at the Premise, (15) costs incurred in the sale or refinancing of the Premise, (16) any expenses otherwise includable within Operating Expenses to the extent actually reimbursed by any other person, (17) costs (including attorneys' fees and costs of settlement, judgments and payments in lieu thereof) incurred in connection with negotiations or disputes with employees, consultants, management agents, leasing agents, purchasers or mortgagees of the Building, and/or (18) penalties, fines, interest or other similar charges incurred by Landlord (A) due to the violation by Landlord, its employees, agents or contractors or any tenant of the terms and conditions of this Lease or any Applicable Laws, (B) incurred as a result of Landlord's inability or failure to make payment of taxes and/or to file any tax or informational returns when due, or (C) due to the gross negligence or willful misconduct of Landlord or its employees, officers, directors, contractors or agents.

(b) Operating Expenses shall be payable by Tenant within ten (10) days after a reasonably detailed statement of actual expenses is presented to Tenant by Landlord. At Landlord's option, however, an amount may be estimated by Landlord from time to time of annual Operating Expenses and the same shall be payable monthly or quarterly, as Landlord shall designate, during each twelve (12) month period of the Term, on the same day as the Base Rent is due hereunder. Landlord shall deliver to Tenant, within one hundred and twenty (120) days after the expiration of each calendar year or as soon thereafter as practicable, a reasonably detailed statement showing the actual Operating Expenses incurred during the preceding year. If Tenant's payments under this Subparagraph 3.2(b) during said preceding year exceed the actual Operating Expenses as indicated on said statement, Landlord shall credit the amount of such over-payment against Operating Expenses next becoming due. If Tenant's payments under this Subparagraph 3.2(c) during said preceding year were less than the actual Operating Expenses as indicated on said statement, Tenant shall pay to Landlord the amount of the deficiency within ten (10) days after delivery by Landlord to Tenant of said statement.

(c) Notwithstanding anything to the contrary set forth in this Paragraph 3.2, the aggregate "Controllable Operating Expenses" (as hereinafter defined) included in the Operating Expenses in any calendar year after the 2021 calendar year shall not exceed the "CAM Cap" (as hereinafter defined), but with no limit on the amount of Controllable Operating Expenses which may be included in the Operating Expenses incurred during the 2021 calendar year. For purposes of this Lease, (1) "**Controllable Operating Expenses**" shall mean all Operating Expenses except: (i) Real Property Taxes and all other taxes and assessments, (ii) costs of the premiums for the insurance policies maintained by Landlord under Paragraph 7 hereof, (iii) utility costs, and (iv) Permitted Capital Expenditures, and (2) "**CAM Cap**" shall mean (A) for the 2022 calendar year, 105% of the aggregate Controllable Operating Expenses included in the Operating Expenses for the 2021 calendar year (as adjusted to account for the partial calendar year occurring after the Commencement Date [i.e., increased by 33.33%]), and (B) for each calendar year thereafter, 105% of the aggregate Controllable Operating Expenses included in the Operating Expenses for the prior calendar year.

(d) After delivery to Landlord of at least thirty (30) days prior written notice, Tenant, at its sole cost and expense through any accountant designated by it, shall have the right to examine and/or audit the books and records evidencing such expenses for the previous one (1) calendar year, during Landlord's reasonable business hours but not more frequently than once during any calendar year. Tenant may not compensate any such accountant on a contingency fee basis. The results of any such audit (and any negotiations between the Parties related thereto) shall be maintained strictly confidential by Tenant and its accounting firm and shall not be disclosed, published or otherwise disseminated to any other party other than to Landlord and its authorized agents or Tenant's employees, accountants, real estate advisors, financial advisors and attorneys and as may be required by law or in any litigation or dispute arising out of such audit. Landlord and Tenant each shall use its commercially reasonable efforts to cooperate in such negotiations and to promptly resolve any discrepancies between Landlord and Tenant in the accounting of such expenses.

4. **Security Deposit.** Tenant shall deposit with Landlord upon Tenant's execution hereof the Security Deposit set forth in Paragraph H of the Summary as security for Tenant's faithful performance of Tenant's obligations under this Lease. If Tenant fails to pay Base Rent or other Rent or charges due hereunder before, beyond any applicable notice and cure period, or after the termination or expiration of this Lease, or otherwise is in Breach under this Lease (as defined in Paragraph 12.1), Landlord may use, apply or retain all or any portion of the Security Deposit for the payment of any amount due Landlord or to reimburse or compensate Landlord for any liability, cost, expense, loss or damage (including attorneys' fees and costs) which Landlord may suffer or incur by reason thereof, whether foreseeable or unforeseeable, including to offset Rent which is unpaid either before or after the termination of this Lease. If Landlord uses or applies all or any portion of the Security Deposit, Tenant shall, within ten (10) days after written request therefor, deposit monies with Landlord sufficient to restore the Security Deposit to the full amount required by this Lease. Landlord shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Landlord shall, no later than 45 days after the expiration or earlier termination of the Term hereof and after Tenant has vacated the Premises, return to Tenant (or, at Landlord's option, to the last approved assignee, if any, of Tenant's interest herein, provided that Tenant's interest in the Security Deposit has been transferred to such assignee), that portion of the Security Deposit not used or applied by Landlord. Unless otherwise expressly agreed in writing by Landlord, no part of the Security Deposit shall be considered to be held in trust, to bear interest or other increment for its use, or to be prepayment for any monies to be paid by Tenant under this Lease. Tenant waives any and all rights under (i) California Civil Code Section 1950.7, as amended or recodified from time to time, and any and all other laws, rules and regulations, now or hereafter in force, applicable to security deposits in the commercial context ("**Security Deposit Laws**"), and (ii) any and all rights, duties and obligations either Party may now or, in the future, will have relating to or arising from Security Deposit Laws.

5. **Use.**

5.1 **Use**. Tenant shall use and occupy the Premises only for the Permitted Use set forth in Paragraph I of the Summary and for no other purpose. Tenant shall not use or permit the use of the Premises in a manner that is unlawful, creates waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to the Premises or neighboring premises or properties. In no event may the Premises be used for any federal illegal related activities (e.g., drug-related business). Tenant further covenants and agrees that it shall not use, or suffer or permit any person or persons to use, the Premises in violation of any Applicable Laws (subject to the provisions of Paragraph 39 below with respect to any covenants or restrictions of record entered into by Landlord after the Effective Date). Tenant shall comply with all recorded covenants, conditions, and restrictions, and the provisions of all ground or underlying leases, now affecting the Land or permitted by the provisions of Paragraph 39 below. Tenant shall not use or allow another person or entity to use any part of the Premises for the storage, use, treatment, manufacture or sale of "Hazardous Substances," as that term is defined in Subparagraph 5.2 (a) of this Lease, except as permitted by Applicable Laws (subject to the provisions of Paragraph 39 below with respect to any covenants or restrictions of record entered into by Landlord after the Effective Date). Subject to the express provisions of this Lease, Tenant and its employees shall have access to the Premises twenty-four (24) hours per day, 365 days per year.

5.2 **Hazardous Substances**.

(a) **Reportable Uses Require Consent**. The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, 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 Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, PCBs, crude oil or any products or by-products thereof. Tenant shall not engage in any activity in or about the Premises, which constitutes a Reportable Use (as defined below) of Hazardous Substances without the express prior written reasonable consent of Landlord and compliance in a timely manner (at Tenant's sole cost and expense) with all Applicable Requirements (as defined in Paragraph 5.3). "**Reportable Use**" shall mean the installation or use of any above or below ground storage tank. Notwithstanding anything to the contrary contained in this Lease, Tenant shall provide prior written notice to Landlord of the following: (i) 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 (ii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises or neighboring properties.

(b) **Duty to Inform Landlord**. If Tenant 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 disclosed to Landlord, Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system) in violation of Applicable Laws (subject to the provisions of Paragraph 39 below with respect to any covenants or restrictions of record entered into by Landlord after the Effective Date).

(c) **Indemnification**. Tenant shall indemnify, protect, defend and hold Landlord (with counsel approved by Landlord), its directors, officers, agents, partners, members, managers, employees, lenders and ground lessor, if any, and their respective successors and assigns (collectively, "**Landlord Parties**") and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits, damage to property, personal injury and attorneys' and consultants' fees and costs (collectively, "**Claims**") arising out of or involving any (i) Hazardous Substance brought, released or used or allowed to be brought, released or used on the Premises by Tenant or by anyone under Tenant's control, or (ii) the breach of any term, condition, representation or warranty contained in this Paragraph 5. Tenant's obligations under this Subparagraph 5.2 (c) shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and costs and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement. The provisions of this Paragraph 5.2(c) shall survive the expiration or earlier termination of this Lease.

(d) **Environmental Questionnaire Disclosure**. Prior to the execution of this Lease, Tenant shall complete, execute and deliver to Landlord a Hazardous Substances Survey Form in substantially the form of Exhibit F attached hereto ("**Survey Form**"), and Tenant shall certify to Landlord that all information contained in the Survey Form is true and correct. Within ten (10) days following Tenant's receipt of a written request from Landlord, Tenant shall update, execute and deliver to Landlord the Survey Form, as the same may be modified by Landlord from time to time.

(e) **Pre-Existing Conditions; Indemnification of Tenant**. Notwithstanding anything in this Lease to the contrary, Tenant shall not be responsible for any Hazardous Substances existing on, in or under the Premises as of the date possession of the Premises is delivered to Tenant, except to the extent that Tenant exacerbates any such pre-existing condition in the Premises. Landlord shall indemnify, protect, defend and hold Tenant, its directors, officers, members, agents and employees harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Industrial Center by Landlord.

5.3 **Tenant's Compliance with Requirements**. Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all "**Applicable Requirements**," which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants, relating in any manner to Hazardous Substances and the Premises (including, without limitation, matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including air quality, soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill, or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Tenant shall, within ten (10) days after receipt of Landlord's written request, provide Landlord with copies of all documents and information, including, without limitation, permits, registrations, manifests, applications, reports and certificates, evidencing Tenant's compliance with any Applicable Requirements specified by Landlord, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any Applicable Requirements.

5.4 **Inspection; Compliance with Law**. Landlord, Landlord's agents, employees, contractors and designated representatives, and the holders of any mortgages, deeds of trust or ground leases on the Premises ("**Lenders**") shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, upon at least one business day prior notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease and all Applicable Requirements, and Landlord shall be entitled to employ experts and/or consultants in connection therewith. The costs and expenses of any such inspections shall be paid by the Party requesting same, unless a Default or Breach of this Lease by Tenant or a violation of Applicable Requirements or a contamination, caused or materially contributed to by Tenant, is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination caused by Tenant. In such case, Tenant shall upon request reimburse Landlord or Landlord's Lender, as the case may be, for the costs and expenses of such inspections.

6. **Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations**

6.1 **Tenant's Obligations**.

(a) Subject to the provisions of Paragraphs 1.2 (Condition), 1.3 (Compliance with Covenants, Restrictions and Building Code), 6.2 (Landlord's Obligations), 8 (Damage or Destruction), and 13 (Condemnation) (collectively, the "**Maintenance Exclusions**"), Tenant shall, at Tenant's sole cost and expense and at all times, keep the Premises, Utility Installations and Alterations and every part thereof in good order, condition and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or readily accessible to Tenant, and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises), including, without limitation, all equipment or facilities, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire hose connections if within the Premises, fixtures, walls (interior and exterior), ceilings, roof drainage systems, floors, windows, doors, plate glass, skylights and signs located in, on, or adjacent to the Premises. Tenant shall keep the Premises clean at all times and contract directly for trash removal from the Premises and all utility services, including electricity, telephone, security, gas and water. Tenant, 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 contract required by subparagraph (b) of this Paragraph 6.1. Subject to the Maintenance Exclusions, Tenant'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. Subject to the Maintenance Exclusions, if an item 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 Tenant at Tenant's sole cost and expense. Tenant shall, during the term of this Lease, keep the exterior appearance of the Premises 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 Premises.

(b) Tenant shall, at Tenant's sole cost and expense, procure and maintain a contract, with a copy to Landlord, in customary form and substance for and with a licensed contractor specializing and experienced in the inspection, maintenance and service of the heating, air conditioning and ventilation system for the Premises. Such HVAC contract shall provide for the maintenance of the HVAC system not less than quarterly and replacement of the air filters not less than monthly. Such contractor shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed. Subject to the Maintenance Exclusions, Tenant shall make all repairs and replacements recommended by such contractor at Tenant's sole cost and expense.

(c) If Tenant fails to perform Tenant's obligations under this Paragraph 6.1, Landlord may enter upon the Premises after ten (10) days' prior written notice to Tenant (except in the case of an emergency, in which case no notice shall be required), to perform such obligations on Tenant's behalf, and put the Premises in good order, condition and repair, in accordance with Paragraph 12.2 below.

6.2 **Landlord's Obligations**. Subject to the provisions of Paragraphs 1.2 (Condition), 1.3 (Compliance with Covenants, Restrictions and Building Code), 3.2 (Operating Expenses), 5 (Use), 8 (Damage or Destruction) and 13 (Condemnation), and subject to the reimbursement requirements of Paragraph 3.2, Landlord, shall keep in good order, condition and repair the roof, foundation, floor slabs, exterior walls (including painting), the structural condition of interior bearing walls of the Premises, underground utilities to the point on connection to the Building, and the exterior areas of the Premises (i.e., landscaping, parking areas, sidewalks and driveways), including procuring and maintaining service contracts for the fire extinguishing systems, including fire alarm and/or smoke detection, landscaping and irrigation systems, roof covering and drains, and the basic utility feed to the perimeter of the Premises (the cost of such service contracts shall be included in Operating Expenses). Except as provided in this Paragraph 6.2 and Paragraphs 1.2, 1.3, 8 and 13, it is intended by the Parties hereto that Landlord have no obligation to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of Tenant. Notwithstanding the foregoing and subject to Tenant's indemnification of Landlord as set forth in Paragraph 7.4 below, and without relieving Tenant of liability for any damage caused by Tenant or resulting from Tenant's failure to exercise and perform good maintenance practices, if during the Original Term any major repairs or replacements to the Premises are required or necessary for the operation of the Premises which repair or replacement is the obligation of Tenant under Paragraph 6.1 above (which repairs or replacement is not caused by Tenant's misuse or failure to maintain the Premises as required under this Lease, in which case Tenant shall be responsible for such repairs or replacement caused by misuse or failure to maintain the Premises) and the cost of which exceeds $100,000.00 (a "**Major Repair or Replacement**"), Landlord shall perform such Major Repair or Replacement and Tenant shall reimburse Landlord for the cost of such Major Repair or Replacement provided that such cost shall be amortized (including interest on the unamortized cost) over its useful life (but in no event less than five (5) years) as determined in accordance with Landlord's sound accounting principles. Such reimbursement amount shall be added to Tenant's Share of Operating Expenses and shall be paid concurrently with and in the same manner as Tenant's Share of Operating Expenses and shall be deemed a Permitted Capital Expenditure. In the event that Tenant exercises an Option or otherwise extends the Term of this Lease, such extension shall be contingent upon Tenant's continued payment of the amortized cost of the Major Repair or Replacement under this Paragraph 6.2 which relates to the term of such extension.

6.3 **Utility Installations, Trade Fixtures, Alterations.**

(a) **Definitions; Consent Required.** The term "**Utility Installations**" is used in this Lease to refer to all air lines, power panels, electrical distribution, security, fire protection systems, communications systems, lighting fixtures, heating, ventilating and air conditioning equipment, plumbing, and fencing in, on or about the Premises. The term "**Trade Fixtures**" shall mean Tenant's machinery and equipment, which can be removed without doing damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements on the Premises, which are made by Tenant, with Landlord's prior written approval, under the terms of this Lease, other than Utility Installations or Trade Fixtures. "**Tenant-Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Tenant that are not yet owned by Landlord pursuant to Subparagraph 6.4 (a). Except in accordance with the Leasehold Improvement Exhibit attached as Exhibit B to this Lease, Tenant shall not make nor cause to be made any Alterations or Utility Installations in, on, under or about the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. If Landlord fails to respond within (10) business days to any request for consent to any Alterations or Utility Installations from Tenant (including the receipt of any plans, if applicable), then Tenant may give to Landlord a second written notice, which written notice must contain the caption "Notice of Deemed Approval of Alterations," reiterating the request that Landlord approve or disapprove of the Alterations and/or Utility Installations and stating that, if Landlord fails to do so within five (5) business days after the receipt by Landlord of such second notice from Tenant, Landlord shall be deemed to have approved the Alterations and/or Utility Installations. If Landlord fails to approve or disapprove the Alterations and/or Utility Installations within such five (5) business day period, Landlord shall be deemed to have approved the Alterations and/or Utility Installations. The provisions of this Paragraph 6.3 shall not apply to the Leasehold Improvements made by Tenant pursuant to the Leasehold Improvement Exhibit attached as Exhibit B to this Lease.

(b) **Consent.** Any Alterations or Utility Installations that Tenant shall desire to make and which require the consent of Landlord shall be presented to Landlord in written form with detailed plans. All consents given by Landlord, whether by virtue of Subparagraph 6.3 (a) or by subsequent specific consent, shall be deemed conditioned upon: (i) Tenant's acquiring all applicable permits required by governmental authorities; (ii) the furnishing of copies of such permits together with a copy of the plans and specifications for the Alteration or Utility Installation to Landlord prior to commencement of the work thereon; and (iii) the compliance by Tenant with all conditions of said permits in a prompt and expeditious manner. In connection with approving any Alterations or Utility Installations, Landlord shall have the right to reasonably approve Tenant's contractor(s). Any Alterations or Utility Installations by Tenant during the Term of this Lease shall be done in a good and workmanlike manner, with good and sufficient materials, and be in compliance with all Applicable Requirements. Landlord's approval of the plans, specifications and working drawings for Tenant's Alterations or Utility Installations shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with all laws, rules and regulations of governmental agencies or authorities. In the event that Tenant makes any Alterations or Utility Installations, Tenant agrees to carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of such Alterations or Utility Installations, and such other insurance as Landlord may require and all of such Alterations or Utility Installations shall be insured by Tenant pursuant to Article 8 of this Lease. Upon completion of any Alterations or Utility Installations, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Premises is located in accordance with Applicable Laws, and Tenant shall deliver to Landlord a reproducible copy of the "as built" drawings, and specifications therefor of the Alterations or Utility Installations. Landlord may (but without obligation to do so) condition its consent to any requested Alteration or Utility Installation that costs One Million Dollars ($1,000,000.00) or more upon Tenant's providing Landlord with such assurances to Landlord, including without limitation, posting a bond or establishing an escrow account, as Landlord shall require to assure payment of the costs thereof to protect Landlord and the Premises from and against any mechanic's, materialmen's or other liens. Tenant shall keep the Premises lien free. Tenant shall pay to Landlord all of Landlord's actual and reasonable out-of-pocket third party costs incurred in conjunction with the review of Tenant's proposed Alterations or Utility Installations within fifteen (15) days of Tenant's receipt of an invoice therefor. Notwithstanding anything to the contrary in this Lease, Tenant may, at its election and without first obtaining Landlord's consent but upon ten (10) business days' prior notice to Landlord, make any Non-Material Alterations (as defined below) at Tenant's sole cost and expense subject to the following: (a) Tenant complies with all Applicable Laws with respect to such Non-Material Alterations (subject to the provisions of Paragraph 39 below with respect to any covenants or restrictions of record entered into by Landlord after the Effective Date); (b) Tenant provides Landlord copies of all contracts, agreements, receipts, and all other related documentation immediately upon request; and (c) Tenant furnishes Landlord with a complete set of architectural plans and construction documents (if any), including all finish schedules and specifications and "as built" drawings (if applicable), with respect to such Non-Material Alterations. Tenant shall pay all costs and expenses incurred in connection with such Non-Material Alterations, including the cost of any space plans and architectural fees. Tenant shall directly hire all architects, engineers, contractors and subcontractors. "**Non-Material Alterations**" means alterations that (i) are interior and non-structural, (ii) do not exceed the cost of Two Hundred Fifty Thousand and No/100 Dollars ($250,000) in the aggregate in any 12-month period, (iii) do not require any application to a political jurisdiction for rezoning, general plan amendment, variance, or conditional use permit, (iv) do not affect the Building's HVAC, MEP or similar systems, the entryways or elevators, the structural integrity of the Building or the exterior appearance of the Building, or (v) require a building permit.

(c) **Lien Protection.** Tenant shall pay when due all claims for labor or materials furnished or alleged to have been furnished to or for Tenant 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. Tenant shall give Landlord not less than ten (10) days' notice prior to the commencement of any work in, on, or about the Premises, and Landlord shall have the right to post notices of non-responsibility in or on the Premises and to record the same, as provided by law. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense, defend and protect itself, Landlord and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against Landlord or the Premises. If Landlord shall require, Tenant shall furnish to Landlord a surety bond reasonably satisfactory to Landlord in an amount equal to one and one-half times the amount of such contested lien claim or demand pursuant to Applicable Laws, indemnifying Landlord against liability for the same, as required by law for the holding of the Premises free from the effect of such lien or claim. In addition, Landlord may require Tenant to pay Landlord's attorneys' fees and costs in participating in such action if Landlord shall decide it is to its best interest to do so.

6.4 **Ownership, Removal, Surrender, and Restoration.**

(a) **Ownership.** Subject to Landlord's right to require their removal and to cause Tenant to become the owner thereof as hereinafter provided in this Paragraph 6.4, all Alterations and Utility Installations made to the Premises by Tenant shall be the property of and owned by Tenant, but considered a part of the Premises. Landlord may, at any time and at its option, elect in writing to Tenant to be the owner of all or any specified part of the Tenant-Owned Alterations and Utility Installations. Unless otherwise instructed per Subparagraph 6.4 (b) hereof, all Tenant-Owned Alterations and Utility Installations shall, at the expiration or earlier termination of this Lease, automatically and without further action on the part of Landlord, become the property of Landlord and remain upon the Premises and be surrendered with the Premises by Tenant.

(b) **Removal.** Unless otherwise agreed in writing, Landlord may require that any or all Tenant-Owned Alterations or Utility Installations be removed by the expiration or earlier termination of this Lease, notwithstanding that Landlord may have consented to their installation. Concurrently with Tenant's request for consent, Tenant may request in writing that Landlord determine whether such Alterations and/or Utility Installations will be required to be so removed and if Landlord does not require such removal when consent is given, Tenant shall not be obligated to remove the Alterations and/or Utility Installations at the expiration or earlier termination of this Lease. Landlord may require the removal at any time of all or any part of any Alterations or Utility Installations made without the required consent of Landlord.

(c) **Surrender/Restoration.** Tenant shall surrender the Premises by the end of the last day of the Term or any earlier termination date, clean and free of debris, with all Hazardous Substances removed from the Premises, and in good operating order, condition and state of repair as more particularly described in the Move Out Standards attached as Exhibit G to this Lease, normal wear and tear, casualty and Landlord's obligations excepted, and shall provide Landlord with keys for all interior doors. Except as otherwise agreed or specified herein, the Premises, as surrendered, shall include the Alterations and Utility Installations. The obligations of Tenant shall include the repair of any damage occasioned by the installation, maintenance or removal of Tenant's Trade Fixtures, furnishings, equipment, and Tenant-Owned Alterations and Utility Installations, as well as the removal of any storage tank installed by or for Tenant, and the removal, replacement, or remediation of any air quality, soil, material or ground water contaminated by Tenant, all as may then be required by Applicable Requirements and/or customary real estate practices. Tenant's Trade Fixtures shall remain the property of Tenant and shall be removed by Tenant subject to its obligation to repair and restore the Premises pursuant to this Lease. Notwithstanding anything to the contrary contained herein, on or before the Expiration Date or any earlier termination of this Lease, Tenant shall, at Tenant's sole cost and expense and in compliance with the National Electric Code and other applicable laws, remove all electronic, fiber, phone and data cabling and related equipment that has been installed by or for the exclusive benefit of Tenant in or around the Premises (collectively, the "Cabling"); provided, however, Tenant shall not remove the Cabling if Tenant receives a written notice from Landlord at least fifteen (15) days prior to the expiration or earlier termination of this Lease authorizing all or any portion of the Cabling to remain in place, or if such Cabling will not unreasonably interfere with the leasing of the Premises or the next tenant's use of the Premises, in which event the Cabling or portion thereof authorized by Landlord remain at the Premises shall be surrendered with the Premises upon expiration or earlier termination of this Lease.

7. **Insurance; Indemnity.**

7.1 **Landlord's Insurance**. Landlord shall maintain "causes of loss - special form" property insurance covering the Premises against loss or damage resulting from fire and other insurable loss. Such insurance shall be on a 100% replacement cost basis. As reasonably determined by Landlord and subject to Tenant's reimbursement of such costs in accordance with the terms of this Paragraph 7.1, Landlord shall also carry earthquake, terrorism, windstorm and/or other insurance covering the Premises at commercially reasonable rates. Landlord shall have the right to obtain flood insurance if the Premises is located within a 100-Year Flood Plain or in an identified "flood prone area" as classified by the U.S. Department of Housing and Urban Development or if required by any lender holding a security interest in the Premises. Landlord shall not obtain insurance for Tenant's fixtures or equipment or other building improvements installed by Tenant on the Premises, including Trade Fixtures and Tenant-Owned Alterations and/or Utility Installations. During the Term, Landlord shall also maintain a rental income insurance policy, with loss payable to Landlord, in an amount not to exceed eighteen (18) months of Base Rent, plus estimated real property taxes and insurance premiums. Tenant shall be liable for the payment of any commercially reasonable deductible amount under Landlord's insurance policies maintained pursuant to this Paragraph 7.1 and any commercially reasonable self-insured retention amount. Tenant shall not do or permit anything to be done which invalidates any such insurance policies (provided that such insurance policies are consistent with the provisions of this Lease). Tenant shall pay all premiums for the insurance policies described in this Paragraph 7.1 within fifteen (15) days after Tenant's receipt of a copy of the premium statement or other evidence of the amount due except Landlord shall pay all premiums for non-primary comprehensive public liability insurance which Landlord elects to obtain. Alternatively, at Landlord's election, Landlord shall estimate the insurance premiums required to be paid by Tenant under this Paragraph 7.1 and require that such premiums be paid to Landlord by Tenant monthly in advance as part of Operating Expenses in accordance with Paragraph 3.2 above. Such monthly payments shall be an amount equal to the amount of the estimated annual insurance premiums divided by the number of months remaining before the month in which said premiums become delinquent. When the actual amount of the insurance premiums are known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the insurance premiums. If the amount collected by Landlord is insufficient to pay such insurance premiums when due, Tenant shall pay Landlord, upon 10 business days written notice thereof, such additional sum as is necessary. If the Term expires before the expiration of an insurance policy maintained by Landlord, Tenant shall be liable for Tenant's prorated share of the insurance premiums.

7.2 **Tenant's Insurance**. At all times during the Term of this Lease, Tenant shall satisfy the insurance requirements set forth in Exhibit I to this Lease.

7.3 **Waiver of Subrogation**. Landlord and Tenant each hereby waives, on their behalf and on behalf of their respective insurance carriers, any claim which either Party might otherwise have against the other Party, arising out of loss or damage, including consequential loss or damage, to any property of such Party from any risk required to be insured against hereunder. Landlord and Tenant shall each indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure of either Party, respectively, to obtain the waivers required by this Paragraph 7.3.

7.4 **Indemnity.** Except to the extent caused by Landlord's gross negligence or willful misconduct, Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and Landlord Parties from and against any and all Claims arising out of, involving, or in connection with, the occupancy of the Premises by Tenant, the conduct of Tenant's business, any act, omission or neglect of Tenant or the Tenant Parties, and out of any Default or Breach by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord) litigated and/or reduced to judgment. In case any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. The provisions of this Paragraph 7.4 shall survive the expiration or earlier termination of this Lease.

7.5 **Exemption of Landlord from Liability.** Except to the extent arising from the gross negligence or willful misconduct of the Landlord Parties, Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant or the Tenant Parties 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, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising upon the Premises from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Notwithstanding the negligence or breach of this Lease by either Party, except with respect to Lessee's obligations pursuant to Paragraph 6.2 ("Hazardous Substances") and Paragraph 26 ("No Right to Holdover") of this Lease, under no circumstances shall either Party be liable for injury to the other Party's business or for any loss of income or profit therefrom, provided that in no event shall Lessor be precluded from exercising its remedies under Paragraph 12.2 of this Lease.

7.6 **Failure to Provide Insurance**. Following Landlord's delivery of prior written notice to Tenant, and Tenant's failure to cure within five (5) business days thereafter, Landlord shall have the right and option, but not the obligation, to maintain any or all of the insurance which is required in this Paragraph 7 to be provided by Tenant if Tenant fails to maintain the insurance required of Tenant in this Paragraph 7. All costs of Tenant's insurance provided by the Landlord shall be obtained at Tenant's expense.

8. **Damage or Destruction**. If at any time during the Term the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is estimated to exceed nine (9) months, Landlord may elect to terminate this Lease upon notice to Tenant. If Landlord does not elect to terminate this Lease, or if Landlord estimates that restoration will take nine (9) months or less, then Landlord shall, subject to delays arising from the collection of insurance proceeds or from events of Force Majeure, restore the Premises, excluding any Alterations. Tenant at Tenant's expense shall promptly perform, subject to delays arising from the collection of insurance proceeds, or from Force Majeure events, all repairs or restoration not required to be done by Landlord. Notwithstanding the foregoing, either Party may terminate this Lease if the Premises are damaged during the last year of the Term and Landlord reasonably estimates that it will take more than two (2) months to repair such damage. Base Rent and Operating Expenses shall be abated for the period of repair and restoration commencing on the date of such casualty event in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises. Such abatement shall be the sole remedy of Tenant, and except as provided herein, Tenant waives any right to terminate the Lease by reason of damage or casualty loss accorded Tenant by any law currently existing or hereafter enacted, including without limitation, all rights pursuant to California Civil Code Sections 1932(2.), 1933(4.), 1941 and 1942 and any similar or successor laws. Landlord and Tenant agree that the provisions of this Paragraph 8 shall only apply when the Premises is physically damaged or the structural integrity of the Premises is degraded as a result of a fire or other casualty.

Within sixty (60) days after the date of the damage or destruction, Landlord shall provide Tenant with written notice ("**Damage Repair Estimate**") of Landlord's estimated assessment of the period of time for the repairs to be completed, based upon the opinion of Landlord's architect. If the Damage Repair Estimate indicates that repairs are not reasonably expected to be completed within the 9 Month Period (as hereinafter defined), Landlord or Tenant shall be entitled to terminate this Lease by written notice to the other Party within fifteen (15) days of Landlord's delivery of the Damage Repair Estimate to Tenant, in which event this Lease shall terminate as of the date designated in such notice (provided that such termination date shall not be later than sixty (60) days after such notice).

If Landlord does not elect to terminate this Lease under the terms of this Paragraph 8, but the damage required to be repaired by Landlord is not repaired within the period ending nine (9) months after the damage or destruction (the "**9 Month Period**") (subject to extension for any delay caused by Force Majeure, provided that in no event shall such extension exceed 90 days), then Tenant (subject to the provisions of this Paragraph 8), within thirty (30) days after the end of such 9 Month Period, may terminate this Lease by written notice to Landlord, in which event this Lease shall terminate as of the date of receipt of the notice. Notwithstanding the foregoing, if Landlord is diligently proceeding to complete the repair of such damage, then Tenant shall not have the right to terminate this Lease if, prior to the expiration of the 9 Month Period, Landlord, at Landlord's sole option, gives written notice to Tenant that the repairs will be completed within thirty (30) days after the end of such 9 Month Period, and the repairs are actually completed within such thirty (30) day period. If the repairs are not completed within thirty (30) days after the end of such 9 Month Period, then Tenant may terminate this Lease by written notice to Landlord. Such notice of termination shall be given within sixty (60) days after the end of such 9 Month Period, and shall be effective upon receipt thereof by Landlord. Notwithstanding the provisions of this Paragraph 8, Tenant shall have the right to terminate this Lease under this Paragraph only if there is no Breach then in effect.

9. **Real Property Taxes.**

9.1 **Payment of Taxes.** Landlord shall pay the Real Property Taxes, as defined in Paragraph 9.2, applicable to the Premises, and except as otherwise provided in Paragraph 9.3, any such amounts shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 3.2.

9.2 **Real Property Tax Definition.** As used herein, the term "**Real Property Taxes**" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed upon the Premises by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage, or other improvement district thereof, levied against any legal or equitable interest of Landlord in the Premises or any portion thereof, Landlord's right to rent or other income therefrom, and/or Landlord's business of leasing the Premises, including any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in Applicable Law taking effect, during the Term of this Lease, including, without limitation, a change in the ownership of the Premises or in the improvements thereon, the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the Parties. Notwithstanding anything to the contrary contained in this Lease, Real Property Taxes shall not include excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Building and/or the Premises) or penalties incurred due to Landlord's negligence or unwillingness to pay Real Property Taxes when due. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days, which such calendar year and tax year have in common. Each year, at Landlord's election, Landlord may protest real property assessments. In the event Landlord elects to protest a real property tax assessment, Landlord may utilize the services of a tax consultant to protest the real property tax assessment. If as a result of the protest, the Real Property Taxes are lowered, and a tax consultant has been utilized in connection with the protest, Tenant agrees to pay, as additional rent during the Term, all fees payable to tax consultants in the manner set forth in this Lease, as long as there is a net benefit to Tenant from such lowering of Real Property Taxes.

9.3 **Tenant's Property Taxes.** Tenant shall pay, prior to delinquency, all taxes assessed against and levied upon Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Tenant contained in the Premises or stored within the Premises. When possible, Tenant shall cause its Tenant-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 Landlord. If any of Tenant's said property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant's property within ten (10) days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

10. **Utilities**. Tenant shall pay directly for all utilities and services supplied to the Premises, including, without limitation, electricity, telephone, security, gas, water, trash removal and cleaning of the Premises, together with any taxes thereon. There shall be no abatement of rent and Landlord shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service. Upon Landlord's request, Tenant shall deliver to Landlord copies of all bills for separately metered utilities supplied to the Premises for the past twelve (12) month period within ten (10) days of Landlord's request. At Landlord's option, Landlord may maintain a telephone line or lines in Landlord's name for a security alarm system and/or fire-life/safety system for the Premises, the cost of which shall be reimbursed by Tenant within ten (10) days of demand or estimated monthly and paid as part of Operating Expenses under Paragraph 3.2. Under no circumstances shall any public safety power shutoff ("PSPS"), planned maintenance outage or other power shutoff by SDG&E or any other utility provider render Landlord liable to Tenant for abatement of Rent. Notwithstanding anything to the contrary contained in this Lease, if the Premises are rendered unusable for the normal conduct of Tenant's business and Tenant, in fact, ceases to use and occupy such portion of the Premises for the normal conduct of its business as a result of (a) any repair, maintenance, alteration or other work performed by Landlord (including those required or permitted by Landlord under this Lease), or which Landlord failed to perform, after the Commencement Date and required by this Lease, which substantially interferes with Tenant's use of or ingress to or egress from the Building, the Building parking facility or the Premises, or (b) the failure or interruption of any essential utility service that is caused by the active negligence or willful misconduct or Landlord or any Landlord Parties and where restoration of such utility service is within the reasonable control of Landlord (in either case under subparagraph (a) or subparagraph (b) above, an "**Abatement Event**"), then Tenant shall give Landlord notice of such Abatement Event, and if such Abatement Event continues for five (5) consecutive business days after Landlord's receipt of any such notice (the "**Eligibility Period**"), then the Base Rent and Tenant's Share of Operating Expenses shall be abated or reduced, as the case may be, after the expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises; provided, however, in the event that Tenant is prevented from using, and does not use, a portion of the Premises for a period of time in excess of the Eligibility Period and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the Base Rent and Tenant's Share of Operating Expenses for the entire Premises shall be abated for such time as Tenant continues to be so prevented from using, and does not use, the Premises. If, however, Tenant reoccupies and conducts normal business operations in any portion of the Premises during such period, the Rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date Tenant reoccupies and conducts normal business operations in such portion of the Premises.

11. **Assignment and Subletting.**

11.1 **Landlord's Consent Required.**

(a) Tenant shall not voluntarily or by operation of law assign, transfer, mortgage or otherwise transfer or encumber (collectively, "**assign**" or "**assignment**") or sublet all or any part of Tenant's interest or obligations in this Lease or in the Premises without Landlord's prior written consent given under and subject to the terms of this Paragraph 11 and Paragraph 34, which Landlord shall not withhold unreasonably; provided, that it shall not be unreasonable for Landlord to withhold its consent if any of the following circumstances exist or may exist: (i) the transferee's contemplated use of the Premises following the proposed assignment or subletting is different from the permitted use specified herein; (ii) in Landlord's reasonable business judgment, the transferee lacks sufficient business reputation or experience to operate a successful business of the type and quality permitted under the Lease; (iii) in Landlord's reasonable business judgment, the present net worth of the transferee is not sufficient to meet the obligations under the assignment or sublease; (iv) intentionally deleted; (v) the proposed assignment or subletting would breach any covenant of Landlord in any financing agreement or other agreement relating to the Premises or otherwise; or (vi) the transferee requests an amendment to the Lease other than the identity of Tenant. "**Net Worth**" for purposes of this Lease shall be the tangible net worth of Tenant (not including goodwill as an asset and excluding any guarantors) established under generally accepted accounting principles consistently applied. A transfer of the ownership interests controlling Tenant shall be deemed an assignment of this Lease requiring Landlord's consent unless such ownership interests are publicly traded. If Landlord fails to respond within (10) business days to any request for consent to any assignment or sublease from Tenant (including the receipt of any information reasonable requested by Landlord concerning such assignment or sublease, including a copy of such sublease or assignment and financial information of such transferee), then Tenant may give to Landlord a second written notice, which written notice must contain the caption "Notice of Deemed Approval of Assignment or Sublease," reiterating the request that Landlord approve or disapprove of the assignment or sublease and stating that, if Landlord fails to do so within five (5) business days after the receipt by Landlord of such second notice from Tenant, Landlord shall be deemed to have approved the assignment or sublease. If Landlord fails to approve or disapprove the assignment or sublease within such five (5) business day period, Landlord shall be deemed to have approved the assignment or sublease.

(b) Regardless of Landlord's consent, any assignment or subletting shall not (i) be effective without the express written assumption by such assignee or subtenant of the obligations of Tenant under this Lease; (ii) release Tenant of any liabilities, obligations or covenants hereunder; nor (iii) alter the primary liability of Tenant for the payment of Base Rent and other sums due Landlord hereunder or for the performance of any other obligations to be performed by Tenant under this Lease.

(c) An assignment of Tenant's interest in this Lease or subletting of the Premises or any part thereof without Landlord's specific prior written consent shall, at Landlord's option, constitute a Default under this Lease. In the event of any Default or Breach of Tenant's obligation under this Lease, Landlord may proceed directly against Tenant, any Guarantors or anyone else responsible for the performance of the Tenant's obligations under this Lease, including any subtenant, without first exhausting Landlord's remedies against any other person or entity responsible therefor to Landlord, or any security held by Landlord.

(d) "**Permitted Transfer**" means (a) an assignment of this Lease or a subletting of all or a portion of the Premises to an affiliate of Tenant (an entity which controls (as defined below), is controlled by or is under common control with, Tenant), (b) an assignment of this Lease to an entity which acquires all or substantially all of the assets or interests (partnership, stock or other) of Tenant, (c) a transfer of stock or partnership or membership interests in Tenant to an entity which acquires all or substantially all of such stock or interests in a bona fide M&A transaction, (d) an assignment of this Lease to an entity which is the resulting entity of a merger or consolidation of Tenant, and (e) a sale or other transfer of corporate shares of capital stock (or any member interest if Tenant is a limited liability company) in Tenant in connection with either a bona fide financing for the benefit of Tenant or an initial public offering of Tenant's stock on a nationally-recognized stock exchange (and, following any such public offering, the sale or transfer of any such shares shall be a Permitted Transfer) or any other transaction. The term "control" and similar phrases, as used in this subparagraph, means the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of more than fifty percent (50%) of the voting interest in, any person or entity. "**Permitted Transferee**" means (i) any transferee with respect to a Permitted Transfer pursuant to Clauses (a) or (b) above, and (ii) the resulting Tenant arising from or in connection with a Permitted Transfer pursuant to Clauses (c) or (d) above. Notwithstanding anything to the contrary in this Lease, a Permitted Transfer shall not be deemed an assignment, sublease or deemed assignment under this Lease, shall not require Landlord's consent and shall not trigger the sharing of any Transfer Premium as set forth below, provided that (A) Tenant delivers ten (10) days prior written notice of such Permitted Transfer to Landlord or, if Tenant is unable to provide such ten (10) days prior notice due to confidentiality obligations, within ten (10) days following the closing of such Permitted Transfer, Tenant notifies Landlord of such Permitted Transfer and promptly supplies Landlord with any documents or information reasonably requested by Landlord regarding such Permitted Transfer or such Permitted Transferee, (B) such Permitted Transfer is not a subterfuge by Tenant to avoid its obligations under this Lease, (C) any Permitted Transferee assumes in writing all of Tenant's obligations under this Lease. and (D) the Permitted Transferee shall have a Net Worth at least equal to the Net Worth of Tenant immediately prior to such Permitted Transfer. Except with respect to a Permitted Transfer pursuant to clauses (c) or (e) above, any Permitted Transferee in connection with a Permitted Transfer shall be deemed the original Tenant for all purposes of this Lease (including without limitation options to renew or expand, signage rights and roof rights).

11.2 **Additional Terms and Conditions Applicable to Assignment and Subletting.**

(a) Landlord may accept any Rent or performance of Tenant's obligations from any person other than Tenant pending approval or disapproval of an assignment. Except as expressly set forth above, neither a delay in the approval or disapproval of such assignment nor the acceptance of any Rent for performance shall constitute a waiver or estoppel of Landlord's right to exercise its remedies for the Default or Breach by Tenant of any of the terms, covenants or conditions of this Lease.

(b) The consent of Landlord to any assignment or subletting shall not constitute consent to any subsequent assignment or subletting by Tenant or to any subsequent assignment or subletting by the assignee or subtenant (provided that Landlord shall not unreasonably withhold consent to any such subsequent assignment or sublease subject to the terms of this Paragraph 11). However, Landlord may consent to subsequent sublettings and assignments of the sublease or any amendments or modifications thereto without notifying Tenant or anyone else liable under this Lease or the sublease and without obtaining their consent, and such action shall not relieve such persons from liability under this Lease or the sublease.

(c) Should Tenant desire to enter into an assignment or subletting transaction, Tenant shall give notice thereof to Landlord by requesting in writing Landlord's consent to such assignment or subletting at least twenty (20) days before the proposed effective date of any such assignment or subletting and shall provide Landlord with the following: (i) the full particulars of the proposed assignment or subletting transaction, including its nature, effective date, terms and conditions, and copies of any documents pertaining to such proposed transaction; (ii) a description of the identity, net worth and previous business experience of the transferee, including, without limitation, copies of transferee's latest income, balance sheet and change-of-financial-position statements (with accompanying notes and disclosures of all material changes thereto) in audited form, if available, and certified as accurate by the transferee (which Landlord shall keep confidential); and (iii) any further information relevant to the transaction which Landlord shall have reasonably requested within ten (10) days after receipt of Tenant's request for consent and all information specified above in Subparagraphs (i), (ii) and (iii). Each assignment or subletting to which Landlord has consented shall be evidenced by an instrument made in such written form as is satisfactory to Landlord and executed by Tenant and transferee. By such instrument, transferee shall assume all the terms, covenants and conditions of this Lease, which are obligations of Tenant. Tenant shall remain fully liable to perform its duties under this Lease following the assignment or subletting. Tenant shall pay Landlord a fee of $1,000.00 for Landlord's review of any proposed assignment or subletting, whether or not Landlord consents to it. In addition, Tenant shall, on demand of Landlord, reimburse Landlord for Landlord's reasonable costs, including legal fees, not to exceed $2,000.00, incurred in obtaining advice and preparing documentation for each assignment or subletting to which Landlord has consented.

(d) If Landlord consents to an assignment or subletting, as a condition thereto which the Parties hereby agree is reasonable, Tenant shall pay to Landlord fifty percent (50%) of any "Transfer Premium," as that term is defined in this Paragraph, received by Tenant from such assignee or subtenant. "**Transfer Premium**" shall mean all rent, additional rent or other consideration (including, without limitation, key money, bonus money or other cash consideration of any kind) payable by the assignee or subtenant to Tenant or any person or entity affiliated with Tenant in connection with the assignment or sublease in excess of the Base Rent under this Lease during the term of the assignment or sublease, deducting any documented marketing expenses, the cost of reasonable and customary improvements to the Premises required by such assignment or sublease, reasonable attorneys' fees and commission expenses incurred by Tenant in connection with such assignment or sublease, but excluding loss of rent. The determination of the amount of Landlord's applicable share of the Transfer Premium shall be made on a monthly basis as rent or other consideration is received by Tenant under the assignment or sublease.

12. **Default; Breach; Remedies**.

12.1 **Default; Breach.** Tenant's obligations to Landlord hereunder shall include any and all costs or expenses incurred by Landlord in conjunction with enforcing Landlord's rights and remedies hereunder, including, without limitation, any attorneys' fees or other legal expenses or costs associated therewith, and Landlord may include the cost of such services and costs in any notice of Default as rent due and payable to cure said default. A "**Default**" by Tenant is defined as a failure by Tenant to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to Tenant under this Lease. A "**Breach**" by Tenant is defined as the occurrence of any Default, as described in subparagraphs (a) through (c) below, and, where a grace period for cure after notice is specified herein, the failure by Tenant to cure such Default prior to the expiration of the applicable grace period, and shall entitle Landlord to pursue the remedies set forth in Paragraphs 12.2 and/or 12.3:

(a) The vacating of the Premises without the intention to reoccupy same, or the abandonment of the Premises; provided, however, that Tenant shall not be deemed to have vacated or abandoned the Premises if it continues to timely pay all amounts due under this Lease, keeps the Premises secure, and otherwise maintains the Premises in accordance with this Lease.

(b) The failure by Tenant to make any payment of Rent, Operating Expenses, or any other monetary payment required to be made by Tenant hereunder as and when due, the failure by Tenant to provide Landlord with reasonable evidence of insurance or surety bond required under this Lease, or the failure of Tenant to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) business days following written notice thereof by or on behalf of Landlord to Tenant.

(c) A Default by Tenant as to the terms or provisions of this Lease, or of the Rules and Regulations adopted under Paragraph 37 below that are to be observed, complied with, or performed by Tenant, other than those described in Subparagraphs 12.1(a) or (b) above, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of Landlord to Tenant; provided, however, that if the nature of Tenant's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by Tenant if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

12.2 **Remedies.** If Tenant fails to perform any affirmative duty or obligation of Tenant under this Lease, within ten (10) days after written notice to Tenant (or in case of an emergency, without notice), Landlord may at its option (but without obligation to do so), perform such duty or obligation on Tenant's behalf, including, without limitation, obtaining reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Landlord shall be due and payable by Tenant to Landlord upon invoice therefor. If any check given to Landlord by Tenant shall not be honored by the bank upon which it is drawn, Landlord at its own option, may require all future payments to be made under this Lease by Tenant to be made only by cashier's check. In the event of a Breach of this Lease by Tenant, with or without further notice or demand, and without limiting Landlord in the exercise of any right or remedy, which Landlord may have by reason of such Breach, Landlord may:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease and the Term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of 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 Tenant 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 Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, 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 Landlord 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 San Francisco or the Federal Reserve Bank District in which the Premises are located at the time of award plus one percent (1%). Efforts by Landlord to mitigate damages caused by Tenant's Default or Breach of this Lease shall not waive Landlord's right to recover damages under this Paragraph 12.2. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Landlord shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or Landlord may reserve the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a notice and grace period required under Subparagraph 12.1 (b) or (c) was not previously given, a notice to pay rent or quit, or to perform or quit, as the case may be, given to Tenant under any statute authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by Subparagraph 12.1 (b) or (c). In such case, the applicable grace period under the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Tenant to cure the Default within the greater of the two (2) such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Landlord to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Tenant's right to possession in effect (in California under California Civil Code Section 1951.4) after Tenant's Breach and recover the Rent as it becomes due, provided Tenant has the right to sublet or assign, subject only to reasonable limitations. Landlord and Tenant agree that the limitations on assignment and subletting in this Lease are reasonable. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver to protect Landlord's interest under this Lease, shall not constitute a termination of Tenant's right to possession.

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state wherein the Premises are located.

(d) Even if an eviction moratoria exists, to the extent allowed by applicable law, Landlord shall have the right to continue this Lease in effect and bring an action to collect rent due under this Lease (including an action against any guarantors of Tenant's obligations under this Lease) and otherwise exercise Landlord's rights and remedies under this Lease including, but not limited to, Landlord's right to apply or draw upon any security deposit or letter of credit delivered to Landlord pursuant to this Lease.

(e) The expiration or termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term hereof or by reason of Tenant's occupancy of the Premises.

12.3 **Inducement Recapture in Event of Breach.** Any agreement by Landlord for free or abated Rent or other charges applicable to the Premises, or for the giving or paying by Landlord to or for Tenant of any cash or other bonus, inducement or consideration for Tenant's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**" shall be deemed conditioned upon Tenant's full and faithful performance of all of the terms, covenants and conditions of this Lease to be performed or observed by Tenant during the Term hereof as the same may be extended. Upon the occurrence of a Breach of this Lease by Tenant, 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 Landlord under such an Inducement Provision shall be immediately due and payable by Tenant to Landlord, and recoverable by Landlord, as additional rent due under this Lease, notwithstanding any subsequent cure of said Breach by Tenant. The acceptance by Landlord of Rent or the cure of the Breach which initiated the operation of this Paragraph 12.3 shall not be deemed a waiver by Landlord of the provisions of this Paragraph 12.3 unless specifically so stated in writing by Landlord at the time of such acceptance.

12.4 **Late Charges.** If any installment of rent or other sum due from Tenant shall not be received by Landlord or Landlord's designee at the address stated in, and in accordance with, the Rent Payment Instructions attached as Exhibit H to this Lease, within five (5) business days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. Any postdated checks, two party checks, third party checks or any check from a party other than the Tenant named in this Lease will not be accepted and will be deemed late unless a check from Tenant is received within such five (5) day period. Tenant acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Notwithstanding the foregoing, Tenant shall not be obligated to pay such late charge for the first such late payment in any twelve (12) month period, provided that such payment is made within three (3) business days after notice from Landlord that such amount was not paid when due. The Parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's Default or Breach with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. In addition to the late charge, in the event (i) any check is returned for insufficient funds, (ii) Landlord receives a check for an installment of rent at an address other than the address set forth in the Rent Payment Instructions attached as Exhibit H to this Lease, or (iii) Landlord receives a postdated check, a two party check, a third party check or any check for Rent from a party other than the Tenant named in this Lease, Tenant shall pay to Landlord, as additional rent, the sum of $50.00. In the event that more than one (1) check of Tenant is returned for insufficient funds in any twelve (12) month period, Landlord shall have the right to require that any or all subsequent payments by Tenant to Landlord be in the form of cashier's or certified check drawn on an institution acceptable to Landlord, notwithstanding any prior practice of accepting payments in any different form.

13. **Condemnation.** If any part of the Premises should be taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "**Taking**" or "**Taken**"), and the Taking would materially interfere with or impair Landlord's ownership or operation of the Premises, then upon written notice by Landlord this Lease shall terminate and Base Rent shall be apportioned as of said date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, the Base Rent payable hereunder during the unexpired Term shall be reduced to such extent as may be fair and reasonable under the circumstances. In the event of any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's Trade Fixtures. In no event shall any governmental action for the purpose of protecting public safety (e.g., to protect against acts of war, the spread of communicable diseases, or an infestation), including but not limited to, any order requiring businesses to close temporarily, be considered a Taking requiring government compensation or entitling Tenant to abatement of rent or any other remedy.

14. **Brokers.** The Broker(s) named in Paragraph J of the Summary is/are the procuring cause of this Lease. Tenant and Landlord each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder other than as named in Paragraph J of the Summary in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and that no broker or other person, firm or entity other than said named Broker(s) is entitled to any commission or finder's fee in connection with said transaction. Tenant and Landlord do each 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, and/or attorneys' fees reasonably incurred with respect thereto.

15. **Estoppel Certificate and Financial Statements.**

15.1 **Estoppel Certificate**. Within ten (10) days after written notice from Landlord, Tenant shall execute and deliver to Landlord a certificate stating such matters reflecting the status of this Lease or the Premises as Landlord or Landlord's lender, purchaser or ground lessor may reasonably request. If Tenant shall fail to deliver such certificate within said ten (10) day period, such failure shall constitute a Default under this Lease and, at Landlord's option, any representation of Landlord respecting the matters covered by such certificate shall be conclusively presumed to be accurate. Any such election by Landlord shall not cure Tenant's default, and Tenant shall continue to be obligated to deliver such certificate. Upon the written request from Tenant, Landlord shall promptly furnish a similar commercially reasonable estoppel certificate to Tenant.

15.2 **Financial Statements.** Within ten (10) days of Landlord's request, Tenant and all Guarantors shall deliver to Landlord and any potential lender or purchaser designated by Landlord such financial statements of Tenant and such Guarantors as may be reasonably required by Landlord and/or such lender or purchaser, including, without limitation, Tenant's financial statements for the past three (3) years. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

16. **Landlord's Liability.** The term "**Landlord**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises. In the event of a transfer of Landlord's title or interest in the Premises or in this Lease, Landlord shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Landlord at the time of such transfer or assignment. Upon such transfer or assignment and delivery of the Security Deposit, the prior Landlord shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by Landlord. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by Landlord shall be binding only upon Landlord as hereinabove defined. In no event shall the obligations of Landlord under this Lease constitute personal obligations of the Landlord Parties, and Tenant expressly waives such personal liability on behalf of itself and all persons claiming by, through or under Tenant. Further, Tenant, for satisfaction of any liability of Landlord under this Lease, may seek recourse only against Landlord's interest in the Premises and shall not seek recourse against Landlord's other assets or against the Landlord Parties.

17. **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.

18. **Interest on Past-Due Obligations.** Any monetary payment due Landlord hereunder, other than late charges, not received by Landlord within ten (10) days following the date on which it was due, shall bear interest from the date due at the rate of ten percent (10%) per annum, but not exceeding the maximum rate allowed by law, in addition to the potential late charge provided for in Paragraph 12.4.

19. **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.

20. **Rent Defined.** All monetary obligations of Tenant to Landlord under the terms of this Lease are deemed to be "Rent."

21. **No Prior or Other Agreements.** This Lease (including all exhibits and addenda) contains all agreements, representations and warranties between the Parties with respect to any matter mentioned herein and supersedes and cancels any and all previous negotiations, arrangements, brochures, marketing materials, agreements and understandings, if any, and no other prior or contemporaneous agreement or understanding (whether verbal or written) shall be effective. Landlord and Tenant hereby acknowledge that the Storage License Agreement dated as of September 24, 2020 between Landlord and Tenant is terminated by the execution of this Lease. This Lease may not be modified, deleted or added to except by a writing signed by the Parties hereto. The Parties acknowledge that (i) each Party and/or its counsel have reviewed and revised this Lease, and (ii) no rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall be employed in the interpretation or enforcement of this Lease.

22. **Notices.** All notices required or permitted by this Lease shall be in writing and shall be and deemed duly served or given when actually delivered (or if attempted but refused delivery), if personally delivered or delivered by overnight courier (including delivery by FedEx, which confirms delivery in writing), and shall be deemed sufficiently given if served in a manner specified in this Paragraph 22. If notice is received on a Saturday or a Sunday or a legal holiday, it shall be deemed received on the next business day. The addresses noted adjacent to a Party's signature on this Lease (including "copy to" addresses) shall be that Party's address for delivery or mailing of notices, provided that either Party may designate other addresses for notices by written notice to the other Party. Either Party may by written notice to the other specify a different address for notice purposes.

23. **Waivers.** No waiver by either Party of the default of any term, covenant or condition hereof by the other Party, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent default by the other Party of the same or any other term, covenant or condition hereof. Regardless of Landlord's knowledge of a Default or Breach at the time of accepting rent, the acceptance of rent by Landlord shall not be a waiver of any Default or Breach by Tenant of any provision hereof. Any payment given Landlord by Tenant may be accepted by Landlord on account of moneys or damages due Landlord, notwithstanding any qualifying statements or conditions made by Tenant in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Landlord at or before the time of deposit of such payment.

24. **Recording.** Tenant shall not record this Lease or any memorandum of this Lease.

25. **No Right to Holdover.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. In the event that Tenant holds over in violation of this Paragraph 25, the Base Rent payable from and after the time of the expiration or earlier termination of this Lease shall be increased to (a) for the first two (2) months of such holdover, one hundred twenty five percent (125%) of the Base Rent applicable during the month immediately preceding such expiration or earlier termination, and (b) thereafter, one hundred fifty percent (150%) of the Base Rent applicable during the month immediately preceding such expiration or earlier termination. Additionally, in the event that upon the expiration or earlier termination of the Lease, and following written notice from Landlord to Tenant and Tenant's failure to cure within ten (10) business days thereafter, Tenant has not fulfilled its obligation with respect to restoration, repairs and cleanup of the Premises or any other Tenant obligations as set forth in this Lease, Landlord shall have the right to perform any such obligations as it deems necessary at Tenant's sole cost and expense, and any time required by Landlord to complete such obligations shall be considered a period of holding over and the terms of this Paragraph 25 shall apply. Tenant shall protect, defend, indemnify and hold Landlord harmless from all Claims resulting from Tenant's holding over for more than thirty (30) days after the expiration or earlier termination of this Lease, including, without limitation, the cost of unlawful detainer proceedings instituted by Landlord against Tenant, and provided that Landlord has given Tenant thirty (30) days prior written notice that it has entered into a lease of the Premises with a new tenant and Tenant fails to surrender possession of the Premises within such thirty (30) day period, increased construction costs to Landlord as a result of Landlord's inability to timely commence construction of improvements for a new tenant for the Premises, lost profits that results from Landlord's inability to timely deliver the Premises to such new tenant, and any claims made by any succeeding tenant founded upon such failure to surrender and any lost profits to Landlord resulting therefrom. Nothing contained herein shall be construed as consent by Landlord to any holding over by Tenant.

26. **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.

27. **Covenants and Conditions.** All provisions of this Lease to be observed or performed by Tenant are both covenants and conditions.

28. **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. Tenant expressly agrees that any and all disputes arising out of or in connection with this Lease shall be litigated only in the Superior Court of the State of California for the county in which the Premises are located (and in no other), and Tenant consents to the jurisdiction of said court.

29. **Subordination; Attornment; Non-Disturbance.**

29.1 **Subordination.** This Lease and any Option granted hereby shall automatically be subject and subordinate to any ground lease, mortgage, deed of trust, or other security device or amendment or modification thereto (collectively, "**Security Device**"), now or hereafter placed by Landlord upon the Land and to all amendments, renewals and extensions thereof. Tenant agrees that the Lenders holding any such Security Device shall have no duty, liability or obligation to perform any of the obligations of Landlord under this Lease, but that in the event of Landlord's default with respect to any such obligation, Tenant will give any Lender whose name and address have been furnished Tenant notice of Landlord's default. If any Lender shall elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device and shall give written notice thereof to Tenant, this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

29.2 **Attornment.** Subject to the non-disturbance provisions of Paragraph 29.3, Tenant agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior landlord or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Tenant might have against any prior landlord, or (iii) be bound by prepayment of more than one month's rent.

29.3 **Non-Disturbance.** With respect to Security Devices entered into for the first time (as opposed to amendments or modifications to existing Security Devices) by Landlord after the execution of this Lease, Tenant's subordination of this Lease shall be subject to receipt of an assurance (a "**Non-Disturbance Agreement**") from the Lender that Tenant's possession and this Lease, including any options to extend the Term hereof, will not be disturbed so long as Tenant is not in Breach hereof and attorns to the record owner of the Premises. Landlord shall use commercially reasonable efforts to obtain a Non-disturbance Agreement from any Lender currently holding an existing Security Device against the Premises on such Lender's standard subordination, non-disturbance and attornment agreement form within sixty (60) days of the mutual execution and delivery of this Lease.

29.4 **Self-Executing.** The agreements contained in this Paragraph 29 shall be effective without the execution of any further documents; provided, however, that upon written request from Landlord or a Lender in connection with a sale, financing or refinancing of Premises, Tenant shall, within ten (10) days following the date of such request, execute such further commercially reasonable writings as may be reasonably required to separately document any such subordination or non-subordination, attornment and/or non-disturbance agreement as is provided for herein.

30. **Attorneys' Fees.** If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (defined below) 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 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 of its claim or defense. The attorneys' fee 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. Landlord shall be entitled to attorneys' fees, costs and expenses incurred in 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.

31. **Landlord's Access; Showing Premises; Repairs.** Landlord and Landlord's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times upon at least one business day 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 Landlord is required to make under this Lease, including the right to take photographs of the Premises in connection with such entry. Landlord may at any time place on or about the Premises any ordinary "For Sale" signs and Landlord may at any time during the last three hundred sixty-five (365) days of the Term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Landlord shall be without abatement of rent or liability to Tenant.

32. **Signs.** Tenant shall not place any sign upon the exterior of the Premises, except that Tenant may, with Landlord's prior written consent and at Tenant's sole cost and expense, install (but not on the roof) such signs as are reasonably required to advertise Tenant's own business so long as such signs are in a location designated by Landlord and comply with Applicable Requirements and the signage criteria established for the Premises by Landlord. Notwithstanding the foregoing, at Tenant's sole cost and expense, Tenant shall have the right to install (a) a Building top sign on the exterior of the Building, (b) eyebrow signage on the exterior of the Building, (c) signage adjacent to the main entrance to the Premises, and (d) a monument sign, which signage shall consist solely of the name "Cue Health" and/or its logo, subject to Landlord's prior approval of such signage in accordance with the following provisions and Tenant's compliance with the other provisions of this Paragraph 32. The location, quality, design, style, lighting and size of such signage shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Such signage shall comply with all applicable laws, statutes, regulations, ordinances and restrictions, including but not limited to, any permit requirements. Tenant shall install and maintain said signage in good condition and repair at its sole cost and expense during the entire Term. The installation of any sign on the Premises by or for Tenant shall be subject to the provisions of Paragraph 6 (Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations).

33. **Termination; Merger.** Unless specifically stated otherwise in writing by Landlord, the voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof, or a termination hereof by Landlord for Breach by Tenant, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, Landlord shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or all of any existing subtenancies. Landlord's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute Landlord's election to have such event constitute the termination of such interest.

34. **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, conditioned or delayed. Landlord's actual third party out-of-pocket costs and expenses (including, without limitation, architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Tenant for any Landlord consent pertaining to this Lease or the Premises, including, without limitation, consents to an assignment or subletting or the presence or use of a Hazardous Substance, shall be paid by Tenant to Landlord upon receipt of an invoice therefor.

35. **Use of Drones.** Landlord acknowledges that Tenant may use a drone or similar device for fly-over photography or video from time to time and that such activity is not prohibited by Landlord, provided that such activities are at all times performed in accordance with Applicable Laws (subject to the provisions of Paragraph 39 below with respect to any covenants or restrictions of record entered into by Landlord after the Effective Date) and that Tenant shall hold Landlord and the Landlord Parties harmless from and indemnify, protect and defend Landlord and the Landlord Parties against all Claims caused by or arising out of such activities under this Paragraph 35.

36. **Quiet Possession.** Upon payment by Tenant of the Rent for the Premises and the performance of all of the covenants, conditions and provisions on Tenant's part to be observed and performed under this Lease, and unless specifically provided herein, Tenant shall have quiet possession of the Premises for the entire Term hereof subject to all of the provisions of this Lease.

37. **Rules and Regulations.** Tenant agrees that it will abide by, and keep and observe all reasonable rules and regulations ("**Rules and Regulations**") which Landlord may make from time to time for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order. The current Rules and Regulations for the Premises are attached hereto as Exhibit D.

38. **Security Measures.** Tenant acknowledges that the rental payable to Landlord hereunder does not include the cost of guard service or other security measures, and that Landlord shall have no obligation whatsoever to provide same. Tenant assumes all responsibility for the protection of the Premises, Tenant and the Tenant Parties and their property from the acts of third parties and shall install, at Tenant's sole cost and expense, any and all necessary security devices.

39. **Reservations.** Landlord reserves the right, from time to time, to grant, without the consent or joinder of Tenant, such easements, rights of way, utility raceways, and dedications that Landlord deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights of way, utility raceways, dedications, maps and restrictions do not unreasonably interfere with (a) Tenant's use of, or access to or from, the Premises, (b) Tenant's parking rights under this Lease, (c) Tenant's signature rights under this lease, and/or (d) Tenant's roof rights under this Lease. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate any such easement rights, dedication, map or restrictions.

40. **OFAC Compliance**. Each Party represents, warrants and covenants to the other Party that neither they are not, and, after making due inquiry, that no person or entity that owns a 10% or greater equity interest in or otherwise controls such Party, nor any of their respective officers, directors or managing members, (i) is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List or any similar list) or under any statute, executive order (including Executive Order 13224 (the "**Executive Order**") signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental action, (ii) is currently subject to any U.S. sanctions administered by OFAC, (iii) is in violation of the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "**Money Laundering Act**") and none of the activities of such person violate the Money Laundering Act, and (iv) that throughout the term of this Lease Tenant shall comply with the Executive Order and with the Money Laundering Act.

41. **Inspection by a CASp in Accordance with Civil Code § 1938.** Pursuant to California Civil Code Section 1938, Landlord is required to inform Tenant whether the Premises has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the Premises meets all applicable construction-related accessibility standards pursuant to Section 55.53 of the California Civil Code. Landlord informs Tenant that the Premises have not been so inspected by a CASp and Tenant acknowledges that the Premises has not undergone inspection by a CASp. As required by Section 1938(e) of the California Civil Code, Landlord states as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Landlord and Tenant agree that any CASp inspection requested by Tenant shall be conducted at Tenant's sole cost and expense and any repairs within the Premises to correct violations of construction-related accessibility standards disclosed by any CASp inspection requested by Tenant shall be performed at Tenant's sole cost and expense.

42. **Force Majeure**. Except for Tenant's obligation to pay rent and other monetary obligations under this Lease, the parties shall not be held responsible for delays in the performance of their obligations hereunder when caused by strikes, lockouts, labor disputes, acts of God, permitting delays, inspection delays, the inability to obtain or unavailability of services, labor, or materials or reasonable substitutes therefor, failure of power or utilities, governmental actions, orders or declarations, eviction moratoria, riots, insurrection, civil commotion, sabotage, vandalism, explosion, war, natural or local emergency, including public health emergencies, pandemics, epidemics or other outbreaks of virus or disease, fire, flood, severe weather or other casualty, or any other cause beyond the reasonable control of the party obligated to perform, whether foreseen or unforeseen and including events that may or may not be related to the events enumerated herein ("**Force Majeure**").

43. **Authority.** If either Party hereto is a corporation, limited liability company, trust, or general or limited partnership, 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. If Tenant is a corporation, limited liability company, trust or partnership, Tenant shall, within five (5) days after request by Landlord, deliver to Landlord evidence satisfactory to Landlord of such authority.

44. **Conflict.** Any typewritten or handwritten provisions that have been initialed by both Parties shall control any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions.

45. **Offer; Counterparts; Facsimile, Electronic and Emailed Signatures.** Preparation of this Lease by either Landlord or Tenant or Landlord's agent or Tenant's agent and submission of same to Tenant or Landlord shall not be deemed an offer to lease. This Lease is not intended to be binding until executed and delivered by all Parties hereto. This Lease may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. A signed copy of this Lease transmitted by facsimile, email, DocuSign or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Lease for all purposes.

46. **Amendments.** This Lease may be modified only in writing, signed by the parties in interest at the time of the modification. The Parties shall amend this Lease from time to time to reflect any adjustments that are made to the Base Rent or other rent payable under this Lease. As long as they do not materially change Tenant's obligations hereunder, Tenant 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 property of which the Premises are a part.

47. **Multiple Parties.** Except as otherwise expressly provided herein, if more than one person or entity is named herein as either Landlord or Tenant, the obligations of such multiple parties shall be the joint and several responsibility of all persons or entities named herein as such Landlord or Tenant.

48. **Construction.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Lease. Whenever required by the context of this Lease, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Lease shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same and, consequently, any inconsistencies or ambiguities herein shall not be interpreted against either Party as the drafter of the Lease. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Lease. All exhibits referred to in this Lease are attached and incorporated by this reference. Tenant agrees that Tenant shall not disclose any of the economic terms of this Lease to any person or entity not a party to this Lease, nor shall Tenant issue any press releases or make any public statements relating to the terms or provisions of this Lease; provided, however, Tenant may make necessary disclosures to potential lenders, attorneys, accountants and space planning consultants, and/or as may be required by applicable Laws or court order, so long as such Parties agree to keep all of the economic terms of this Lease strictly confidential. The obligation of Tenant set forth in this paragraph shall survive the expiration or any earlier termination of this Lease.

49. **Waiver of Redemption and Common Law Defenses by Tenant**. Tenant hereby waives, for Tenant and for all those claiming under Tenant, any and all rights now or hereafter existing (a) to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease, and (b) to disavow the effectiveness of this Lease or claim that Tenant is excused from Tenant's obligations with regard to Rent and other charges to be paid by Tenant pursuant to this Lease based on any common law doctrines of frustration of purpose or impracticability or impossibility of performance regardless of the occurrence of events making performance of Tenant's obligations under this Lease unprofitable, less profitable or more difficult, including the unavailability of a particular source of funds. Waiver of Redemption by Tenant.

50. **Waiver of Trial by Jury**. LANDLORD AND TENANT, TO THE EXTENT THEY MAY LEGALLY DO SO, HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS LEASE, OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS LEASE OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE EXTENT THEY MAY LEGALLY DO SO, LANDLORD AND TENANT HEREBY AGREE THAT ANY SUCH CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE OTHER PARTY OR PARTIES HERETO TO WAIVER OF ITS OR THEIR RIGHT TO TRIAL BY JURY.

Tenant's Initial /s/ AK
Landlord's Initial /s/ DA

51. **Roof Equipment**. Provided that this Lease is then in full force and effect Tenant shall be permitted, subject to approval by all applicable governmental authorities and compliance with all covenants, conditions and restrictions recorded against the Premises and Applicable Laws, to install, maintain and operate a satellite dish or dishes, antenna, supplemental heating, ventilation and air-conditioning equipment or other communication equipment or Building systems equipment on the roof of the Building (collectively, the "**Roof Equipment**"), the size, weight and precise location of which shall be subject to Landlord's prior written approval not to be unreasonably withheld, conditioned or delayed, and pursuant to plans, all of which have been approved in writing by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed), at Tenant's sole cost and expense. Tenant shall obtain Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, to any roof penetrations and any such penetrations permitted by Landlord shall be performed by Landlord's contractors at Tenant's expense. The installation, maintenance and operation of the Roof Equipment shall be in accordance with the provisions of this Lease and shall be performed at Tenant's sole cost and expense. Tenant will ensure that the Roof Equipment, and each part of them, will be installed by licensed contractors in accordance with all federal, state and local rules and building codes. Tenant will obtain, at its sole cost and expense, all Federal Communications Commission and other licenses or approvals required to install and operate the Roof Equipment and shall repair any and all damage to the Building (including, but not limited to, the roof of the Building) caused as a result of Tenant's installation of the Roof Equipment. The Roof Equipment is and shall remain the property of Tenant or Tenant's assignee, transferee or sublessee, and Landlord and Tenant agree that the Roof Equipment is not, and installation of the Roof Equipment at the Building shall not cause the Roof Equipment to become, a fixture pursuant to this Lease or by operation of law. Tenant shall not be entitled to receive any income from any third-party individual or entity for the use of the Roof Equipment. Tenant shall be responsible for the operation, repair and maintenance of the Roof Equipment during the Term, at Tenant's sole cost and expense, and upon the expiration or other termination of this Lease, Tenant shall remove the Roof Equipment and repair any and all damage to the Building (including, but not limited to, the roof of the Building) caused as a result of such removal. In the event Landlord repairs or replaces the roof during the Lease Term, Tenant will relocate or, if necessary, remove the Roof Equipment from the roof at Tenant's sole cost upon receipt of written request from Landlord. Landlord shall use commercially reasonable efforts to avoid the relocation or removal of the Roof Equipment during any such repair or replacement of the roof. Tenant shall be able to place the Roof Equipment on the roof, at Tenant's sole cost and expense, after Landlord completes repairing or replacing the roof. Landlord may have its representative present at the installation or any reinstallation of the Roof Equipment. The Roof Equipment shall be included within the coverage of all insurance policies required to be maintained by Tenant under the Lease and Tenant shall obtain at its cost all permits required by governmental authorities for the Roof Equipment. The Roof Equipment shall be used solely in connection with the business operations in the Premises, and shall not be used by any party who is not a tenant of the Premises.

THE PARTIES 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 AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

THIS LEASE HAS BEEN PREPARED FOR YOUR ATTORNEY'S REVIEW AND APPROVAL. EXPERTS SHOULD BE CONSULTED TO EVALUATE THE CONDITION OF THE PREMISES AS TO THE POSSIBLE PRESENCE OF ASBESTOS, UNDERGROUND STORAGE TANKS OR HAZARDOUS SUBSTANCES. THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE. AN ATTORNEY FROM THE STATE WHERE THE PREMISES IS LOCATED SHOULD BE CONSULTED.

[SIGNATURES ON NEXT PAGE]

The Parties hereto have executed this Lease as of the Effective Date.

LANDLORD

WESTCORE CG COMMERCE, LLC,
a Delaware limited liability company

By: Westcore CG Venture, LLC,
a Delaware limited liability company,
its Sole Member

By: Westcore Realty Investments, LLC,
a Delaware limited liability company,
its Operations Member

By: Westcore Realty, LLC,
a Delaware limited liability company,
its Sole Member

By: /s/ Don Ankeny
Name: Don Ankeny
Title: Authorized Officer

Address:

c/o Westcore
4350 La Jolla Village Drive, Suite 900
San Diego, CA 92122
Telephone: [***]
Facsimile: [***]

With a copy to:

Ziontz & Radick LLP
233 Wilshire Boulevard, Suite 600
Santa Monica, CA 90401

TENANT
CUE HEALTH INC.,
a Delaware corporation

By: /s/ Ayub Khattak
Name: Ayub Khattak
Title: Chief Executive Officer

Address:

4980 Carroll Canyon Road, Suite 100
San Diego, California 92121
Attention: Ayub Khattak
Telephone: [***]
Email: [***]

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is made this 4th day of June, 2020, between **ARE-SD REGION NO. 67, LLC**, a Delaware limited liability company ("**Landlord**"), and **CUE HEALTH INC.**, a Delaware corporation ("**Tenant**").

Building: 9877 Waples Street, San Diego, California

Premises: The entire Building, containing approximately 63,774 rentable square feet, as shown on **Exhibit A**.

Project: The real property on which the Building is located, together with all improvements thereon and appurtenances thereto as described on **Exhibit B**.

Base Rent: Initially, $33.60 per rentable square foot of the Premises per year, subject to adjustment pursuant to Section 4 hereof.

Rentable Area of Premises: 63,774 sq. ft.

Rentable Area of Project: 63,774 sq. ft.

Tenant's Share of Operating Expenses: 100%

Security Deposit: $1,500,000.00, subject to reduction pursuant to the last paragraph of Section 6.

Rent Adjustment Percentage: 3%

Base Term: Beginning on the Commencement Date and ending 126 months from the first day of the first full month following the Rent Commencement Date. For clarity, if the Rent Commencement Date occurs on the first day of a month, the expiration of the Base Term shall be measured from that date. If the Rent Commencement Date occurs on a day other than the first day of a month, the expiration of the Base Term shall be measured from the first day of the following month.

Permitted Use: Assembling, manufacturing, distribution, and research and development laboratory, office and other related uses in compliance with the provisions of Section 7 hereof.

Address for Rent Payment:
Bank of the West
Dept LA 23447
Pasadena, CA 91185-3447

Landlord's Notice Address:
26 North Euclid Avenue
Pasadena, CA 91101
Attention: Corporate Secretary

Tenant's Notice Address:
Cue Health Inc.
4980 Carroll Canyon Road
San Diego, CA 92121
Attention: Clint Sever

The following Exhibits and Addenda are attached hereto and incorporated herein by this reference:

[X] **EXHIBIT A** - PREMISES DESCRIPTION
[X] **EXHIBIT B** - DESCRIPTION OF PROJECT
[X] **EXHIBIT C** - WORK LETTER
[X] **EXHIBIT D** - COMMENCEMENT DATE
[X] **EXHIBIT E** - RULES AND REGULATIONS
[X] **EXHIBIT F** - TENANT'S PERSONAL PROPERTY
[X] **EXHIBIT G** - LANDLORD'S WORK
[X] **EXHIBIT H** - MAINTENANCE OBLIGATIONS
[X] **EXHIBIT I** – SIGNAGE

1. **Lease of Premises**. Upon and subject to all of the terms and conditions hereof, Landlord hereby leases the Project to Tenant and Tenant hereby leases the Project from Landlord. From and after the Commencement Date through the expiration of the Term, Tenant shall have access to the Building, the Project (including the parking areas serving the Project), and the Premises 24 hours a day, 7 days a week, except in the case of emergencies, as the result of Legal Requirements, or the performance by Landlord of any installation, maintenance or repairs for which Landlord is responsible under this Lease, and otherwise subject to the terms of this Lease.

2. **Delivery; Acceptance of Premises; Commencement Date**. The "**Commencement Date**" shall be the date Landlord acquires fee title to the Project. Landlord shall deliver the Project to Tenant on the Commencement Date. The "**Rent Commencement Date**" shall be the later of (a) the date that is 6 months after the Commencement Date, or (b) January 1, 2021. Upon request of Landlord, Tenant shall execute and deliver a written acknowledgment of the Commencement Date, the Rent Commencement Date, the OPEX Commencement Date (as defined in Section 3(b)) and the expiration date of the Term when such are established in the form of the "Acknowledgement of Commencement Date" attached to this Lease as **Exhibit D**; provided, however, Tenant's failure to execute and deliver such acknowledgment shall not affect Landlord's rights hereunder. The "**Term**" of this Lease shall be the Base Term, as defined above on the first page of this Lease and any Extension Terms which Tenant may elect pursuant to Section 39 hereof.

Except as set forth in the Work Letter or as otherwise expressly set forth in this Lease: (i) Tenant shall accept the Premises in their condition as of the Commencement Date; (ii) Landlord shall have no obligation for any defects in the Premises; and (iii) Tenant's taking possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken. Any access to or occupancy of the Premises by Tenant before the Commencement Date shall be subject to all of the terms and conditions of this Lease, excluding the obligation to pay Base Rent and Operating Expenses.

Notwithstanding anything to the contrary contained in this Lease, Tenant and Landlord acknowledge and agree that as of the date of this Lease, Landlord does not own the Project and that the effectiveness of this Lease and the delivery of the Premises to Tenant is conditioned upon Landlord acquiring fee title the Project pursuant to the existing purchase and sale agreement (as the same may be amended) between Landlord and the current owner of the Project ("**Condition Precedent**"). Neither Landlord nor Tenant shall have any liability whatsoever to each other relating to or arising from Landlord's inability or failure for any reason to cause the Condition Precedent to be satisfied. If the Condition Precedent is not satisfied by August 31, 2020, then this Lease may be terminated by Landlord or Tenant by delivery of written notice to the other delivered on or before September 15, 2020. If this Lease terminates pursuant to the immediately preceding sentence, neither Landlord nor Tenant shall have any further rights, duties or obligations under this Lease.

Following the Commencement Date, Landlord shall perform certain work with respect to the core and shell of the Building and certain site work pursuant to the scope of work attached hereto as **Exhibit G**, which scope of work has been agreed to by Landlord and Tenant ("**Landlord's Work**"). Landlord shall cause Landlord's Work to be performed in a good and workmanlike manner and in accordance with applicable Legal Requirements. Landlord shall consult with Tenant with respect to elements of Landlord's Work which are discretionary in nature (such as the color the Building is being painted). Landlord may make changes to the scope of Landlord's Work reflected on **Exhibit G** upon notice to Tenant so long as such changes will not result in (w) a material increase in TI Costs, (x) a material, adverse effect on Tenant's schedule for substantial completion of the Tenant Improvements, (y) increase the cost of Landlord's Work above the amount of Landlord's Contribution, or (z) any element of Landlord's Work being removed from the scope of Landlord's Work. Any changes to the scope of Landlord's Work reflected on **Exhibit G** that would result in any of the circumstances listed in subsections (w) through (y) of the immediately preceding sentence would require Tenant's prior approval, which shall not be unreasonably withheld, conditioned or delayed, and any changes that would result in any element of Landlord's Work being removed from the scope of Landlord's Work as contemplated in subsection (z) of the immediately preceding sentence would require Tenant's prior approval, which may be granted or withheld in Tenant's sole discretion. Tenant waives all claims for Rent Abatement in connection with Landlord's Work. All costs incurred by Landlord in connection with Landlord's Work including, without limitation, all hard and soft design, engineering, permitting and construction costs, and an administrative fee payable to Landlord in the amount of 1% of the "hard" costs of Landlord's Work, shall be included in the calculation of the cost of Landlord's Work. Landlord shall be responsible for the cost of Landlord's Work up to $25.00 per rentable square foot of the Premises ("**Landlord Contribution**"). Landlord shall make determinations with respect to the budget for Landlord's Work and any changes thereto in a commercially reasonable manner.

Tenant acknowledges that Landlord shall continue to require access to portions of the Project (including the Building interior) following the Commencement Date in order to complete Landlord's Work while Tenant is performing the Tenant Improvements. Commencing on the Commencement Date, Landlord and Tenant shall work together in a cooperative manner, and shall likewise require each of their respective contractors to work together in a cooperative manner, to coordinate the remaining Landlord's Work and the Tenant Improvements and to achieve the substantial completion of all such work in as prompt and efficient manner as reasonably practicable. Landlord shall use reasonable efforts to complete Landlord's Work by the Rent Commencement Date. If Landlord fails to complete Landlord's Work prior to the Rent Commencement Date and Tenant's operations in the Premises are adversely affected due to such failure, then, commencing on the Rent Commencement Date, Tenant shall receive 1 day of abatement of Base Rent for each day following the Rent Commencement Date that Landlord fails to substantially complete Landlord's Work.

Tenant agrees and acknowledges that, except as expressly set forth in this Lease, neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of all or any portion of the Premises or the Project, and/or the suitability of the Premises or the Project for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises or the Project are suitable for the Permitted Use. This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof and supersedes any and all prior representations, inducements, promises, agreements, understandings and negotiations which are not contained herein. Landlord in executing this Lease does so in reliance upon Tenant's representations, warranties, acknowledgments and agreements contained herein.

3. **Rent**.

(a) **Base Rent**. Base Rent for the month in which the Rent Commencement Date occurs (or, if the Rent Commencement Date does not occur on the first day of a calendar month, Base Rent for the first full calendar month following the Rent Commencement Date) and the Security Deposit shall be due and payable concurrently with Tenant's delivery of an executed copy of this Lease to Landlord. For the avoidance of doubt, Tenant shall not be required to pay Base Rent for the period commencing on the Commencement Date through the day immediately preceding the Rent Commencement Date. Tenant shall pay to Landlord in advance, without demand, abatement, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month during the Term hereof after the Rent Commencement Date, in lawful money of the United States of America, at Tenant's election either (i) at the office of Landlord for payment of Rent set forth above, or to such other person or at such other place as Landlord may from time to time designate in writing, or (ii) via federally insured wire transfer (including ACH) pursuant to the wire instructions provided by Landlord. Payments of Base Rent for any fractional calendar month shall be prorated. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any Rent (as defined in Section 5) due hereunder except for any abatement as may be expressly provided in this Lease.

Notwithstanding anything to the contrary contained in this Lease, so long as Tenant is not then in Default (as defined in Section 20) under this Lease, Tenant shall not be required to pay Base Rent with respect to the Premises for the period commencing on the first day of the 2nd full calendar month immediately following the Rent Commencement Date through the last day of the 7th full calendar month immediately following the Rent Commencement (the "**Abatement Period**"). Tenant shall resume paying Base Rent with respect to the entire Premises on the day immediately following the expiration of the Abatement Period.

(b) **Additional Rent**. In addition to Base Rent, Tenant agrees to pay to Landlord as additional rent ("**Additional Rent**"): (i) commencing on the earlier of (x) the Rent Commencement Date, or (y) the date that Tenant commences doing business in more than 50% of the Premises (either, the "**OPEX Commencement Date**"), Tenant's Share of "Operating Expenses" (as defined in Section 5), and (ii) any and all other amounts Tenant assumes or agrees to pay under the provisions of this Lease, including, without limitation, any and all other sums that may become due by reason of any default of Tenant or failure to comply with the agreements, terms, covenants and conditions of this Lease to be performed by Tenant, after any applicable notice and cure period.

4. **Base Rent Adjustments**.

(a) **Total Improvements Cost increase**. If the total cost of Landlord's Work and the amount of the TI Allowance actually funded by Landlord (collectively, the "**Total Improvement Costs**") exceed $150.00 per rentable square foot of the Premises in the aggregate and any portion of the First Tier Additional Allowance (as defined below) is applied toward Total Improvement Costs, then the initial Base Rent reflected on page 1 shall be increased to reflect an annual rate of return of 8% on any portion of the First Tier Additional Allowance actually funded by Landlord. For example, if the Total Improvement Costs are $175.00 per rentable square foot of the Premises and the full amount of the First Tier Additional Allowance is funded, then Base Rent shall be increased pursuant to the following calculation: $175.00/rsf - $150.00/rsf = $25.00/rsf x 8% = $2.00/rsf divided by 12 months = $0.17/rsf per month, so the new initial Base Rent amount shall be equal to $35.64 per rentable square foot of the Premises per year ($2.80 + $0.17 = $2.97/rsf per month x 12). Once the Total Improvement Costs have been determined, Landlord shall deliver written notice (the "**Increase Notice**") to Tenant of the amount of the Total Improvement Costs and the corresponding increase to Base Rent, if any, along with reasonable supporting evidence therefor. Any increase made to Base Rent pursuant to this Section 4(a) shall be retroactive to the Rent Commencement Date. To the extent that Base Rent is increased pursuant to this Section 4(a), (i) Tenant shall pay the additional Base Rent due for the period commencing on the Rent Commencement Date through the month in which the Increase Notice is delivered to Tenant within 30 days after Landlord's delivery to Tenant of the Increase Notice, and (ii) Tenant shall commence paying Base Rent in the amount reflected in the Increase Notice (as may be adjusted pursuant to Section 4(b) below) commencing on the first day of the calendar month immediately following Landlord's delivery to Tenant of the Increase Notice.

To the extent that (x) following the completion of Landlord's Work and the payment of all costs of the Landlord's Work, the actual total cost of Landlord's Work was less than the full amount of Landlord's Contribution, (such difference between the total actual cost of Landlord's Work and Landlord's Contribution, if any, being the "**Landlord's Work Cost Surplus**"), then the Landlord's Work Cost Surplus shall be automatically applied to TI Costs incurred under the Work letter in excess of the $125.00, if any, and (y) following the completion of the Tenant Improvements and payment of all TI Costs, the total actual TI Costs were less than the TI Allowance (if any, the "**Remaining Allowance**"), then the Remaining Allowance shall be automatically applied to any cost of Landlord's Work in excess of Landlord's Contribution, if any.

In addition to Landlord's Contribution and the TI Allowance, Landlord shall make available a "**First Tier Additional Allowance**" in the amount of $25.00 per rentable square foot of the Premises, which First Tier Additional Allowance shall be automatically applied, firstly, toward any cost of Landlord's Work over and above Landlord's Contribution, if any. If all or any portion of the First Tier Additional Allowance remains undisbursed following the payment in full of all costs of Landlord Work in excess of Landlord's Contribution, such remaining First Tier Additional Allowance shall, to the extent Tenant elects not to use its own funds to pay such excess amounts, be applied toward Excess TI Costs (as defined in the Work Letter). Such First Tier Additional Allowance, to the extent applied as provided in this paragraph, shall result in an increase in Base Rent pursuant to the first paragraph of this Section 4(a).

(b) **Annual Adjustments**. Base Rent shall be increased on each annual anniversary of the Rent Commencement Date (provided, however, that if the Rent Commencement Date occurs on a day other than the first day of a calendar month, then Base Rent shall be increased on each annual anniversary of the first day of the first full calendar month immediately following the Rent Commencement Date) (each an "**Adjustment Date**") by multiplying the Base Rent payable immediately before such Adjustment Date by the Rent Adjustment Percentage and adding the resulting amount to the Base Rent payable immediately before such Adjustment Date. Base Rent, as so adjusted, shall thereafter be due as provided herein. Base Rent adjustments for any fractional calendar month shall be prorated.

(c) **Second Tier Additional Allowance**. In addition to Landlord's Contribution, the TI Allowance and the First Tier TI Allowance, Landlord shall make available a "**Second Tier Additional Allowance**" in the amount of $25.00 per rentable square foot of the Premises, which Second Tier Additional Allowance shall automatically be applied, firstly, toward any cost of Landlord's Work over and above Landlord's Contribution and the First Tier Additional Allowance, if any. If all or any portion of the Second Tier Additional Allowance remains undisbursed following the payment in full of all costs of Landlord Work in excess of Landlord's Contribution and the First Tier Additional Allowance, such remaining Second Tier Additional Allowance shall, to the extent Tenant elects not to use its own funds to pay such amounts, be applied toward Excess TI Costs. For the avoidance of any doubt, (i) no portion of the Second Tier Additional Allowance shall be made available unless and until the full amount of the First Tier Additional Allowance has been exhausted, and (ii) Tenant is responsible for any and all Excess TI Costs remaining following the application, if applicable, of any portion of the First Tier Additional Allowance and/or any portion of the available Second Tier Additional Allowance.

Commencing on the Rent Commencement Date and continuing thereafter on the first day of each month during the Base Term, Tenant shall pay the amount necessary to fully amortize the portion of the Second Tier Additional Allowance actually funded by Landlord, if any, in equal monthly payments with interest at a rate of 8% per annum over the Base Term, which interest shall begin to accrue on the date that Landlord first disburses such Second Tier Additional Allowance or any portion(s) thereof. Notwithstanding anything to the contrary contained herein, Tenant may, at Tenant's sole election, accelerate or prepay all or any portion of the outstanding and unamortized portion of the Second Tier Additional Allowance that was actually funded by Landlord at any time without penalty, in which event the amortizing payments shall be appropriately adjusted. Any outstanding and unamortized portion of the Second Tier Additional Allowance and applicable interest remaining unpaid as of the expiration or earlier termination of this Lease shall be paid to Landlord in a lump sum at the expiration or earlier termination of this Lease.

5. **Operating Expense Payments**. Landlord shall deliver to Tenant a reasonably detailed written estimate of Operating Expenses for each calendar year during the Term (the "**Annual Estimate**"), which may be revised by Landlord from time to time during such calendar year. Commencing on the OPEX Commencement Date, and continuing thereafter on the first day of each month during the Term, Tenant shall pay Landlord an amount equal to 1/12th of Tenant's Share of the Annual Estimate. Payments for any fractional calendar month shall be prorated.

The term "**Operating Expenses**" means all costs and expenses of any kind or description whatsoever incurred or accrued each calendar year by Landlord with respect to the Project (including, without duplication, (i) Taxes (as defined in Section 9), (ii) capital repairs, replacements and improvements amortized over the useful life of such capital repairs, replacements and improvements (as reasonably determined by Landlord taking into account all relevant factors), and (iii) subject to the terms of Section 14, the costs of Landlord's third party property manager (not to exceed 1% of Base Rent) or, if there is no third party property manager, administration rent in the amount of 1% of Base Rent (provided that during the Abatement Period, Tenant shall nonetheless be required to pay administration rent each month equal to the amount of the administration rent that Tenant would have been required to pay in the absence of there being an Abatement Period)), excluding only:

(a) the original construction costs of the Structural Items (as defined in Section 13) and costs of correcting defects in such Structural Items;

(b) capital expenditures for expansion or reconfiguration of the Project;

(c) interest, principal or any other payments under any Mortgage (as defined in Section 27) debts of Landlord, financing costs and amortization of funds borrowed by Landlord, whether secured or unsecured and all payments of rent (but not taxes or operating expenses) under any ground lease or other underlying lease of all or any portion of the Project;

(d) depreciation of the Project (except for capital improvements, the cost of which are includable in Operating Expenses and are amortized as set forth above);

(e) salaries, wages, benefits and other compensation paid to (i) personnel of Landlord or its agents or contractors above the position of the person, regardless of title, who has day-to-day management responsibility for the Project or (ii) officers and employees of Landlord or its affiliates who are not assigned in whole or in part to the operation, management, maintenance or repair of the Project; provided, however, that with respect to any such person who does not devote substantially all of his or her employed time to the Project, the salaries, wages, benefits and other compensation of such person shall be prorated to reflect time spent on matters related to operating, managing, maintaining or repairing the Project in comparison to the time spent on matters unrelated to operating, managing, maintaining or repairing the Project;

(f) general organizational, administrative and overhead costs relating to maintaining Landlord's existence, either as a corporation, partnership, or other entity, including general corporate, legal and accounting expenses;

(g) costs (including attorneys' fees and costs of settlement, judgments and payments in lieu thereof) incurred in connection with negotiations or disputes with employees, consultants, management agents, leasing agents, purchasers or mortgagees of the Building;

(h) costs incurred by Landlord due to the violation by Landlord, its employees, agents or contractors of any provision of this Lease or any Legal Requirement (as defined in Section 7);

(i) penalties, fines or interest incurred as a result of Landlord's inability or failure to make payment of Taxes and/or to file any tax or informational returns when due, or from Landlord's failure to make any payment of Taxes required to be made by Landlord hereunder before delinquency;

(j) overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to the Project to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis;

(k) costs of Landlord's charitable or political contributions, or of fine art maintained at the Project;

(l) costs incurred in the sale or refinancing of the Project;

(m) reserves;

(n) net income taxes of Landlord or the owner of any interest in the Project, franchise, capital stock, gift, estate or inheritance taxes or any federal, state or local documentary taxes imposed against the Project or any portion thereof or interest therein;

(o) costs or repair directly resulting from the gross negligence or willful misconduct of landlord or any Landlord Indemnified Parties (as defined in Section 16);

(p) any costs incurred to remove, study, test or remediate Hazardous Materials in or about the Building or the Project for which Tenant is not responsible under Section 30 hereof; and

(q) any expenses otherwise includable within Operating Expenses to the extent actually reimbursed by any other person.

Notwithstanding anything to the contrary contained in this Lease, (A) Landlord shall not be entitled to collect Operating Expenses from Tenant in excess of 100% of the total Operating Expenses actually incurred by Landlord nor shall Landlord be entitled to make any profit from Landlord's collection of Operating Expenses, and (B) all Operating Expenses accounting shall be generally consistently applied from year to year.

Notwithstanding anything to the contrary contained herein, any insurance deductible over $25,000 payable by Tenant to Landlord as part of Operating Expenses under this Lease may, at Tenant's option, be paid by Tenant to Landlord in full at the time the deductible expense is incurred by Landlord or amortized (with interest) in equal monthly installments and paid by Tenant to Landlord over the remaining Term.

Within 90 days after the end of each calendar year (or such longer period as may be reasonably required), Landlord shall furnish to Tenant a statement (an "**Annual Statement**") showing in reasonable detail: (a) the total and Tenant's Share of actual Operating Expenses for the previous calendar year, and (b) the total of Tenant's payments in respect of Operating Expenses for such year. If Tenant's Share of actual Operating Expenses for such year exceeds Tenant's payments of Operating Expenses for such year, the excess shall be due and payable by Tenant as Rent within 30 days after delivery of such Annual Statement to Tenant. If Tenant's payments of Operating Expenses for such year exceed Tenant's Share of actual Operating Expenses for such year Landlord shall pay the excess to Tenant within 30 days after delivery of such Annual Statement, except that after the expiration, or earlier termination of the Term or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting all other amounts due Landlord. Landlord's and Tenant's obligations to pay any overpayments or deficiencies due pursuant to this paragraph shall survive the expiration or earlier termination of this Lease.

The Annual Statement shall be final and binding upon Tenant unless Tenant, within 90 days after Tenant's receipt thereof, shall contest any item therein by giving written notice to Landlord, specifying each item contested and the reason therefor. If, during such 90 day period, Tenant reasonably and in good faith questions or contests the accuracy of Landlord's statement of Tenant's Share of Operating Expenses, Landlord will provide Tenant with access to Landlord's books and records relating to the operation of the Project and such information as Landlord reasonably determines to be responsive to Tenant's questions (the "**Expense Information**"). If after Tenant's review of such Expense Information, Landlord and Tenant cannot agree upon the amount of Tenant's Share of Operating Expenses, then Tenant shall have the right to have an independent regionally or nationally recognized public accounting firm selected by Tenant and approved by Landlord (which approval shall not be unreasonably withheld or delayed), working pursuant to a fee arrangement other than a contingent fee (at Tenant's sole cost and expense), audit and/or review the Expense Information for the year in question (the "**Independent Review**"). The results of any such Independent Review shall be binding on Landlord and Tenant. If the Independent Review shows that the payments actually made by Tenant with respect to Operating Expenses for the calendar year in question exceeded Tenant's Share of Operating Expenses for such calendar year, Landlord shall at Landlord's option either (i) credit the excess amount to the next succeeding installments of estimated Operating Expenses or (ii) pay the excess to Tenant within 30 days after delivery of such statement, except that after the expiration or earlier termination of this Lease or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting all other amounts due Landlord. If the Independent Review shows that Tenant's payments with respect to Operating Expenses for such calendar year were less than Tenant's Share of Operating Expenses for the calendar year, Tenant shall pay the deficiency to Landlord within 30 days after delivery of such statement. If the Independent Review shows that Tenant has overpaid with respect to Operating Expenses by more than 5% then Landlord shall reimburse Tenant for all costs incurred by Tenant for the Independent Review. Operating Expenses for the calendar years in which Tenant's obligation to share therein begins and ends shall be prorated.

"**Tenant's Share**" shall be the percentage set forth on the first page of this Lease. Landlord and Tenant agree that the rentable square footage of the Premises shall not be subject to re-measurement by either party during the Term. Base Rent, Tenant's Share of Operating Expenses and all other amounts payable by Tenant to Landlord hereunder are collectively referred to herein as "**Rent**."

6. **Security Deposit**. Tenant shall deposit with Landlord, upon delivery of an executed copy of this Lease to Landlord, a security deposit (the "**Security Deposit**") for the performance of all of Tenant's obligations hereunder in the amount set forth on page 1 of this Lease, which Security Deposit shall be in the form of an unconditional and irrevocable letter of credit (the "**Letter of Credit**"): (i) in form and substance reasonably satisfactory to Landlord, (ii) naming Landlord as beneficiary, (iii) expressly allowing Landlord to draw upon it at any time from time to time by delivering to the issuer notice that Landlord is entitled to draw thereunder, (iv) issued by Comerica Bank or another FDIC-insured financial institution reasonably satisfactory to Landlord, and (v) redeemable by presentation of a sight draft in the state of Landlord's choice. If Tenant does not provide Landlord with a substitute Letter of Credit complying with all of the requirements hereof at least 10 business days before the stated expiration date of any then current Letter of Credit, Landlord shall have the right to draw the full amount of the current Letter of Credit and hold the funds drawn in cash without obligation for interest thereon as the Security Deposit. The Security Deposit shall be held by Landlord as security for the performance of Tenant's obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Upon each occurrence of a Default (as defined in Section 20), Landlord may use all or any part of the Security Deposit to pay delinquent payments due under this Lease, future rent damages under California Civil Code Section 1951.2, and the cost of any damage, injury, expense or liability caused by such Default, without prejudice to any other remedy provided herein or provided by law. Landlord's right to use the Security Deposit under this Section 6 includes the right to use the Security Deposit to pay future rent damages following the termination of this Lease pursuant to Section 21(c) below. Upon any use of all or any portion of the Security Deposit in accordance with the terms of this Lease, Tenant shall pay Landlord on demand the amount that will restore the Security Deposit to the amount set forth on Page 1 of this Lease. Tenant hereby waives the provisions of any law, now or hereafter in force, including, without limitation, California Civil Code Section 1950.7, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any officer, employee, agent or invitee of Tenant. Upon bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for periods prior to the filing of such proceedings. If Tenant shall fully perform every provision of this Lease to be performed by Tenant, the Security Deposit, or any balance thereof (i.e., after deducting therefrom all amounts to which Landlord is entitled under the provisions of this Lease), shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within 60 days after the expiration or earlier termination of this Lease.

If Landlord transfers its interest in the Project or this Lease, Landlord shall either (a) transfer any Security Deposit then held by Landlord to a person or entity assuming Landlord's obligations under this Section 6, or (b) return to Tenant any Security Deposit then held by Landlord and remaining after the deductions permitted herein. Upon such transfer to such transferee or the return of the Security Deposit to Tenant, Landlord shall have no further obligation with respect to the Security Deposit, and Tenant's right to the return of the Security Deposit shall apply solely against Landlord's transferee. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Landlord's obligation respecting the Security Deposit is that of a debtor, not a trustee, and no interest shall accrue thereon.

If, prior to December 31, 2020, (i) Tenant is not then in Default under this Lease, (ii) Tenant has raised not less than $50,000,000.00 of new financing, and (iii) FDA Emergency Use Authorization approval has been granted to Tenant with respect to Tenant's SARS-CoV-2 test for the clinical-care setting (collectively, the "**Reduction Requirements**" and each a "**Reduction Requirement**"), then the Security Deposit shall be reduced to an amount equal to the lesser of (A) 2 months' Base Rent, or (B) $350,000.00 (the "**Reduced Security Deposit**"). If Tenant delivers a written request to Landlord for such reduction of the Security Deposit along with evidence reasonably satisfactory to Landlord reflecting that the Reduction Requirements reflected in subsections (ii) and (iii) above have been satisfied, then, so long as all of the Reduction Requirements have been satisfied, Landlord shall cooperate with Tenant, at no cost, expense or liability to Landlord, to reduce the Letter of Credit then held by Landlord to the amount of the Reduced Security Deposit. If the Security Deposit is reduced as provided in this paragraph, then from and after the date of such reduction, the "**Security Deposit**" shall be deemed to be the Reduced Security Deposit, for all purposes of this Lease.

7. **Use**. The Premises shall be used solely for the Permitted Use set forth in the basic lease provisions on page 1 of this Lease, and in compliance with all laws, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises, and to the use and occupancy thereof, including, without limitation, the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq. (together with the regulations promulgated pursuant thereto, "**ADA**") (collectively, "**Legal Requirements**" and each, a "**Legal Requirement**"). Tenant shall, upon 5 days' written notice from Landlord, discontinue any use of the Premises which is declared by any Governmental Authority (as defined in Section 9) having jurisdiction to be a violation of a Legal Requirement. Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance, increase the insurance risk, or cause the disallowance of any sprinkler or other credits. Tenant shall not permit any part of the Premises to be used as a "place of public accommodation", as defined in the ADA or any similar legal requirement. Tenant shall reimburse Landlord promptly upon demand for any additional premium charged for any such insurance policy by reason of Tenant's failure to comply with the provisions of this Section or otherwise caused by Tenant's use and/or occupancy of the Premises. Tenant will use the Premises in a careful, safe and proper manner and will not commit or permit waste, overload the floor or structure of the Premises, subject the Premises to use that would damage the Premises or obstruct or interfere with the rights of Landlord, conduct or give notice of any auction, liquidation, or going out of business sale on the Premises, or use or allow the Premises to be used for any unlawful purpose. Tenant shall not place any machinery or equipment which would overload the floor in or upon the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Except as may be provided under the Work Letter, Tenant shall not, without the prior written consent of Landlord, use the Premises in any manner which will require ventilation, air exchange, heating, gas, steam, electricity or water beyond the existing capacity of the Project.

Landlord shall cause Landlord's Work to be completed in compliance with applicable Legal Requirements (including the ADA). Landlord shall, as an Operating Expense (to the extent such Legal Requirement is generally applicable to similar buildings in the area in which the Project is located) or at Tenant's expense (to the extent such Legal Requirement is triggered by reason of Tenant's specific use of the Premises, the Tenant Improvements or Tenant's Alterations) make any alterations or modifications to the exterior of the Building that are required by Legal Requirements. Except as otherwise expressly provided in this paragraph, Tenant, at its sole expense, shall make any alterations or modifications to the Premises or the Project that are required by Legal Requirements (including, without limitation, compliance of the Premises with the ADA) related to the Tenant Improvements, Tenant's use or occupancy of the Premises or Tenant's Alterations. Notwithstanding any other provision herein to the contrary, Tenant shall be responsible for any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages or judgments, and all reasonable expenses incurred in investigating or resisting the same (including, without limitation, reasonable attorneys' fees, charges and disbursements and costs of suit) (collectively, "**Claims**") arising out of or in connection with Legal Requirements related to the Tenant Improvements, Tenant's use or occupancy of the Premises or Tenant's Alterations, and Tenant shall indemnify, defend, hold and save Landlord harmless from and against any and all Claims arising out of or in connection with any failure of the Premises to comply with any Legal Requirement related to Tenant's use or occupancy of the Premises or Tenant's Alterations.

8. **Holding Over** If, with Landlord's express written consent, Tenant retains possession of the Premises after the termination of the Term, (i) unless otherwise agreed in such written consent, such possession shall be subject to immediate termination by Landlord at any time, (ii) all of the other terms and provisions of this Lease (including, without limitation, the adjustment of Base Rent pursuant to Section 4 hereof) shall remain in full force and effect (excluding any expansion or renewal option or other similar right or option) during such holdover period, (iii) Tenant shall continue to pay Base Rent in the amount payable upon the date of the expiration or earlier termination of this Lease or such other amount as Landlord may indicate, in Landlord's sole and absolute discretion, in such written consent, and (iv) all other payments shall continue under the terms of this Lease. If Tenant remains in possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Landlord, (A) Tenant shall become a tenant at sufferance upon the terms of this Lease except that (x) for the first 30 days of such holdover, the monthly rental shall be equal to 125% of Base Rent in effect during the last 30 days of the Term, and (y) for any period of holdover in excess of 30 days, the monthly rental shall be equal to 150% of Base Rent in effect during the last 30 days of the Term, and (B) Tenant shall be responsible for all damages suffered by Landlord resulting from or occasioned by Tenant's holding over beyond the date that is 30 days after the expiration or earlier termination of the Term, including consequential damages. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Section 8 shall not be construed as consent for Tenant to retain possession of the Premises. Acceptance by Landlord of Rent after the expiration of the Term or earlier termination of this Lease shall not result in a renewal or reinstatement of this Lease.

9. **Taxes**. Landlord shall pay, as part of Operating Expenses (except to the extent the cost thereof is excluded from Operating Expenses pursuant to Section 5 hereof), all taxes, levies, fees, assessments and governmental charges of any kind, existing as of the Commencement Date or thereafter enacted (collectively referred to as "**Taxes**"), imposed by any federal, state, regional, municipal, local or other governmental authority or agency, including, without limitation, quasi-public agencies (collectively, "**Governmental Authority**") during the Term, including, without limitation, all Taxes: (i) imposed on or measured by or based, in whole or in part, on rent payable to (or gross receipts received by) Landlord under this Lease and/or from the rental by Landlord of the Project or any portion thereof, or (ii) based on the square footage, assessed value or other measure or evaluation of any kind of the Premises or the Project, or (iii) assessed or imposed by or on the operation or maintenance of any portion of the Premises or the Project, including parking, or (iv) assessed or imposed by, or at the direction of, or resulting from Legal Requirements, or interpretations thereof, promulgated by any Governmental Authority, or (v) imposed as a license or other fee, charge, tax, or assessment on Landlord's business or occupation of leasing space in the Project. Landlord may contest by appropriate legal proceedings the amount, validity, or application of any Taxes or liens securing Taxes. Taxes shall not include any net income taxes imposed on Landlord except to the extent such net income taxes are in substitution for any Taxes payable hereunder. If any such Tax is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall pay, prior to delinquency, any and all Taxes levied or assessed against any personal property or trade fixtures placed by Tenant in the Premises, whether levied or assessed against Landlord or Tenant. If any Taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property, or if the assessed valuation of the Project is increased by a value attributable to improvements in or alterations to the Premises, whether owned by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, then Landlord shall have the right, but not the obligation, to pay such Taxes. Landlord's reasonable determination of any excess assessed valuation shall be binding and conclusive, absent manifest error. The amount of any such payment by Landlord shall constitute Additional Rent due from Tenant to Landlord within 30 days after Tenant's receipt of demand therefor from Landlord.

10. **Parking**. Subject to all applicable Legal Requirements, Force Majeure, a Taking (as defined in Section 19 below) and the exercise by Landlord of its rights hereunder, Tenant shall have the exclusive use of all of the parking spaces at the Project, which Tenant may, at its election, subject to applicable requirements of the City of San Diego and Landlord's reasonable approval, mark as being available exclusively for Tenant's use. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties. Notwithstanding the foregoing, if, following the Rent Commencement Date, Landlord's Work has not been substantially completed and, due to the failure of Landlord's Work to be substantially completed, Tenant will not have access to at least 85% of the parking spaces at the Project, then Landlord shall, at Landlord's cost, until the earlier of the date that Landlord substantially completes Landlord's Work or the date that Tenant has access to at least 85% of the parking spaces at the Project, implement a parking efficiency program (such as valet parking, or off-site parking with shuttle access if more than a 5 minute walk from the Project) in order to address such shortage. After Landlord's Work is substantially completed, except to the extent required by Legal Requirements or as reasonably required for Landlord to satisfy any obligations of Landlord under this Lease, Landlord shall not make changes to the parking areas of the Project that would have any material, adverse effect on Tenant's parking rights under this Section 10 (i.e., that would result in Tenant having access to fewer than 85% of the parking spaces at the Project) without the prior approval of Tenant (which approval shall not be unreasonably withheld).

11. **Utilities, Services**. Commencing on the Commencement Date, Tenant shall contract directly with utility providers for all water, electricity, heat, light, power, sewer, and other utilities (including gas and fire sprinklers to the extent the Project is plumbed for such services), janitorial, and refuse and trash collection ("**Utilities**") required and/or utilized by Tenant during the Term. Tenant shall pay directly to such Utility providers prior to delinquency for all such Utilities furnished to Tenant or the Project during the Term and shall pay for all maintenance charges for Utilities, and any storm sewer charges or other similar charges for Utilities imposed by any Governmental Authority or Utility provider, and any taxes, penalties, surcharges or similar charges thereon. To the extent that any Utilities, maintenance charges for Utilities, any storm sewer charges or other similar charges for Utilities imposed by any Governmental Authority or Utility provider, or any taxes, penalties, surcharges or similar charges are paid for by Landlord, Tenant shall reimburse Landlord for such costs as Operating Expenses. No interruption or failure of Utilities, from any cause whatsoever other than Landlord's willful misconduct, shall result in eviction or constructive eviction of Tenant, termination of this Lease, or the abatement of Rent. Notwithstanding anything to the contrary contained herein, during the period that Landlord is constructing Landlord's Work, the portion of the cost of the Utilities furnished to the Project equitably attributable to Landlord's construction of Landlord's Work shall be included as part of the cost of Landlord's Work. Notwithstanding anything to the contrary set forth herein, if (i) a stoppage of an Essential Service (as defined below) to the Premises shall occur and such stoppage is due solely to the gross negligence or willful misconduct of Landlord and not due in any part to any act or omission on the part of Tenant or any Tenant Party or any matter beyond Landlord's reasonable control (any such stoppage of an Essential Service being hereinafter referred to as a "**Service Interruption**"), and (ii) such Service Interruption continues for more than 3 consecutive business days after Landlord shall have received written notice thereof from Tenant, and (iii) as a result of such Service Interruption, the conduct of Tenant's normal operations in the Premises are materially and adversely affected, then there shall be an abatement of one day's Base Rent for each day during which such Service Interruption continues after such 3 business day period; provided, however, that if any part of the Premises is reasonably useable for Tenant's normal business operations or if Tenant conducts all or any part of its operations in any portion of the Premises notwithstanding such Service Interruption, then the amount of each daily abatement of Base Rent shall only be proportionate to the nature and extent of the interruption of Tenant's normal operations or ability to use the Premises. The rights granted to Tenant under this paragraph shall be Tenant's sole and exclusive remedy resulting from a failure of Landlord to provide services, and Landlord shall not otherwise be liable for any loss or damage suffered or sustained by Tenant resulting from any failure or cessation of services. For purposes hereof, the term "**Essential Services**" shall mean the following services: HVAC service, water, sewer and electricity, but in each case only to the extent that Landlord has an obligation to provide same to Tenant under this Lease.

Tenant agrees to provide Landlord with access to Tenant's water and/or energy usage data on a monthly basis, either by providing Tenant's applicable utility login credentials to Landlord's Measurabl online portal, or by another delivery method reasonably agreed to by Landlord and Tenant. The costs and expenses incurred by Landlord in connection with receiving and analyzing such water and/or energy usage data (including, without limitation, as may be required pursuant to applicable Legal Requirements) shall be included as part of Operating Expenses.

12. **Alterations and Tenant's Property**. Any alterations, additions, or improvements made to the Premises by or on behalf of Tenant, including additional locks or bolts of any kind or nature upon any doors or windows in the Premises, but excluding installation, removal or realignment of furniture systems (other than removal of furniture systems owned or paid for by Landlord) not involving any modifications to the structure or connections (other than by ordinary plugs or jacks) to Building Systems (as defined in Section 13) ("**Alterations**") shall be subject to Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion if any such Alteration materially or adversely affects the structure or Building Systems and shall not be otherwise unreasonably withheld. Tenant may construct nonstructural, cosmetic Alterations in the Premises without Landlord's prior approval if the aggregate cost of all such work in any 12 month period does not exceed $100,000 (excluding paint and carpet) (a "**Notice-Only Alteration**"), provided Tenant notifies Landlord in writing of such intended Notice-Only Alteration, and such notice shall be accompanied by plans, specifications, work contracts and such other information concerning the nature and cost of the Notice-Only Alteration as may be reasonably requested by Landlord, which notice and accompanying materials shall be delivered to Landlord not less than 15 business days in advance of any proposed construction. If Landlord approves any Alterations, Landlord may impose such reasonable conditions on Tenant in connection with the commencement, performance and completion of such Alterations as Landlord may deem appropriate in Landlord's reasonable discretion. Any request for approval shall be in writing, delivered not less than 15 business days in advance of any proposed construction, and accompanied by plans, specifications, bid proposals, work contracts and such other information concerning the nature and cost of the alterations as may be reasonably requested by Landlord, including the identities and mailing addresses of all persons performing work or supplying materials. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to ensure that such plans and specifications or construction comply with applicable Legal Requirements. Tenant shall cause, at its sole cost and expense, all Alterations to comply with insurance requirements and with Legal Requirements and shall implement at its sole cost and expense any alteration or modification required by Legal Requirements as a result of any Alterations. Except with respect to Notice-Only Alterations, Tenant shall pay to Landlord, as Additional Rent, on demand, an amount equal to the reasonable out-of-pocket costs incurred by Landlord with respect to each Alteration. Before Tenant begins any Alteration, Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall reimburse Landlord for, and indemnify and hold Landlord harmless from, any expense incurred by Landlord by reason of faulty work done by Tenant or its contractors, delays caused by such work, or inadequate cleanup.

Tenant shall furnish security or make other arrangements reasonably satisfactory to Landlord to assure payment for the completion of all Alterations work free and clear of liens, and shall provide (and cause each contractor or subcontractor to provide) certificates of insurance for workers' compensation and other coverage in amounts and from an insurance company reasonably satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Alterations, Tenant shall deliver to Landlord: (i) sworn statements setting forth the names of all contractors and subcontractors who did the work and final lien waivers from all such contractors and subcontractors; and (ii) if available, "as built" plans for any such Alteration.

Except for Removable Installations (as hereinafter defined) and Tenant's Property, all Installations (as hereinafter defined) shall be and shall remain the property of Landlord during the Term and following the expiration or earlier termination of the Term, shall not be removed by Tenant at any time during the Term, and shall remain upon and be surrendered with the Premises as a part thereof. Notwithstanding the foregoing, Landlord may, at the time its approval of any Alterations is requested, or at the time it receives notice of a Notice-Only Alteration (but, if the Notice-Only Alteration, is carpet, paint or floor covering, Landlord shall not require those items to be removed), notify Tenant that Landlord requires that Tenant remove such Alteration upon the expiration or earlier termination of the Term, in which event Tenant shall remove such Alterations in accordance with the immediately succeeding sentence. Upon the expiration or earlier termination of the Term, Tenant shall remove (i) all wires, cables or similar equipment which Tenant has installed in the Premises or in the risers or plenums of the Building unless such wires, cables or similar equipment are viable for the next tenant and do not interfere with the wire, cable and equipment needs of the next tenant, all as reasonably determined by Landlord within a reasonable period following receipt by Landlord of a written inquiry from Tenant, (ii) any Alterations for which Landlord has given Tenant notice of removal in accordance with the immediately preceding sentence, and (iii) all of Tenant's Property (as hereinafter defined), and Tenant shall restore and repair any damage caused by or occasioned as a result of such removal, including, without limitation, capping off all such connections behind the walls of the Premises and repairing any holes. During any restoration period beyond the expiration or earlier termination of the Term, Tenant shall pay Rent to Landlord as provided herein as if said space were otherwise occupied by Tenant. If Landlord is requested by Tenant or any lender, lessor or other person or entity claiming an interest in any of Tenant's Property to waive any lien Landlord may have against any of Tenant's Property, and Landlord consents to such waiver, then Landlord shall be entitled to be paid as administrative rent a fee of $1,000 per occurrence for its time and effort in preparing and negotiating such a waiver of lien.

For purposes of this Lease, (x) "**Removable Installations**" means any items listed on **Exhibit F** attached hereto and any items agreed by Landlord in writing (which agreement shall not be unreasonably withheld, conditioned or delayed) to be included on **Exhibit F** in the future, (y) "**Tenant's Property**" means Removable Installations and, other than Installations, any personal property or equipment of Tenant that may be removed without material damage to the Premises, and (z) "**Installations**" means all property of any kind paid for with the TI Fund, all Alterations, all fixtures, and all partitions, hardware, built-in machinery, built-in casework and cabinets and other similar additions, equipment, property and improvements built into the Premises so as to become an integral part of the Premises, including, without limitation, fume hoods which penetrate the roof or plenum area, built-in cold rooms, built-in warm rooms, walk-in cold rooms, walk-in warm rooms, deionized water systems, glass washing equipment, autoclaves, chillers, built-in plumbing, electrical and mechanical equipment and systems, and any power generator and transfer switch.

Tenant shall not be required to remove the Tenant Improvements at the expiration or earlier termination of the Term nor shall Tenant have any right to remove any of the Tenant Improvements at any time.

After Landlord's Work is substantially completed, except to the extent required by Legal Requirements or as reasonably required for Landlord to satisfy any obligations of Landlord under this Lease, Landlord shall not make any alterations to the Project that would have any material effect on Tenant's ability to operate in the Premises without the prior approval of Tenant (which approval shall not be unreasonably withheld).

13. **Landlord's Repairs**. Landlord shall, at Landlord's sole expense (and not as an Operating Expense), be responsible for capital repairs and replacements of the roof (not including the roof membrane), exterior walls and foundation of the Building ("**Structural Items**") unless the need for such repairs or replacements is (a) required by changes in Legal Requirements, in which case the cost thereof shall be included as part of Operating Expenses and shall be amortized pursuant to Section 5 hereof, or (b) caused by Tenant or any Tenant Parties, in which case Tenant shall bear the full cost to repair or replace such Structural Items. Landlord shall, as an Operating Expense, be responsible for the routine maintenance and repair of such Structural Items. Landlord, as an Operating Expense, shall maintain, repair and replace (i) the roof membrane, (ii) all of the exterior, parking and areas of the Project outside the Building, and (iii) all HVAC, plumbing, fire sprinklers and all other building systems serving the Premises and other portions of the Project ("**Building Systems**"), in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, or by any of Tenant's assignees, sublessees, licensees, agents, servants, employees, invitees and contractors (or any of Tenant's assignees, sublessees and/or licensees respective agents, servants, employees, invitees and contractors) (collectively, "**Tenant Parties**") excluded. Losses and damages caused by Tenant or any Tenant Party shall be repaired by Landlord, to the extent not covered by insurance, at Tenant's sole cost and expense. Landlord reserves the right to stop Building Systems services when necessary (i) by reason of accident or emergency, or (ii) for planned repairs, alterations or improvements, which are, in the judgment of Landlord, desirable or necessary to be made, until said repairs, alterations or improvements shall have been completed. Landlord shall have no responsibility or liability for failure to supply Building Systems services during any such period of interruption; provided, however, that Landlord shall, except in case of emergency, give Tenant 5 business days' advance notice of any planned stoppage of Building Systems services for routine maintenance, repairs, alterations or improvements. Landlord shall use reasonable efforts to coordinate any planned stoppages of Building Systems with Tenant to minimize interference with Tenant's operations in the Premises during any such planned stoppages of Building Systems. Tenant shall promptly give Landlord written notice of any repair required by Landlord pursuant to this Section, after which Landlord shall make a commercially reasonable effort to effect such repair. Landlord shall not be liable for any failure to make any repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after Tenant's written notice of the need for such repairs or maintenance. Tenant waives its rights under any state or local law to terminate this Lease or to make such repairs at Landlord's expense and agrees that the parties' respective rights with respect to such matters shall be solely as set forth herein. Repairs required as the result of fire, earthquake, flood, vandalism, war, or similar cause of damage or destruction shall be controlled by Section 18.

14. **Tenant's Repairs**. Subject to Section 13 hereof (and except as otherwise expressly set forth in the fourth paragraph of Section 2 of this Lease), Tenant, at its expense, shall repair, replace and maintain in good condition all portions of the Premises, including, without limitation, entries, doors, ceilings, interior windows, interior walls, and the interior side of demising walls. Such repair and replacement may include capital expenditures and repairs whose benefit may extend beyond the Term. Should Tenant fail to make any such repair or replacement or fail to maintain the Premises, Landlord shall give Tenant notice of such failure. If Tenant fails to commence cure of such failure within 10 days of Landlord's notice, and thereafter diligently prosecute such cure to completion, Landlord may perform such work and shall be reimbursed by Tenant within 10 days after demand therefor; provided, however, that if such failure by Tenant creates or could create an emergency, Landlord may immediately commence cure of such failure and shall thereafter be entitled to recover the costs of such cure from Tenant. Subject to Sections 17 and 18, Tenant shall bear the full uninsured cost of any repair or replacement to any part of the Project that results from damage caused by Tenant or any Tenant Party.

Notwithstanding anything to the contrary contained in this Lease, as of the Commencement Date, the maintenance and repair obligations for the Premises and the Project shall be allocated between Landlord and Tenant as set forth on **Exhibit H** attached hereto. The maintenance obligations allocated to Tenant pursuant to **Exhibit H** (the "**Tenant Maintenance Obligations**") shall be performed by Tenant at Tenant's sole cost and expense. The Tenant Maintenance Obligations shall include the procurement and maintenance of contracts, in form and substance reasonably satisfactory to Landlord, with copies to Landlord upon Landlord's written request, for and with contractors reasonably acceptable to Landlord specializing and experienced in the respective Tenant Maintenance Obligations. Notwithstanding anything to the contrary contained herein, the scope of work of any such contracts entered into by Tenant pursuant to this paragraph shall, at a minimum, comply with manufacturer's recommended maintenance procedures for the optimal performance of the applicable equipment. Landlord shall, notwithstanding anything to the contrary contained in this Lease, have no obligation to perform any Tenant Maintenance Obligations. The Tenant Maintenance Obligations shall not include the right or obligation on the part of Tenant to make any structural and/or capital repairs or improvements to the Project. Notwithstanding anything to the contrary contained in this Lease, Landlord shall, during any period that Tenant is responsible for the Tenant Maintenance Obligations, continue, as part of Operating Expenses (except as otherwise expressly excluded from Operating Expenses pursuant to Section 5), to be responsible, as provided in Section 13, for capital repairs and replacements required to be made to the Project. If Tenant fails to maintain any portion of the Project for which Tenant is responsible as part of the Tenant Maintenance Obligations in a manner reasonably acceptable to Landlord within the requirements of this Lease (each, a "**Maintenance Obligation Failure**"), Landlord shall have the right, but not the obligation, to provide Tenant with written notice thereof. If Tenant does not cure such Maintenance Obligation Failure within 10 business days (unless the nature of such repair or maintenance is such that longer than 10 business days is reasonably required to cure, in which case Tenant shall have additional time so long as Tenant is diligently pursuing such cure) of Landlord's written notice, Landlord shall provide to Tenant with a second written notice stating that Tenant's failure to cure its Maintenance Obligation Failure within 5 days after Tenant's receipt of the second notice may result in Landlord assuming the maintenance obligation with respect to which the Maintenance Obligation Failure exists. Landlord and Tenant acknowledge and agree that (a) the administrative rent of 1% of Base Rent provided for in Section 5 assumes Tenant maintaining the portions of the Project for which Tenant is responsible as part of the Tenant Maintenance Obligations in a manner reasonably acceptable to Landlord within the requirements of this Lease as provided in this Section 14, and (b) if at any time during the Term, Landlord assumes any or all of the Tenant Maintenance Obligations as provided for in the immediately preceding sentence, then such administrative rent shall be increased to 3% of Base Rent. If Landlord has assumed any of the Tenant Maintenance Obligations pursuant to the terms of this paragraph, either Landlord or Tenant may elect, upon not less than 30 days written notice to the other, to have Landlord assume the balance of the Tenant Maintenance Obligations and Tenant shall not be required to perform any of the Tenant Maintenance Obligations following such date.

15. **Mechanic's Liens**. Tenant shall discharge, by bond or otherwise, any mechanic's lien filed against the Premises or against the Project for work claimed to have been done for, or materials claimed to have been furnished to, Tenant within 15 days after Tenant receives notice of the filing thereof, at Tenant's sole cost and shall otherwise keep the Premises and the Project free from any liens arising out of work performed, materials furnished or obligations incurred by Tenant. Should Tenant fail to discharge any lien described herein within the period provided for above, Landlord shall have the right, but not the obligation, to pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title to the Project and the cost thereof shall be immediately due from Tenant as Additional Rent. If Tenant shall lease or finance the acquisition of office equipment, furnishings, or other personal property of a removable nature utilized by Tenant in the operation of Tenant's business, Tenant warrants that any Uniform Commercial Code Financing Statement filed as a matter of public record by any lessor or creditor of Tenant will upon its face or by exhibit thereto indicate that such Financing Statement is applicable only to removable personal property of Tenant located within the Premises. In no event shall the address of the Project be furnished on the statement without qualifying language as to applicability of the lien only to removable personal property, located in an identified suite held by Tenant.

16. **Indemnification**. Tenant hereby indemnifies and agrees to defend, save and hold Landlord, its officers, directors, employees, managers, agents, sub-agents, constituent entities and lease signators (collectively, "**Landlord Indemnified Parties**") harmless from and against any and all Claims for injury or death to persons or damage to property occurring within or about the Premises or the Project arising directly or indirectly out of use or occupancy of the Premises or the Project (including, without limitation, any act, omission or neglect by Tenant or any Tenant's Parties in or about the Premises or at the Project) or a breach or default by Tenant in the performance of any of its obligations hereunder, except to the extent caused by the willful misconduct or gross negligence of Landlord Indemnified Parties. Landlord shall not be liable to Tenant for, and Tenant assumes all risk of damage to, personal property (including, without limitation, loss of records kept within the Premises). Tenant further waives any and all Claims for injury to Tenant's business or loss of income relating to any such damage or destruction of personal property (including, without limitation, any loss of records). Landlord Indemnified Parties shall not be liable for any damages arising from any act, omission or neglect of any tenant in the Project or of any other third party or Tenant Parties.

Subject to all of the other provisions of this Lease including, without limitation, the waivers provided for in Section 17, Landlord hereby indemnifies and agrees to defend, save and hold Tenant harmless from and against any and all third party Claims for injury or death to persons or damage to property occurring at the Project (outside the Premises) to the extent caused by the willful misconduct or gross negligence of Landlord.

17. **Insurance**. Landlord shall maintain all risk property and, if applicable, sprinkler damage insurance covering the full replacement cost of the Project. Landlord shall further procure and maintain commercial general liability insurance with a single loss limit of not less than $2,000,000 for bodily injury and property damage with respect to the Project. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, flood, environmental hazard and earthquake, loss or failure of building equipment, errors and omissions, rental loss during the period of repair or rebuilding, workers' compensation insurance and fidelity bonds for employees employed to perform services and insurance for any improvements installed by Tenant or which are in addition to the standard improvements customarily furnished by Landlord without regard to whether or not such are made a part of the Project. All such insurance shall be included as part of the Operating Expenses. The Project may be included in a blanket policy (in which case the cost of such insurance allocable to the Project will be determined by Landlord based upon the insurer's cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance which Landlord reasonably deems necessary as a result of Tenant's use of the Premises.

Tenant, at its sole cost and expense, shall maintain during the Term: all risk property insurance or special form property insurance with business interruption and extra expense coverage, covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense; workers' compensation insurance with no less than the minimum limits required by law; employer's liability insurance with such limits as required by laws; and commercial general liability insurance, with a minimum limit of not less than $5,000,000 per occurrence for bodily injury and property damage with respect to the Premises, which coverage amount may be satisfied through a combination of primary and umbrella policies. The commercial general liability insurance maintained by Tenant shall name Alexandria Real Estate Equities, Inc., and Landlord, its officers, directors, employees, managers, agents, sub-agents, constituent entities and lease signators (collectively, "**Landlord Insured Parties**"), as additional insureds; insure on an occurrence and not a claims-made basis; be issued by insurance companies which have a rating of not less than policyholder rating of A and financial category rating of at least Class X in "Best's Insurance Guide"; not contain a hostile fire exclusion; contain a contractual liability endorsement; and provide primary coverage to Landlord Insured Parties (any policy issued to Landlord Insured Parties providing duplicate or similar coverage shall be deemed excess over Tenant's policies, regardless of limits). Tenant shall (i) provide Landlord with 30 days' advance written notice of cancellation of such commercial general liability policy, and (ii) require Tenant's insurer to endeavor to provide 10 days' advance written notice of cancellation of such commercial general liability policy. Copies of such policies (if requested by Landlord), or certificates of insurance showing the limits of coverage required hereunder and showing Landlord as an additional insured, along with reasonable evidence of the payment of premiums for the applicable period, shall be delivered to Landlord by Tenant prior to (i) the earlier to occur of (x) the Commencement Date, or (y) the date that Tenant accesses the Premises under this Lease, and (ii) each renewal of said insurance. Tenant's policy may be a "blanket policy" with an aggregate per location endorsement which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Tenant shall, at least 5 days prior to the expiration of such policies, furnish Landlord with renewal certificates.

In each instance where insurance is to name Landlord as an additional insured, Tenant shall upon written request of Landlord also designate and furnish certificates so evidencing Landlord as additional insured to: (i) any lender of Landlord holding a security interest in the Project or any portion thereof, (ii) the landlord under any lease wherein Landlord is tenant of the real property on which the Project is located, if the interest of Landlord is or shall become that of a tenant under a ground or other underlying lease rather than that of a fee owner, and/or (iii) any management company retained by Landlord to manage the Project.

The property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, and their respective officers, directors, employees, managers, agents, invitees and contractors ("**Related Parties**"), in connection with any loss or damage thereby insured against. Neither party nor its respective Related Parties shall be liable to the other for loss or damage caused by any risk insured against under property insurance required to be maintained hereunder, and each party waives any claims against the other party, and its respective Related Parties, for such loss or damage. The failure of a party to insure its property shall not void this waiver. Landlord and its respective Related Parties shall not be liable for, and Tenant hereby waives all claims against such parties for, business interruption and losses occasioned thereby sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or the Project from any cause whatsoever. If the foregoing waivers shall contravene any law with respect to exculpatory agreements, the liability of Landlord or Tenant shall be deemed not released but shall be secondary to the other's insurer.

Landlord may require insurance policy limits to be raised to conform with requirements of Landlord's lender and/or insurance consultants; provided, however, that the increased amount of coverage is consistent with coverage amounts then being required by institutional owners of similar projects with tenants occupying similar size premises in the geographical area in which the Project is located

18. **Restoration**. If, at any time during the Term, the Project or the Premises are damaged or destroyed by a fire or other insured casualty, Landlord shall notify Tenant within 60 days after discovery of such damage as to the amount of time Landlord reasonably estimates it will take to restore the Project or the Premises, as applicable (the "**Restoration Period**"). If the Restoration Period is estimated to exceed 12 months (the "**Maximum Restoration Period**"), Tenant may elect to terminate this Lease by delivery of written notice to Landlord within 5 business days of receipt of a notice from Landlord estimating a Restoration Period for the Premises longer than the Maximum Restoration Period. Unless Tenant so elects to terminate this Lease, Landlord shall, subject to receipt of sufficient insurance proceeds (with any deductible to be treated as a current Operating Expense), promptly restore the Premises (excluding the improvements installed by Tenant or by Landlord and paid for by Tenant), subject to delays arising from the collection of insurance proceeds, from Force Majeure events or as needed to obtain any license, clearance or other authorization of any kind required to enter into and restore the Premises issued by any Governmental Authority having jurisdiction over the use, storage, handling, treatment, generation, release, disposal, removal or remediation of Hazardous Materials (as defined in Section 30) in, on or about the Premises (collectively referred to herein as "**Hazardous Materials Clearances**"); provided, however, that if repair or restoration of the Premises is not substantially complete as of the end of the Maximum Restoration Period or, if longer, the Restoration Period, Tenant may by written notice to Landlord delivered within 5 business days of the expiration of the Maximum Restoration Period or, if longer, the Restoration Period, elect to terminate this Lease, in which event Landlord shall be relieved of its obligation to make such repairs or restoration and this Lease shall terminate as of the date that is 60 days after the later of: (i) discovery of such damage or destruction, or (ii) the date all required Hazardous Materials Clearances are obtained, but Landlord shall retain any Rent paid and the right to any Rent payable by Tenant prior to such election by Tenant.

Notwithstanding anything to the contrary contained in this Section 18, if the Premises or the Project is damaged or destroyed by a casualty which is not covered by Landlord's insurance (or is only partially covered by Landlord's insurance) such that there is any shortfall in coverage to restore the Premises or the Project other than any shortfall resulting from Landlord's failure to maintain the insurance required to be maintained by Landlord pursuant to Section 17, and Landlord is not willing to pay the amount of such shortfall, then Landlord shall give written notice to Tenant of such determination (the "**Determination Notice**"). In addition, if any Holder requires that any of the insurance proceeds from a casualty be applied to indebtedness secured by the Project and it results in a shortfall to complete the repairs and Landlord is not willing to pay for such shortfall, then Landlord shall have the right to provide a Determination Notice to Tenant; provided, however that, if Landlord encumbers the Project with a Mortgage, Landlord shall use reasonable efforts to cause the Holder of such Mortgage to agree to only claim such insurance proceeds if the Restoration Period is estimated to exceed the Maximum Restoration Period (provided further that in no event shall Landlord have any liability to Tenant in connection with Landlord's failure to obtain such agreement from the Holder despite Landlord's good faith efforts). Either Landlord (subject to Tenant's right to deliver a Termination Rejection Notice) or Tenant may terminate this Lease by giving written notice ("**Termination Notice**") to the other party within 30 days after receipt of the Determination Notice. Tenant shall have the right to reject Landlord's termination notice and require Landlord to restore the Premises or the Project, as applicable, provided, however, that Tenant provides Landlord with written notice ("**Termination Rejection Notice**"), within 10 business days after receipt of the Termination Notice, of Tenant's election to require Landlord to restore the Premises or the Project, as applicable, and Tenant pays the full amount of the shortfall ("**Tenant Contribution**"). Landlord shall have the right to require Tenant to deposit the full Tenant Contribution with Landlord concurrently with Tenant's delivery of the Termination Rejection Notice. Notwithstanding anything to the contrary contained in this paragraph, in no event shall Landlord have any repair obligations under this paragraph unless there is at least 4 years remaining on the Base Term of this Lease from and after the estimated completion date of the repairs.

Tenant, at its expense, shall promptly perform, subject to delays arising from the collection of insurance proceeds, from Force Majeure (as defined in Section 34) events or to obtain Hazardous Material Clearances, any repairs or restoration Tenant wishes to have performed that are not required to be done by Landlord and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Notwithstanding the foregoing, either Landlord or Tenant may terminate this Lease upon written notice to the other if the Premises are damaged during the last year of the Term and Landlord reasonably estimates that it will take more than 2 months to repair such damage; provided, however, that such notice is delivered within 10 business days after the date that Landlord provides Tenant with written notice of the estimated Restoration Period. Notwithstanding anything to the contrary contained herein, Landlord shall also have the right to terminate this Lease if insurance proceeds are not available for such restoration. Rent shall be abated from the date all required Hazardous Material Clearances are obtained until the Premises are repaired and restored, in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises, unless Landlord provides Tenant with other space during the period of repair that is suitable (as reasonably determined by Tenant) for the temporary conduct of Tenant's business for the Permitted Use. In the event that no Hazardous Material Clearances are required to be obtained by Tenant with respect to the Premises, rent abatement shall commence on the date of discovery of the damage or destruction. Such abatement shall be the sole remedy of Tenant, and except as provided in this Section 18, Tenant waives any right to terminate this Lease by reason of damage or casualty loss.

The provisions of this Lease, including this Section 18, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, or any other portion of the Project, and any statute or regulation which is now or may hereafter be in effect shall have no application to this Lease or any damage or destruction to all or any part of the Premises or any other portion of the Project, the parties hereto expressly agreeing that this Section 18 sets forth their entire understanding and agreement with respect to such matters.

19. **Condemnation**. If the whole or any material part of the Premises or the Project is taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "**Taking**" or "**Taken**"), and the Taking would in Landlord's reasonable judgment, either prevent or materially interfere with Tenant's use of the Premises or materially interfere with or impair Landlord's ownership or operation of the Project then upon written notice by Landlord this Lease shall terminate and Rent shall be apportioned as of said date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, Landlord shall promptly restore the Premises and the Project as nearly as is commercially reasonable under the circumstances to their condition prior to such partial Taking and the rentable square footage of the Building, the rentable square footage of the Premises, Tenant's Share of Operating Expenses and the Rent payable hereunder during the unexpired Term shall be reduced to such extent as may be fair and reasonable under the circumstances. Upon any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's trade fixtures, if a separate award for such items is made to Tenant. Tenant hereby waives any and all rights it might otherwise have pursuant to any provision of state law to terminate this Lease upon a partial Taking of the Premises or the Project.

20. **Events of Default**. Each of the following events shall be a default ("**Default**") by Tenant under this Lease:

(a) **Payment Defaults**. Tenant shall fail to pay (i) any installment of Base Rent, Operating Expenses or any other regularly scheduled payment of Rent hereunder when due; provided, however, that Landlord will give Tenant notice and an opportunity to cure such failure to pay Rent within 5 days of any such notice and Tenant agrees that such notice shall be in lieu of and not in addition to, or shall be deemed to be, any notice required by law; provided, however, that Landlord shall not be required to deliver and Tenant shall not be entitled to receive a notice and opportunity to cure pursuant to this Section 20(a)(i) more than twice in any 12 month period, or (ii) any non-recurring payment of Rent hereunder when due; provided, however, that Landlord will give Tenant notice and an opportunity to cure any failure to pay such non-recurring payment of Rent within 5 days of any such notice not more than twice in any 12 month period and Tenant agrees that such notice shall be in lieu of and not in addition to, or shall be deemed to be, any notice required by law.

(b) **Insurance**. Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled or terminated or shall expire or shall be reduced or materially changed, or Landlord shall receive a notice of nonrenewal of any such insurance and Tenant shall fail to obtain replacement insurance at least 5 days before the expiration of the current coverage.

(c) **Abandonment**. Tenant shall abandon the Premises. Tenant shall not be deemed to have abandoned the Premises if (i) Tenant provides Landlord with reasonable advance notice prior to vacating and, at the time of vacating the Premises, Tenant completes Tenant's obligations with respect to the Surrender Plan in compliance with Section 28, (ii) Tenant has made reasonable arrangements with Landlord for the security of the Premises for the balance of the Term, and (iii) Tenant continues during the balance of the Term to satisfy all of its obligations under this Lease as they come due.

(d) **Improper Transfer**. Tenant shall assign, sublease or otherwise transfer or attempt to transfer all or any portion of Tenant's interest in this Lease or the Premises except as expressly permitted herein, or Tenant's interest in this Lease shall be attached, executed upon, or otherwise judicially seized and such action is not released within 90 days of the action.

(e) **Liens**. Tenant shall fail to discharge or otherwise obtain the release of any lien placed upon the Premises in violation of this Lease within 15 days after Tenant's receipt of notice that any such lien is filed against the Premises.

(f) **Insolvency Events**. Tenant or any guarantor or surety of Tenant's obligations hereunder shall: (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "**Proceeding for Relief**"); (C) become the subject of any Proceeding for Relief which is not dismissed within 90 days of its filing or entry; or (D) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

(g) **Estoppel Certificate or Subordination Agreement**. Tenant fails to execute any document required from Tenant under Sections 23 or 27 within 5 business days after a second notice requesting such document.

(h) **Other Defaults**. Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Section 20, and, except as otherwise expressly provided herein, such failure shall continue for a period of 30 days after written notice thereof from Landlord to Tenant.

Any notice given under Section 20(h) hereof shall: (i) specify the alleged default, (ii) demand that Tenant cure such default, (iii) be in lieu of, and not in addition to, or shall be deemed to be, any notice required under any provision of applicable law, and (iv) not be deemed a forfeiture or a termination of this Lease unless Landlord elects otherwise in such notice; provided that if the nature of Tenant's default pursuant to Section 20(h) is such that it cannot be cured by the payment of money and reasonably requires more than 30 days to cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said 30 day period and thereafter diligently prosecutes the same to completion; provided, however, that, upon request by Landlord from time to time, Tenant shall provide Landlord with detailed written status reports regarding the status of such cure and the actions being taken by Tenant.

21. **Landlord's Remedies**.

(a) **Payment By Landlord; Interest**. Upon a Default by Tenant hereunder, Landlord may, without waiving or releasing any obligation of Tenant hereunder, make such payment or perform such act. All sums so paid or incurred by Landlord, together with interest thereon, from the date such sums were paid or incurred, at the annual rate equal to 12% per annum or the highest rate permitted by law (the "**Default Rate**"), whichever is less, shall be payable to Landlord on demand as Additional Rent. Nothing herein shall be construed to create or impose a duty on Landlord to mitigate any damages resulting from Tenant's Default hereunder.

(b) **Late Payment Rent**. Late payment by Tenant to Landlord of Rent and other sums due will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord under any Mortgage covering the Premises. Therefore, if any installment of Rent due from Tenant is not received by Landlord within 5 days after the date such payment is due, Tenant shall pay to Landlord an additional sum equal to 6% of the overdue Rent as a late charge. Notwithstanding the foregoing, before assessing a late charge the first time in any calendar year, Landlord shall provide Tenant written notice of the delinquency and will waive the right if Tenant pays such delinquency within 5 business days thereafter. The parties agree that this late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. In addition to the late charge, Rent not paid when due shall bear interest at the Default Rate from the 5th day after the date due until paid.

(c) **Remedies**. Upon the occurrence of a Default, Landlord, at its option, without further notice or demand to Tenant, shall have in addition to all other rights and remedies provided in this Lease, at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

(i) Terminate this Lease, or at Landlord's option, Tenant's right to possession only, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor;

(ii) Upon any termination of this Lease, whether pursuant to the foregoing Section 21(c)(i) or otherwise, Landlord may recover from Tenant the following:

(A) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(B) 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 Tenant proves could have been reasonably avoided; plus

(C) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(D) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including, but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(E) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "**rent**" as used in this Section 21 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 21(c)(ii)(A) and (B), above, the "**worth at the time of award**" shall be computed by allowing interest at the Default Rate. As used in Section 21(c)(ii)(C) above, the "**worth at the time of award**" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

(iii) Landlord may continue this Lease in effect after Tenant's Default and recover rent as it becomes due (Landlord and Tenant hereby agreeing that Tenant has the right to sublet or assign hereunder, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease following a Default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies hereunder, including the right to recover all Rent as it becomes due.

(iv) Whether or not Landlord elects to terminate this Lease following a Default by Tenant, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. Upon Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

(v) Independent of the exercise of any other remedy of Landlord hereunder or under applicable law, Landlord may conduct an environmental test of the Premises as generally described in Section 30(d) hereof, at Tenant's expense.

(d) **Effect of Exercise**. Exercise by Landlord of any remedies hereunder or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, it being understood that such surrender and/or termination can be effected only by the express written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same and shall not be deemed a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of Rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter, re-take or otherwise obtain possession of the Premises as provided in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. Any reletting of the Premises or any portion thereof shall be on such terms and conditions as Landlord in its sole discretion may determine. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting or otherwise to mitigate any damages arising by reason of Tenant's Default.

22. **Assignment and Subletting**.

(a) **General Prohibition**. Without Landlord's prior written consent subject to and on the conditions described in this Section 22 (including those set forth in Section 22(b) below), Tenant shall not, directly or indirectly, voluntarily or by operation of law, assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises, and any attempt to do any of the foregoing shall be void and of no effect. If Tenant is a corporation, partnership or limited liability company, the shares or other ownership interests thereof which are not actively traded upon a stock exchange or in the over-the-counter market, a transfer or series of transfers whereby 25% or more of the issued and outstanding shares or other ownership interests of such corporation are, or voting control is, transferred (but excepting transfers upon deaths of individual owners) from a person or persons or entity or entities which were owners thereof at time of execution of this Lease to persons or entities who were not owners of shares or other ownership interests of the corporation, partnership or limited liability company at time of execution of this Lease, shall be deemed an assignment of this Lease requiring the consent of Landlord as provided in this Section 22. Notwithstanding the foregoing, Tenant shall have the right to obtain financing from institutional investors (including venture capital funding and corporate partners) which regularly invest in private biotechnology companies or undergo a public offering which results in a change in control of Tenant without such change of control constituting an assignment under this Section 22 requiring Landlord consent, provided that (i) Tenant notifies Landlord in writing of the financing at least 5 business days prior to the closing of the financing ((x) unless Tenant is prohibited from providing such notice by applicable Legal Requirements in which case Tenant shall notify Landlord promptly thereafter, and (y) if the transaction is subject to confidentiality requirements, Tenant's advance notification shall be subject to Landlord's execution of a non-disclosure agreement reasonably acceptable to Landlord and Tenant), and (ii) provided that in no event shall such financing result in a change in use of the Premises from the use contemplated by Tenant at the commencement of the Term.

(b) **Permitted Transfers**. If Tenant desires to assign, sublease, hypothecate or otherwise transfer this Lease or sublet the Premises other than pursuant to a Permitted Assignment (as defined below), then at least 15 business days, but not more than 45 business days, before the date Tenant desires the assignment or sublease to be effective (the "**Assignment Date**"), Tenant shall give Landlord a notice (the "**Assignment Notice**") containing such information about the proposed assignee or sublessee, including the proposed use of the Premises and any Hazardous Materials proposed to be used, stored handled, treated, generated in or released or disposed of from the Premises, the Assignment Date, any relationship between Tenant and the proposed assignee or sublessee, and all material terms and conditions of the proposed assignment or sublease, including a copy of any proposed assignment or sublease in its final form, and such other information as Landlord may deem reasonably necessary or appropriate to its consideration whether to grant its consent. Landlord may, by giving written notice to Tenant within 15 business days after receipt of the Assignment Notice: (i) grant such consent (provided that Landlord shall further have the right to review and reasonably approve or disapprove the proposed form of sublease prior to the effective date of any such subletting), (ii) refuse such consent, in its reasonable discretion; or (iii) terminate this Lease with respect to the space described in the Assignment Notice as of the Assignment Date (an "**Assignment Termination**"). **Among other reasons, it shall be reasonable for** Landlord **to withhold its consent in any of these instances: (1) the proposed assignee or subtenant is a governmental agency; (2) in** Landlord**'s reasonable judgment, the use of the Premises by the proposed assignee or subtenant would entail any** alterations **that would lessen the value of the leasehold improvements in the Premises, or would require increased services by** Landlord**; (3)** in Landlord's reasonable judgment, the proposed assignee or subtenant is engaged in areas of scientific research or other business concerns that are controversial such that they may (i) attract or cause negative publicity for or about the Building or the Project, (ii) negatively affect the reputation of the Building, the Project or Landlord, (iii) attract protestors to the Building or the Project, or (iv) lessen the attractiveness of the Project to any tenants or prospective tenants, purchasers or lenders; (4) in Landlord's reasonable judgment, the proposed assignee or subtenant lacks the creditworthiness to support the financial obligations it will incur under the proposed assignment or sublease**; (5) intentionally omitted; (6) in** Landlord**'s reasonable judgment,** Landlord **has received from any prior** landlord **to the proposed assignee or subtenant a negative report concerning such prior** landlord**'s experience with the proposed assignee or subtenant; (7)** Landlord **has experienced previous defaults by or is in litigation with the proposed assignee or subtenant; (8) the use of the Premises by the proposed assignee or subtenant will violate any applicable Legal Requirement; (9) intentionally omitted; (10) intentionally omitted; or (11) the assignment or sublease is prohibited by** Landlord**'s lender.** If Landlord delivers notice of its election to exercise an Assignment Termination, Tenant shall have the right to withdraw such Assignment Notice by written notice to Landlord of such election within 5 business days after Landlord's notice electing to exercise the Assignment Termination. If Tenant withdraws such Assignment Notice, this Lease shall continue in full force and effect. If Tenant does not withdraw such Assignment Notice, this Lease, and the term and estate herein granted, shall terminate as of the Assignment Date with respect to the space described in such Assignment Notice. No failure of Landlord to exercise any such option to terminate this Lease, or to deliver a timely notice in response to the Assignment Notice, shall be deemed to be Landlord's consent to the proposed assignment, sublease or other transfer. Tenant shall pay to Landlord a fee equal to One Thousand Five Hundred Dollars ($1,500) in connection with its consideration of any Assignment Notice and/or its preparation or review of any consent documents. Notwithstanding the foregoing, Landlord's consent to an assignment of this Lease or a subletting of any portion of the Premises to any entity controlling, controlled by or under common control with Tenant (a "**Control Permitted Assignment**") shall not be required, provided that Landlord shall have the right to approve the form of any such sublease or assignment. In addition, notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right to assign this Lease, upon 30 days prior written notice to Landlord ((x) unless Tenant is prohibited from providing such notice by applicable Legal Requirements in which case Tenant shall notify Landlord promptly thereafter, and (y) if the transaction is subject to confidentiality requirements, Tenant's advance notification shall be subject to Landlord's execution of a non-disclosure agreement reasonably acceptable to Landlord and Tenant) but without obtaining Landlord's prior written consent, to a corporation or other entity which is a successor-in-interest to Tenant, by way of merger, consolidation or corporate reorganization, or by the purchase of all or substantially all of the assets or the ownership interests of Tenant provided that (i) such merger or consolidation, or such acquisition or assumption, as the case may be, is for a good business purpose and not principally for the purpose of transferring this Lease, and (ii) the net worth (as determined in accordance with generally accepted accounting principles ("**GAAP**")) of the assignee (or, if Tenant remains the tenant under this Lease following the Corporate Permitted Assignment, Tenant) immediately following such Control Permitted Assignment is not less than the net worth (as determined in accordance with GAAP) of Tenant immediately prior to the Control Permitted Assignment, and (iii) if following such assignment, the Tenant under this Lease is other than the Tenant immediately before such assignment, such assignee shall agree in writing to assume all of the terms, covenants and conditions of this Lease (a "**Corporate Permitted Assignment**"). Control Permitted Assignments and Corporate Permitted Assignments are hereinafter referred to as "**Permitted Assignments**." In no event may Landlord exercise an Assignment Termination in connection with a Permitted Assignment.

(c) **Additional Conditions**. As a condition to any such assignment or subletting, whether or not Landlord's consent is required, Landlord may require:

(i) that any assignee or subtenant agree, in writing at the time of such assignment or subletting, that if Landlord gives such party notice that Tenant is in default under this Lease, such party shall thereafter make all payments otherwise due Tenant directly to Landlord, which payments will be received by Landlord without any liability except to credit such payment against those due under this Lease, and any such third party shall agree to attorn to Landlord or its successors and assigns should this Lease be terminated for any reason; provided, however, in no event shall Landlord or its successors or assigns be obligated to accept such attornment; and

(ii) A list of Hazardous Materials, certified by the proposed assignee or sublessee to be true and correct, which the proposed assignee or sublessee intends to use, store, handle, treat, generate in or release or dispose of from the Premises, together with copies of all documents relating to such use, storage, handling, treatment, generation, release or disposal of Hazardous Materials by the proposed assignee or subtenant in the Premises or on the Project, prior to the proposed assignment or subletting, including, without limitation: permits; approvals; reports and correspondence; storage and management plans; plans relating to the installation of any storage tanks to be installed in or under the Project (provided, said installation of tanks shall only be permitted after Landlord has given its written consent to do so, which consent may be withheld in Landlord's sole and absolute discretion); and all closure plans or any other documents required by any and all federal, state and local Governmental Authorities for any storage tanks installed in, on or under the Project for the closure of any such tanks. Neither Tenant nor any such proposed assignee or subtenant is required, however, to provide Landlord with any portion(s) of the such documents containing information of a proprietary nature which, in and of themselves, do not contain a reference to any Hazardous Materials or hazardous activities.

(d) **No Release of Tenant, Sharing of Excess Rents**. Notwithstanding any assignment or subletting, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times remain fully and primarily responsible and liable for the payment of Rent and for compliance with all of Tenant's other obligations under this Lease. Except in connection with a Permitted Assignment, if the Rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto in any form) exceeds the sum of the rental payable under this Lease, (excluding however, any Rent payable under this Section) and actual and reasonable brokerage fees, reasonable marketing expenses, legal costs and any design or construction fees directly related to and required pursuant to the terms of any such sublease ("**Excess Rent**"), then Tenant shall be bound and obligated to pay Landlord as Additional Rent hereunder 50% of such Excess Rent within 10 days following receipt thereof by Tenant. If Tenant shall sublet the Premises or any part thereof, Tenant hereby immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any such subletting, and Landlord as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of a Default, Tenant shall have the right to collect such rent.

(e) **No Waiver**. The consent by Landlord to an assignment or subletting shall not relieve Tenant or any assignees of this Lease or any sublessees of the Premises from obtaining the consent of Landlord to any further assignment or subletting nor shall it release Tenant or any assignee or sublessee of Tenant from full and primary liability under this Lease. The acceptance of Rent hereunder, or the acceptance of performance of any other term, covenant, or condition thereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to any subletting, assignment or other transfer of the Premises.

(f) **Prior Conduct of Proposed Transferee**. Notwithstanding any other provision of this Section 22, if (i) the proposed assignee or sublessee of Tenant has been required by any prior landlord, lender or Governmental Authority to take remedial action in connection with Hazardous Materials contaminating a property, where the contamination resulted from such party's action or use of the property in question, (ii) the proposed assignee or sublessee is subject to an enforcement order issued by any Governmental Authority in connection with the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials (including, without limitation, any order related to the failure to make a required reporting to any Governmental Authority), or (iii) because of the existence of a pre-existing environmental condition in the vicinity of or underlying the Project, the risk that Landlord would be targeted as a responsible party in connection with the remediation of such pre-existing environmental condition would be materially increased or exacerbated by the proposed use of Hazardous Materials by such proposed assignee or sublessee, Landlord shall have the absolute right to refuse to consent to any assignment or subletting to any such party.

23. **Estoppel Certificate**. Tenant shall, within 10 business days of written notice from Landlord, execute, acknowledge and deliver a statement in writing in any form reasonably requested by a proposed lender or purchaser, (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any, (ii) acknowledging that, to Tenant's actual knowledge, there are not any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iii) setting forth such further information with respect to the status of this Lease or the Premises as may be reasonably requested thereon. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part. Tenant's failure to deliver such statement within such time shall, at the option of Landlord, constitute a Default under this Lease, and, in any event, shall be conclusive upon Tenant that this Lease is in full force and effect and without modification except as may be represented by Landlord in any certificate prepared by Landlord and delivered to Tenant for execution.

24. **Quiet Enjoyment**. So long as Tenant is not in Default under this Lease, Tenant shall, subject to the terms of this Lease, at all times during the Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

25. **Prorations**. All prorations required or permitted to be made hereunder shall be made on the basis of a 360 day year and 30 day months.

26. **Rules and Regulations**. Tenant shall, at all times during the Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises and the Project. The current rules and regulations are attached hereto as **Exhibit E**. If there is any conflict between said rules and regulations and other provisions of this Lease, the terms and provisions of this Lease shall control.

27. **Subordination**. This Lease and Tenant's interest and rights hereunder are hereby made and shall be subject and subordinate at all times to the lien of any Mortgage now existing or hereafter created on or against the Project or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant; provided, however that so long as there is no Default hereunder, Tenant's right to possession of the Premises shall not be disturbed by the Holder of any such Mortgage. Tenant agrees, at the election of the Holder of any such Mortgage, to attorn to any such Holder. Tenant agrees upon demand to execute, acknowledge and deliver such instruments, confirming such subordination, and such instruments of attornment as shall be requested by any such Holder, provided any such instruments contain appropriate non-disturbance provisions assuring Tenant's quiet enjoyment of the Premises as set forth in Section 24 hereof. Notwithstanding the foregoing, any such Holder may at any time subordinate its Mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution, delivery or recording and in that event such Holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such Mortgage and had been assigned to such Holder. The term "**Mortgage**" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "**Holder**" of a Mortgage shall be deemed to include the beneficiary under a deed of trust. Landlord represents and warrants to Tenant that, as of the date of this Lease, there is no existing Mortgage encumbering the Project.

28. **Surrender**. Upon the expiration of the Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, subject to any Alterations or Installations permitted by Landlord to remain in the Premises, free of Hazardous Materials brought upon, kept, used, stored, handled, treated, generated in, or released or disposed of from, the Premises by any person other than a Landlord Party (collectively, "**Tenant HazMat Operations**") and released of all Hazardous Materials Clearances, broom clean, ordinary wear and tear and casualty loss and condemnation covered by Sections 18 and 19 excepted. At least 3 months prior to the surrender of the Premises or such earlier date as Tenant may elect to cease operations at the Premises, Tenant shall deliver to Landlord a narrative description of the actions proposed (or required by any Governmental Authority) to be taken by Tenant in order to surrender the Premises (including any Installations permitted by Landlord to remain in the Premises) at the expiration or earlier termination of the Term, free from any residual impact from the Tenant HazMat Operations and otherwise released for unrestricted use and occupancy (i.e., for all of the same uses permitted at the Project prior to the date of this Lease) (the "**Decommissioning and HazMat Closure Plan**"). For the avoidance of any doubt, the reference to unrestricted use and occupancy in the preceding sentence means that following Tenant's surrender of the Premises there are no restrictions on the use or occupancy of the Premises arising from or related in any way to Tenant's or any Tenant Parties' access to, use and/or occupancy of the Premises or Tenant's Hazmat Operations. Such Decommissioning and HazMat Closure Plan shall be accompanied by a current listing of (i) all Hazardous Materials licenses and permits held by or on behalf of any Tenant Party with respect to the Premises, and (ii) all Hazardous Materials used, stored, handled, treated, generated, released or disposed of from the Premises, and shall be subject to the review and approval of Landlord's environmental consultant. In connection with the review and approval of the Decommissioning and HazMat Closure Plan, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such additional nonproprietary information concerning Tenant HazMat Operations as Landlord shall reasonably request. On or before such surrender, Tenant shall deliver to Landlord evidence that the approved Decommissioning and HazMat Closure Plan shall have been satisfactorily completed and Landlord shall have the right, subject to reimbursement at Tenant's expense as set forth below, to cause Landlord's environmental consultant to inspect the Premises and perform such additional procedures as may be deemed reasonably necessary to confirm that the Premises are, as of the effective date of such surrender or early termination of this Lease, free from any residual impact from Tenant HazMat Operations. Tenant shall reimburse Landlord, as Additional Rent, for the actual out-of-pocket expense incurred by Landlord for Landlord's environmental consultant to review and approve the Decommissioning and HazMat Closure Plan and to visit the Premises and verify satisfactory completion of the same, which cost shall not exceed $2,500. Landlord shall have the unrestricted right to deliver such Decommissioning and HazMat Closure Plan and any report by Landlord's environmental consultant with respect to the surrender of the Premises to third parties.

If Tenant shall fail to prepare or submit a Decommissioning and HazMat Closure Plan approved by Landlord, or if Tenant shall fail to complete the approved Decommissioning and HazMat Closure Plan, or if such Decommissioning and HazMat Closure Plan, whether or not approved by Landlord, shall fail to adequately address any residual effect of Tenant HazMat Operations in, on or about the Premises, Landlord shall have the right to take such actions as Landlord may deem reasonable or appropriate to assure that the Premises and the Project are surrendered free from any residual impact from Tenant HazMat Operations, the cost of which actions shall be reimbursed by Tenant as Additional Rent, without regard to the limitation set forth in the first paragraph of this Section 28.

Tenant shall immediately return to Landlord all keys and/or access cards to parking, the Project, restrooms or all or any portion of the Premises furnished to or otherwise procured by Tenant. If any such access card or key is lost, Tenant shall pay to Landlord, at Landlord's election, either the cost of replacing such lost access card or key or the cost of reprogramming the access security system in which such access card was used or changing the lock or locks opened by such lost key. Any Tenant's Property, Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and/or disposition of such property. All obligations of Tenant hereunder not fully performed as of the termination of the Term, including the obligations of Tenant under Section 30 hereof, shall survive the expiration or earlier termination of the Term, including, without limitation, indemnity obligations, payment obligations with respect to Rent and obligations concerning the condition and repair of the Premises.

29. **Waiver of Jury Trial**. TO THE EXTENT PERMITTED BY LAW, TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

30. **Environmental Requirements**.

(a) **Prohibition/Compliance/Indemnity**. Tenant shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, kept, used, stored, handled, treated, generated in or about, or released or disposed of from, the Premises or the Project in violation of applicable Environmental Requirements (as hereinafter defined) by Tenant or any Tenant Party. If Tenant breaches the obligation stated in the preceding sentence, or if the presence of Hazardous Materials in the Premises during the Term or any holding over results in contamination of the Premises, the Project or any adjacent property or if contamination of the Premises, the Project or any adjacent property by Hazardous Materials brought into, kept, used, stored, handled, treated, generated in or about, or released or disposed of from, the Premises by anyone other than Landlord and Landlord's employees, agents and contractors otherwise occurs during the Term or any holding over, Tenant hereby indemnifies and shall defend and hold Landlord, its officers, directors, employees, agents and contractors harmless from any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including, without limitation, punitive damages and damages based upon diminution in value of the Premises or the Project, or the loss of, or restriction on, use of the Premises or any portion of the Project), expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, or contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses (collectively, "**Environmental Claims**") which arise during or after the Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by any federal, state or local Governmental Authority because of Hazardous Materials present in the air, soil or ground water above, on, or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises, the Project or any adjacent property caused or permitted by Tenant or any Tenant Party results in any contamination of the Premises, the Project or any adjacent property, Tenant shall promptly take all actions at its sole expense and in accordance with applicable Environmental Requirements as are necessary to return the Premises, the Project or any adjacent property to the condition existing prior to the time of such contamination, provided that Landlord's approval of such action shall first be obtained, which approval shall not unreasonably be withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises or the Project. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be responsible for, and the indemnification and hold harmless obligations of Tenant set forth in this Lease shall not apply to (i) contamination in the Premises which Tenant can prove existed in the Premises immediately prior to the Commencement Date, (ii) the presence of any Hazardous Materials in the Premises which Tenant can prove migrated from outside of the Premises into the Premises, or (iii) caused by Landlord or any Landlord's employees, agents and contractors, unless in any case, the presence of such Hazardous Materials (x) is the result of a breach by Tenant of any of its obligations under this Lease, or (y) was caused, contributed to or exacerbated by Tenant or any Tenant Party.

(b) **Business**. Landlord acknowledges that it is not the intent of this Section 30 to prohibit Tenant from using the Premises for the Permitted Use. Tenant may operate its business according to prudent industry practices so long as the use or presence of Hazardous Materials is strictly and properly monitored according to all then applicable Environmental Requirements. As a material inducement to Landlord to allow Tenant to use Hazardous Materials in connection with its business, Tenant agrees to deliver to Landlord prior to the Commencement Date a list identifying each type of Hazardous Materials to be brought upon, kept, used, stored, handled, treated, generated on, or released or disposed of from, the Premises and setting forth any and all governmental approvals or permits required in connection with the presence, use, storage, handling, treatment, generation, release or disposal of such Hazardous Materials on or from the Premises ("**Hazardous Materials List**"). Tenant shall deliver to Landlord an updated Hazardous Materials List at any additional time that Tenant is required to deliver a Hazardous Materials List to any Governmental Authority (e.g., the fire department). To the extent related to the Premises, Tenant shall deliver to Landlord true and correct copies of the following documents (the "**Haz Mat Documents**") relating to the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials prior to the Commencement Date, or if unavailable at that time, concurrent with the receipt from or submission to a Governmental Authority: permits; approvals; reports and correspondence; storage and management plans, notice of violations of any Legal Requirements; plans relating to the installation of any storage tanks to be installed in or under the Project (provided, said installation of tanks shall only be permitted after Landlord has given Tenant its written consent to do so, which consent may be withheld in Landlord's sole and absolute discretion); all closure plans or any other documents required by any and all federal, state and local Governmental Authorities for any storage tanks installed in, on or under the Project for the closure of any such tanks; and a Decommissioning and HazMat Closure Plan (to the extent surrender in accordance with Section 28 cannot be accomplished in 3 months). Tenant is not required, however, to provide Landlord with any portion(s) of the Haz Mat Documents containing information of a proprietary nature which, in and of themselves, do not contain a reference to any Hazardous Materials or hazardous activities. It is not the intent of this Section to provide Landlord with information which could be detrimental to Tenant's business should such information become known to Tenant's competitors.

(c) **Tenant Representation and Warranty**. Tenant hereby represents and warrants to Landlord that (i) neither Tenant nor any of its legal predecessors has been required by any prior landlord, lender or Governmental Authority at any time to take remedial action in connection with Hazardous Materials contaminating a property which contamination was permitted by Tenant of such predecessor or resulted from Tenant's or such predecessor's action or use of the property in question, and (ii) Tenant is not subject to any enforcement order issued by any Governmental Authority in connection with the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials (including, without limitation, any order related to the failure to make a required reporting to any Governmental Authority). If Landlord determines that this representation and warranty was not true as of the date of this lease, Landlord shall have the right to terminate this Lease in Landlord's sole and absolute discretion.

(d) **Testing**. Landlord shall have the right to conduct annual tests of the Premises to determine whether any contamination of the Premises or the Project has occurred as a result of Tenant's use. Tenant shall be required to pay the cost of such annual test of the Premises if there is a violation of this Section 30 or if contamination for which Tenant is responsible under this Section 30 is identified; provided, however, that if Tenant conducts its own tests of the Premises using third party contractors and test procedures acceptable to Landlord which tests are certified to Landlord, Landlord shall accept such tests in lieu of the annual tests to be paid for by Tenant. In addition, at any time, and from time to time, prior to the expiration or earlier termination of the Term, Landlord shall have the right to conduct appropriate tests of the Premises and the Project to determine if contamination has occurred as a result of Tenant's use of the Premises. In connection with such testing, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such non-proprietary information concerning the use of Hazardous Materials in or about the Premises by Tenant or any Tenant Party. If contamination has occurred for which Tenant is liable under this Section 30, Tenant shall pay all costs to conduct such tests. If no such contamination is found, Landlord shall pay the costs of such tests (which shall not constitute an Operating Expense). Landlord shall provide Tenant with a copy of all third party, non-confidential reports and tests of the Premises made by or on behalf of Landlord during the Term without representation or warranty and subject to a confidentiality agreement. Tenant shall, at its sole cost and expense, promptly and satisfactorily remediate any environmental conditions identified by such testing for which Tenant is responsible under this Section 30 in accordance with all Environmental Requirements. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights which Landlord may have against Tenant.

(e) **Intentionally Omitted**.

(f) **Storage Tanks**. If storage tanks storing Hazardous Materials located on the Premises or the Project are used by Tenant or are hereafter placed on the Premises or the Project by Tenant, Tenant shall install, use, monitor, operate, maintain, upgrade and manage such storage tanks, maintain appropriate records, obtain and maintain appropriate insurance, implement reporting procedures, properly close any storage tanks, and take or cause to be taken all other actions necessary or required under applicable state and federal Legal Requirements, as such now exists or may hereafter be adopted or amended in connection with the installation, use, maintenance, management, operation, upgrading and closure of such storage tanks. Notwithstanding anything to the contrary contained herein, Tenant shall have no right to use or install any underground storage tanks at the Project.

(g) **Tenant's Obligations**. Tenant's obligations under this Section 30 shall survive the expiration or earlier termination of this Lease. During any period of time after the expiration or earlier termination of this Lease required by Tenant or Landlord to complete the removal from the Premises of any Hazardous Materials for which Tenant is responsible under this Lease (including, without limitation, the release and termination of any licenses or permits restricting the use of the Premises and the completion of the approved Decommissioning and HazMat Closure Plan), Tenant shall continue to pay the full Rent in accordance with this Lease for any portion of the Premises not relet by Landlord in Landlord's sole discretion, which Rent shall be prorated daily.

(h) **Definitions**. As used herein, the term "**Environmental Requirements**" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any Governmental Authority regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the Project, or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. As used herein, the term "**Hazardous Materials**" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, or regulated by reason of its impact or potential impact on humans, animals and/or the environment under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "**operator**" of Tenant's "**facility**" and the "**owner**" of all Hazardous Materials brought on the Premises by Tenant or any Tenant Party, and the wastes, by-products, or residues generated, resulting, or produced therefrom.

31. **Tenant's Remedies/Limitation of Liability**. Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within 30 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 30 days, then after such period of time as is reasonably necessary). Upon any default by Landlord, Tenant shall give notice by registered or certified mail to any Holder of a Mortgage covering the Premises and to any landlord of any lease of property in or on which the Premises are located and Tenant shall offer such Holder and/or landlord a reasonable opportunity to cure the default, including time to obtain possession of the Project by power of sale or a judicial action if such should prove necessary to effect a cure; provided Landlord shall have furnished to Tenant in writing the names and addresses of all such persons who are to receive such notices. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder.

All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "**Landlord**" in this Lease shall mean only the owner for the time being of the Premises. Upon the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Term upon each new owner for the duration of such owner's ownership.

32. **Inspection and Access**. Landlord and its agents, representatives, and contractors may enter the Premises at any reasonable time to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord and Landlord's representatives may enter the Premises during business hours on not less than 48 hours advance written notice (except in the case of emergencies in which case no such notice shall be required and such entry may be at any time) for the purpose of effecting any such repairs, inspecting the Premises, showing the Premises to prospective purchasers and, during the last year of the Term, to prospective tenants or for any other business purpose. Landlord may erect a suitable sign on the Premises stating that the Project is available for sale and/or, during the last 12 months of the Term, that the Premises are available for lease. Landlord may grant easements, make public dedications and create restrictions on or about the Premises, provided that no such easement, dedication, designation or restriction materially, adversely affects (i) Tenant's use of the Premises for the Permitted Use, (ii) Tenant's occupancy of or Tenant's access to or from the Premises, or (iii) Tenant's parking rights under Section 10. At Landlord's request, Tenant shall execute such commercially reasonable instruments as may be necessary for such easements, dedications or restrictions. Tenant shall at all times, except in the case of emergencies, have the right to escort Landlord or its agents, representatives, contractors or guests while the same are in the Premises, provided such escort does not materially and adversely affect Landlord's access rights hereunder.

Subject to the terms of this Section 32, Landlord may from time to time during the Term, during regular business hours and/or otherwise at times mutually acceptable to Landlord and Tenant, conduct third party tours of the Premises ("**Tours**"), which Tours may be held with not less than 1 business day's advance notice.

33. **Security**. Tenant acknowledges and agrees that security devices and services, if any, while intended to deter crime may not in given instances prevent theft or other criminal acts and that Landlord is not providing any security services with respect to the Premises. Tenant agrees that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises. Tenant shall be solely responsible for the personal safety of Tenant's officers, employees, agents, contractors, guests and invitees while any such person is in, on or about the Premises and/or the Project. Tenant shall at Tenant's cost obtain insurance coverage to the extent Tenant desires protection against such criminal acts.

34. **Force Majeure**. Except for the payment of Rent, neither Landlord nor Tenant shall be responsible or liable for delays in the performance of its obligations hereunder when caused by, related to, or arising out of acts of God, sinkholes or subsidence, strikes, lockouts, or other labor disputes, embargoes, quarantines, weather, national, regional, or local disasters, calamities, or catastrophes, inability to obtain labor or materials (or reasonable substitutes therefor) at reasonable costs or failure of, or inability to obtain, utilities necessary for performance, governmental restrictions, orders, limitations, regulations, or controls, national emergencies, local, regional or national epidemic or pandemic, delay in issuance or revocation of permits, enemy or hostile governmental action, terrorism, insurrection, riots, civil disturbance or commotion, fire or other casualty, and other causes or events beyond their reasonable control (**"Force Majeure**").

35. **Brokers**. Landlord and Tenant each represents and warrants that it has not dealt with any broker, agent or other person (collectively, "**Broker**") in connection with this transaction and that no Broker brought about this transaction, other than Hughes Marino, Cushman & Wakefield and CBRE. Landlord and Tenant each hereby agree to indemnify and hold the other harmless from and against any claims by any Broker, other than other than Hughes Marino, Cushman & Wakefield and CBRE, claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this leasing transaction.

36. **Limitation on Landlord's Liability**. NOTWITHSTANDING ANYTHING SET FORTH HEREIN OR IN ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT TO THE CONTRARY: (A) LANDLORD SHALL NOT BE LIABLE TO TENANT OR ANY OTHER PERSON FOR (AND TENANT AND EACH SUCH OTHER PERSON ASSUME ALL RISK OF) LOSS, DAMAGE OR INJURY, WHETHER ACTUAL OR CONSEQUENTIAL TO: TENANT'S PERSONAL PROPERTY OF EVERY KIND AND DESCRIPTION, INCLUDING, WITHOUT LIMITATION TRADE FIXTURES, EQUIPMENT, INVENTORY, SCIENTIFIC RESEARCH, SCIENTIFIC EXPERIMENTS, LABORATORY ANIMALS, PRODUCT, SPECIMENS, SAMPLES, AND/OR SCIENTIFIC, BUSINESS, ACCOUNTING AND OTHER RECORDS OF EVERY KIND AND DESCRIPTION KEPT AT THE PREMISES AND ANY AND ALL INCOME DERIVED OR DERIVABLE THEREFROM; (B) THERE SHALL BE NO PERSONAL RECOURSE TO LANDLORD FOR ANY ACT OR OCCURRENCE IN, ON OR ABOUT THE PREMISES OR ARISING IN ANY WAY UNDER THIS LEASE OR ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT WITH RESPECT TO THE SUBJECT MATTER HEREOF AND ANY LIABILITY OF LANDLORD HEREUNDER SHALL BE STRICTLY LIMITED SOLELY TO LANDLORD'S INTEREST IN THE PROJECT OR ANY PROCEEDS FROM SALE OR CONDEMNATION THEREOF AND ANY INSURANCE PROCEEDS PAYABLE IN RESPECT OF LANDLORD'S INTEREST IN THE PROJECT OR IN CONNECTION WITH ANY SUCH LOSS; AND (C) IN NO EVENT SHALL ANY PERSONAL LIABILITY BE ASSERTED AGAINST LANDLORD IN CONNECTION WITH THIS LEASE NOR SHALL ANY RECOURSE BE HAD TO ANY OTHER PROPERTY OR ASSETS OF LANDLORD OR ANY OF LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS. UNDER NO CIRCUMSTANCES SHALL LANDLORD OR ANY OF LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS BE LIABLE FOR INJURY TO TENANT'S BUSINESS OR FOR ANY LOSS OF INCOME OR PROFIT THEREFROM.

Notwithstanding any contrary provision of this Lease, neither party shall be liable to the other party for any consequential damages arising under this Lease; provided that this sentence shall not apply to Landlord's damages (x) as expressly provided for in Section 8, and/or (y) in connection with Tenant's obligations as more fully set forth in Section 30. In no event shall the foregoing limit the damages to which Landlord is entitled under Section 21(c)(ii)(A)-(E).

37. **Severability**. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in effect to such illegal, invalid or unenforceable clause or provision as shall be legal, valid and enforceable.

38. **Signs; Exterior Appearance**. Tenant shall have the exclusive right to display, at Tenant's cost and expense, a sign bearing Tenant's name and/or logo (a "**Building Sign**") in the location and pursuant to the specifications designated on **Exhibit I** attached hereto. Notwithstanding the foregoing, Tenant acknowledges and agrees that each Building Sign including, without limitation, the size, color and type, shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, shall be consistent with the designs reflected on **Exhibit I,** and shall be subject to any and all other required approvals and applicable Legal Requirements. Tenant shall be responsible, at Tenant's sole cost and expense, for the maintenance of the Building Sign, for the removal of the Building Sign at the expiration or earlier termination of this Lease and for the repair of all damage resulting from such removal.

Subject to Landlord's right to include signage identifying Landlord on the Monument Sign as shown on **Exhibit I**, Tenant shall have the exclusive right to display, at Tenant's sole and cost and expense, signage bearing Tenant's name and logo on the monument sign being constructed by Landlord as part of Landlord's Work in the location and pursuant to the specifications designated on **Exhibit I** ("**Monument Sign**"). Tenant acknowledges and agrees that the Tenant's Monument Sign, including, without limitation, the location, size, color and type, shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, shall be consistent with the designs reflected on **Exhibit I**, and shall be subject to and in compliance with applicable Legal Requirements. The design, fabrication and installation of the Tenant's Monument Sign shall be paid for by Landlord. Tenant shall be responsible, at Tenant's sole cost and expense, for the maintenance of Tenant's Monument Sign, the removal of the Tenant's Monument Sign at the expiration or earlier termination of the Term and for the repair of all damage resulting from such removal. The Building Sign and Monument Sign shall be personal to Cue, Inc., except that such right may be assigned in connection with any Permitted Assignment.

39. **Right to Extend Term**. Tenant shall have the right to extend the Term of this Lease upon the following terms and conditions:

(a) **Extension Rights**. Tenant shall have 2 consecutive rights (each, an "**Extension Right**") to extend the term of this Lease for 5 years each (each, an "**Extension Term**") on the same terms and conditions as this Lease (other than with respect to Base Rent and the Work Letter) by giving Landlord written notice of its election to exercise each Extension Right at least 15 months prior, and no earlier than 12 months prior, to the expiration of the Base Term of this Lease or the expiration of any prior Extension Term.

Upon the commencement of any Extension Term, Base Rent shall be payable at the Market Rate (as defined below). Base Rent shall thereafter be adjusted on each annual anniversary of the commencement of such Extension Term by a percentage as determined by Landlord and agreed to by Tenant at the time the Market Rate is determined. As used herein, "**Market Rate**" shall mean the rate that Landlord and affiliates of Landlord have accepted in current transactions from non-equity (i.e., not being offered equity in the buildings) and nonaffiliated tenants of similar financial strength for space of comparable size, quality (including all Tenant Improvements, Alterations and other improvements) and floor height in Class A laboratory/office buildings in Sorrento Mesa area of San Diego for a comparable term, with the determination of the Market Rate to take into account all relevant factors, including tenant inducements, views, available amenities (including, without limitation, the Amenities (as defined in Section 40 below), age of the Building, age of mechanical systems serving the Premises, parking costs, leasing commissions, allowances or concessions, if any. Notwithstanding the foregoing, the Market Rate shall in no event be less than the Base Rent payable as of the date immediately preceding the commencement of such Extension Term increased by the Rent Adjustment Percentage multiplied by such Base Rent.

If, on or before the date which is 180 days prior to the expiration of the Base Term of this Lease, Tenant has not agreed with Landlord's determination of the Market Rate and the rent escalations during the Extension Term after negotiating in good faith, Tenant shall be deemed to have elected arbitration as described in Section 39(b). Tenant acknowledges and agrees that, if Tenant has elected to exercise the Extension Right by delivering notice to Landlord as required in this Section 39(a), Tenant shall have no right thereafter to rescind or elect not to extend the term of this Lease for the Extension Term.

(b) **Arbitration**.

(i) Within 10 days of Tenant's notice to Landlord of its election (or deemed election) to arbitrate Market Rate and escalations, each party shall deliver to the other a proposal containing the Market Rate and escalations that the submitting party believes to be correct ("**Extension Proposal**"). If either party fails to timely submit an Extension Proposal, the other party's submitted proposal shall determine the Base Rent and escalations for the Extension Term. If both parties submit Extension Proposals, then Landlord and Tenant shall meet within 7 days after delivery of the last Extension Proposal and make a good faith attempt to mutually appoint a single Arbitrator (and defined below) to determine the Market Rate and escalations. If Landlord and Tenant are unable to agree upon a single Arbitrator, then each shall, by written notice delivered to the other within 10 days after the meeting, select an Arbitrator. If either party fails to timely give notice of its selection for an Arbitrator, the other party's submitted proposal shall determine the Base Rent for the Extension Term. The 2 Arbitrators so appointed shall, within 5 business days after their appointment, appoint a third Arbitrator. If the 2 Arbitrators so selected cannot agree on the selection of the third Arbitrator within the time above specified, then either party, on behalf of both parties, may request such appointment of such third Arbitrator by application to any state court of general jurisdiction in the jurisdiction in which the Premises are located, upon 10 days prior written notice to the other party of such intent.

(ii) The decision of the Arbitrator(s) shall be made within 30 days after the appointment of a single Arbitrator or the third Arbitrator, as applicable. The decision of the single Arbitrator shall be final and binding upon the parties. The average of the two closest Arbitrators in a three Arbitrator panel shall be final and binding upon the parties. Each party shall pay the fees and expenses of the Arbitrator appointed by or on behalf of such party and the fees and expenses of the third Arbitrator shall be borne equally by both parties. If the Market Rate and escalations are not determined by the first day of the Extension Term, then Tenant shall pay Landlord Base Rent in an amount equal to the Base Rent in effect immediately prior to the Extension Term and increased by the Rent Adjustment Percentage until such determination is made. After the determination of the Market Rate and escalations, the parties shall make any necessary adjustments to such payments made by Tenant. Landlord and Tenant shall then execute an amendment recognizing the Market Rate and escalations for the Extension Term.

(iii) An "**Arbitrator**" shall be any person appointed by or on behalf of either party or appointed pursuant to the provisions hereof and: (i) shall be (A) a member of the American Institute of Real Estate Appraisers with not less than 10 years of experience in the appraisal of improved office and high tech industrial real estate in the greater San Diego metropolitan area, or (B) a licensed commercial real estate broker with not less than 15 years' experience representing landlords and/or tenants in the leasing of high tech or life sciences space in the greater San Diego metropolitan area, (ii) devoting substantially all of their time to professional appraisal or brokerage work, as applicable, at the time of appointment and (iii) be in all respects impartial and disinterested.

(c) **Rights Personal**. Extension Rights are personal to Tenant and are not assignable without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in this Lease, except that they may be assigned in connection with any Permitted Assignment of this Lease.

(d) **Exceptions**. Notwithstanding anything set forth above to the contrary, Extension Rights shall, at Landlord's option, not be in effect and Tenant may not exercise any of the Extension Rights:

(i) during any period of time that Tenant is in Default under any provision of this Lease; or

(ii) if Tenant has been in Default under any provision of this Lease 3 or more times, whether or not the Defaults are cured, during the 12 month period immediately prior to the date that Tenant intends to exercise an Extension Right, whether or not the Defaults are cured.

(e) **No Extensions**. The period of time within which any Extension Rights may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Extension Rights.

(f) **Termination**. The Extension Rights shall, at Landlord's option, terminate and be of no further force or effect even after Tenant's due and timely exercise of an Extension Right, if, after such exercise, but prior to the commencement date of an Extension Term, (i) Tenant fails to timely cure any default by Tenant under this Lease; or (ii) Tenant has Defaulted 3 or more times during the period from the date of the exercise of an Extension Right to the date of the commencement of the Extension Term, whether or not such Defaults are cured.

40. **The Alexandria Regional Amenities**.

(a) **Generally**. Located at the project commonly known as 10996 Torreyana Road, San Diego, California ("**The Alexandria**"), which is owned by an affiliate of Landlord ("**The Alexandria Landlord**"), are certain amenities which include, without limitation, shared conference facilities (the "**The Alexandria Shared Conference Facilities**"), a fitness center and restaurant (collectively, the "**The Alexandria Amenities**"). Located at the project commonly known as Alexandria Tech Center (collectively, the "**Tech Center Project**"), which is owned by another affiliate or affiliates of Landlord (collectively, the "**Tech Center Landlord**"), are certain amenities which, as of the date of this Lease, consist of a fitness center and are anticipated in the future include additional amenities including, without limitation, shared conference facilities (the "**Tech Center Shared Conference Facilities**") and restaurant (collectively, the "**Tech Center Amenities**"). The Alexandria Amenities, the existing fitness center at the Tech Center Project and any future amenities at the Tech Center Project may be collectively referred to herein as the "**Alexandria Regional Amenities**." Subject to the terms of this Section 40, The Alexandria Regional Amenities are available for non-exclusive use by (a) Tenant, (b) Landlord, (c) the tenants of The Alexandria Landlord and the Tech Center Landlord, (d) The Alexandria Landlord, (e) the Tech Center Landlord, (f) other affiliates of Landlord, The Alexandria Landlord, the Tech Center Landlord and Alexandria Real Estate Equities, Inc. ("**ARE**"), (g) the tenants of such other affiliates of Landlord, The Alexandria Landlord, the Tech Center Landlord and ARE, and (h) any other parties permitted by The Alexandria Landlord and Tech Center Landlord (collectively, "**Users**"). Landlord, The Alexandria Landlord, Tech Center Landlord, ARE, and all affiliates of Landlord, The Alexandria Landlord, Tech Center Landlord and ARE may be referred to collectively herein as the "**ARE Parties**." Notwithstanding anything to the contrary contained herein, Tenant acknowledges and agrees that (i) The Alexandria Landlord shall have the right, at the sole discretion of The Alexandria Landlord, to not make The Alexandria Amenities available for use by some or all currently contemplated Users (including Tenant), and Tech Center Landlord shall have the right, at the sole discretion of Tech Center Landlord, to not make the Tech Center Amenities available for use by some or all currently contemplated Users (including Tenant). The Alexandria Landlord and Tech Center Landlord shall have the sole right to determine all matters related to The Alexandria Amenities and the Tech Center Amenities, respectively, including, without limitation, relating to the reconfiguration, relocation, modification or removal of any of The Alexandria Amenities or the Tech Center Amenities, respectively, and/or to revise, expand or discontinue any of the services (if any) provided in connection with The Alexandria Amenities or the Tech Center Amenities, respectively. Tenant acknowledges and agrees that Landlord has not made any representations or warranties regarding the availability of the Alexandria Regional Amenities and that Tenant is not entering into this Lease relying on the continued availability of the Alexandria Regional Amenities to Tenant.

(b) **License**. So long as The Alexandria and the Project continue to be owned by affiliates of ARE, Tenant shall have the non-exclusive right to the use, in common with other Users pursuant to the terms of this Section 40, of (i) commencing on the Commencement Date, The Alexandria Shared Conference Facilities, (ii) commencing on the Commencement Date, the fitness center at the Tech Center Project, and (iii) commencing on the date that the Tech Center Shared Conference Facilities are made available for use by Users (the "**Tech Center Conferencing Commencement Date**"), if at all. Notwithstanding anything to the contrary contained herein, Tenant shall have no further rights to use The Alexandria Shared Conference Facilities commencing on through the date that the Tech Center Shared Conference Facilities are made available for use by Users, if at all. Fitness center passes for use of the fitness center at the Tech Center Project shall be issued to Tenant for all full time employees of Tenant employed at the Premises. Commencing on the OPEX Commencement Date, Tenant shall commence paying Landlord a fixed fee during the Base Term equal to $2.16 per rentable square foot of the Premises per year ("**Amenities Fee**"). The Amenities Fee shall by payable on the first day of each month during the Term whether or not Tenant elects to use any or all of the Alexandria Regional Amenities. The Amenities Fee shall be increased annually on each anniversary of the Commencement Date by 3%. If, (x) prior to the Tech Center Conferencing Commencement Date, the fitness centers at both The Alexandra and the Tech Center Project plus The Alexandria Shared Conference Facilities, and (y) following the Tech Center Conferencing Commencement Date, the fitness center at the Tech Center Project and the Tech Center Shared Conference Facilities, become materially unavailable for use by Tenant (for any reason other than a Default by Tenant under this Lease or the default by Tenant of any agreement(s) relating to the use of the Alexandria Regional Amenities by Tenant) for a period in excess of 30 consecutive days, then, commencing on the date that such components of the Alexandria Regional Amenities become materially unavailable for use by Tenant and continuing for the period that such components of the Alexandria Regional Amenities remain materially unavailable for use by Tenant, the Amenities Fee then-currently payable by Tenant shall be abated.

(c) **Shared Conference Facilities**. Use by Tenant of The Alexandria Shared Conference Facilities and the Tech Center Shared Conference Facilities and the restaurants at The Alexandria and the Tech Center Project shall be in common with other Users with scheduling procedures reasonably determined by The Alexandria Landlord or the Tech Center Landlord, as applicable, or The Alexandria Landlord's or Tech Center Landlord's then designated event operator (each, an "**Event Operator**"). Tenant's use of The Alexandria Shared Conference Facilities and the Tech Center Shared Conference Facilities shall be subject to the payment by Tenant to The Alexandria Landlord or the Tech Center Landlord, as applicable, of a fee equal to The Alexandria Landlord's or Tech Center Landlord's, as applicable, quoted rates for the usage of The Alexandria Shared Conference Facilities or the Tech Center Shared Conference Facilities, as applicable, in effect at the time of Tenant's scheduling. Tenant's use of the conference rooms in The Alexandria Shared Conference Facilities and the Tech Center Shared Conference Facilities shall be subject to availability and The Alexandria Landlord and Tech Center Landlord, as applicable, (or, if applicable, the applicable Event Operator) reserves the right to exercise its reasonable discretion in the event of conflicting scheduling requests among Users. Tenant hereby acknowledges that (i) Biocom/San Diego, a California nonprofit corporation ("**Biocom**") has the right to reserve The Alexandria Shared Conference Facilities and any reservable dining area(s) included within The Alexandria Amenities for up to 50% of the time that The Alexandria Shared Conference Facilities and reservable dining area(s) are available for use by Users each calendar month, and (ii) Illumina, Inc., a Delaware corporation, has the exclusive use of the main conference room within The Alexandria Shared Conference Facilities for up to 4 days per calendar month.

Tenant shall be required to use the food service operator designated by The Alexandria Landlord at The Alexandria and the food service operator designated by the Tech Center Landlord at Tech Center Project (as applicable, the "**Designated Food and Beverage Operator**") for any food and/or beverage service or catered events held by Tenant in The Alexandria Shared Conference Facilities or the Tech Center Shared Conference Facilities, as applicable. As of the date of this Lease, the Designated Food and Beverage Operator at The Alexandria is The Farmer and the Seahorse. The Alexandria Landlord and the Tech Center Landlord have the right, in their sole and absolute discretion, to change the Designated Food and Beverage Operator at any time. Tenant may not use any vendors other than the Designated Food and Beverage Operator nor may Tenant supply its own food and/or beverages in connection with any food and/or beverage service or catered events held by Tenant in The Alexandria Shared Conference Facilities or the Tech Center Shared Conference Facilities.

Tenant shall, at Tenant's sole cost and expense, (i) be responsible for the set-up of The Alexandria Shared Conference Facilities or the Tech Center Shared Conference Facilities, as applicable, in connection with Tenant's use (including, without limitation ensuring that Tenant has a sufficient number of chairs and tables and the appropriate equipment), and (ii) surrender The Alexandria Shared Conference Facilities and the Tech Center Shared Conference Facilities after each time that Tenant uses The Alexandria Shared Conference Facilities and the Tech Center Shared Conference Facilities free of Tenant's personal property, in substantially the same set up and same condition as received, and free of any debris and trash. If Tenant fails to restore and surrender The Alexandria Shared Conference Facilities and the Tech Center Shared Conference Facilities as required by sub-section (ii) of the immediately preceding sentence, such failure shall constitute a "**Shared Facilities Default**." Each time that Landlord reasonably determines that Tenant has committed a Shared Facilities Default, Tenant shall be required to pay Landlord a penalty within 5 days after notice from Landlord of such Shared Facilities Default. The penalty payable by Tenant in connection with the first Shared Facilities Default shall be $200. The penalty payable shall increase by $50 for each subsequent Shared Facilities Default (for the avoidance of doubt, the penalty shall be $250 for the second Shared Facilities Default, shall be $300 for the third Shared Facilities Default, etc.). In addition to the foregoing, Tenant shall be responsible for reimbursing The Alexandria Landlord, the Tech Center Landlord or Landlord, as applicable, for all costs expended by The Alexandria Landlord, the Tech Center Landlord or Landlord, as applicable, in repairing any damage to The Alexandria Shared Conference Facilities, the Tech Center Shared Conference Facilities, the Alexandria Regional Amenities, The Alexandria, the Tech Center Amenities or the Tech Center Project caused by Tenant or any Tenant Related Party. The provisions of this Section 40(c) shall survive the expiration or earlier termination of this Lease.

(d) **Rules and Regulations**. Tenant shall be solely responsible for paying for any and all ancillary services (e.g., audio visual equipment) provided to Tenant, all food services operators and any other third party vendors providing services to Tenant at The Alexandria or the Tech Center Project. Tenant shall use the Alexandria Regional Amenities (including, without limitation, The Alexandria Shared Conference Facilities and the Tech Center Shared Conference Facilities) in compliance with all applicable Legal Requirements and any rules and regulations imposed by The Alexandria Landlord or Tech Square Landlord, respectively, or Landlord from time to time and in a manner that will not interfere with the rights of other Users. The use of the Alexandria Regional Amenities other than the Shared Conference Facilities by employees of Tenant shall be in accordance with the terms and conditions of the standard licenses, indemnification and waiver agreement required by The Alexandria Landlord, the Tech Center Landlord or any operator of the Alexandria Regional Amenities, as applicable, to be executed by all persons wishing to use such Alexandria Regional Amenities. Neither The Alexandria Landlord, the Tech Center Landlord nor Landlord (nor, if applicable, any other affiliate of Landlord) shall have any liability or obligation for the breach of any rules or regulations by other Users with respect to the Alexandria Regional Amenities. Tenant shall not make any alterations, additions, or improvements of any kind to any of the Alexandria Regional Amenities, The Alexandria or the Tech Center Project.

Tenant acknowledges and agrees that The Alexandria Landlord and the Tech Center Landlord, shall have the right at any time and from time to time to reconfigure, relocate, modify or remove any of the Alexandria Regional Amenities at The Alexandria or the Tech Center Project, respectively, and/or to revise, expand or discontinue any of the services (if any) provided in connection with the Alexandria Regional Amenities.

(e) **Waiver of Liability and Indemnification**. Tenant warrants that it will use reasonable care to prevent damage to property and injury to persons while on The Alexandria or the Tech Center Project. Tenant waives any claims it or any Tenant Parties may have against any ARE Parties relating to, arising out of or in connection with the use by Tenant and/or any Tenant Parties of the Alexandria Regional Amenities and any entry by Tenant and/or any Tenant Parties onto The Alexandria of the Tech Center Project, and Tenant releases and exculpates all ARE Parties from any liability relating to, arising out of or in connection with the Alexandria Regional Amenities and any entry by Tenant and/or any Tenant Parties onto The Alexandria and/or the Tech Center Project, except, in each case, to the extent caused by the willful misconduct or gross negligence of any ARE Party. Tenant hereby agrees to indemnify, defend, and hold harmless the ARE Parties from any claim of damage to property or injury to person relating to, arising out of or in connection with (i) the use of the Alexandria Regional Amenities by Tenant or any Tenant Parties, and (ii) any entry by Tenant and/or any Tenant Parties onto The Alexandria and/or the Tech Center Project, except to the extent caused by the willful misconduct or negligence of any ARE Party. The provisions of this Section 40 shall survive the expiration or earlier termination of this Lease.

(f) **Insurance**. As of the OPEX Commencement Date, Tenant shall cause The Alexandria Landlord and the Tech Center Landlord to be named as additional insureds under the commercial general liability policy of insurance that Tenant is required to maintain pursuant to Section 17 of this Lease. The requirements under this Section 40(f) with respect to The Alexandria Landlord shall terminate as of the date that Tenant no longer has access to The Alexandria Shared Conference Facilities pursuant to Section 40(b).

41. **Roof Equipment**. Tenant shall have the right at its sole cost and expense, subject to compliance with all Legal Requirements, to install, maintain, and remove on the top of the roof of the Building one or more satellite dishes, communication antennae, HVAC units, solar panels, and/or other equipment for the transmission or reception of communication of signals as Tenant may from time to time desire (collectively, "**Roof Equipment**") on the following terms and conditions:

(a) **Requirements**. Tenant shall submit to Landlord (i) the plans and specifications for the installation of the Roof Equipment, (ii) copies of all required governmental and quasi-governmental permits, licenses, and authorizations that Tenant will and must obtain at its own expense, with the cooperation of Landlord, if necessary for the installation and operation of the Roof Equipment, and (iii) an insurance policy or certificate of insurance evidencing insurance coverage as required by this Lease and any other insurance as reasonably required by Landlord for the installation and operation of the Roof Equipment. Landlord shall not unreasonably withhold or delay its approval for the installation and operation of the Roof Equipment; provided, however, that Landlord may reasonably withhold its approval if the installation or operation of the Roof Equipment (A) may damage the structural integrity of the Building, (B) may void, terminate, or invalidate any applicable roof warranty, and (C) is not properly screened from the viewing public.

(b) **No Damage to Roof**. If installation of the Roof Equipment requires Tenant to make any roof cuts or perform any other roofing work, such cuts shall only be made in the commercially reasonable manner designated in writing by Landlord; and any such installation work (including any roof cuts or other roofing work) shall be performed by Tenant, at Tenant's sole cost and expense by a roofing contractor designated by Tenant and reasonably approved by Landlord. If Tenant or its agents shall otherwise cause any damage to the roof during the installation, operation, and removal of the Roof Equipment such damage shall be repaired promptly at Tenant's expense and the roof shall be restored in the same condition it was in before the damage. Landlord shall not charge Tenant Additional Rent for the installation and use of the Roof Equipment. If, however, Landlord's insurance premium or Tax assessment increases as a result of the Roof Equipment, Tenant shall pay such increase as Additional Rent within ten (10) days after receipt of a reasonably detailed invoice from Landlord. Tenant shall not be entitled to any abatement or reduction in the amount of Rent payable under this Lease if for any reason Tenant is unable to use the Roof Equipment. In no event whatsoever shall the installation, operation, maintenance, or removal of the Roof Equipment by Tenant or its agents void, terminate, or invalidate any applicable roof warranty.

(c) **Protection**. The installation, operation, and removal of the Roof Equipment shall be at Tenant's sole risk. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims, costs, damages, liabilities and expenses (including, but not limited to, attorneys' fees) of every kind and description that may arise out of or be connected in any way with Tenant's installation, operation, or removal of the Roof Equipment.

(d) **Removal**. At the expiration or earlier termination of this Lease or the discontinuance of the use of the Roof Equipment by Tenant, Tenant shall, at its sole cost and expense, remove the Roof Equipment from the Building. Tenant shall leave the portion of the roof where the Roof Equipment was located in good order and repair, reasonable wear and tear excepted. If Tenant does not so remove the Roof Equipment, Tenant hereby authorizes Landlord to remove and dispose of the Roof Equipment and charge Tenant as Additional Rent for all costs and expenses incurred by Landlord in such removal and disposal. Tenant agrees that Landlord shall not be liable for any Roof Equipment or related property disposed of or removed by Landlord.

(e) **Access**. Landlord grants to Tenant the right of ingress and egress on a 24 hour 7 day per week basis to install, operate, and maintain the Roof Equipment. Landlord shall supply Tenant with the name, telephone, and pager numbers of the contact individual(s) responsible for providing access during emergencies.

(f) **Appearance**. If permissible by Legal Requirements, the Roof Equipment shall be painted the same color as the Building so as to render the Roof Equipment virtually invisible from ground level.

(g) **No Assignment**. Tenant shall not assign, convey, or otherwise transfer to any person or entity any right, title, or interest in all or any portion of the Roof Equipment or the use and operation thereof other than in connection with an assignment of this Lease.

42. **Miscellaneous**.

(a) **Notices**. All notices or other communications between the parties shall be in writing and shall be deemed duly given upon delivery or refusal to accept delivery by the addressee thereof if delivered in person, or upon actual receipt if delivered by reputable overnight guaranty courier, addressed and sent to the parties at their addresses set forth above. Landlord and Tenant may from time to time by written notice to the other designate another address for receipt of future notices.

(b) **Joint and Several Liability**. If and when included within the term "**Tenant**," as used in this instrument, there is more than one person or entity, each shall be jointly and severally liable for the obligations of Tenant.

(c) **Financial Information**. Tenant shall furnish Landlord with true and complete copies of (i) Tenant's most recent audited annual financial statements within 90 days of the end of each of Tenant's fiscal years during the Term, (ii) Tenant's most recent unaudited quarterly financial statements within 45 days of the end of each of Tenant's first three fiscal quarters of each of Tenant's fiscal years during the Term, (iii) at Landlord's request from time to time, updated business plans, including cash flow projections and/or pro forma balance sheets and income statements, all of which shall be treated by Landlord as confidential information belonging to Tenant, and (iv) any other financial information or summaries that Tenant typically provides to its lenders or shareholders. Notwithstanding the foregoing, in no event shall Tenant be required to provide any financial information to Landlord which Tenant does not otherwise prepare (or cause to be prepared) for its own purposes. Landlord shall treat Tenant's financial information as confidential information belonging to Tenant and will not disclose the same to other than on a need-to-know basis (and with instructions that such information is to be treated as confidential) to Landlord's affiliates, legal, financial or tax advisors, consultants, potential lenders and potential purchasers and as required by Legal Requirements.

(d) **Recordation**. Neither this Lease nor a memorandum of lease shall be filed by or on behalf of Tenant in any public record. Landlord may prepare and file, and upon request by Landlord Tenant will execute, a memorandum of lease.

(e) **Interpretation**. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(f) **Not Binding Until Executed**. The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(g) **Limitations on Interest**. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(h) **Choice of Law**. Construction and interpretation of this Lease shall be governed by the internal laws of the state in which the Premises are located, excluding any principles of conflicts of laws.

(i) **Time**. Time is of the essence as to the performance of Tenant's obligations under this Lease.

(j) **OFAC**. Tenant and Landlord are currently (a) in compliance with and shall at all times during the Term of this Lease remain in compliance with the regulations of the Office of Foreign Assets Control ("**OFAC**") of the U.S. Department of Treasury and any statute, executive order, or regulation relating thereto (collectively, the "**OFAC Rules**"), (b) not listed on, and shall not during the term of this Lease be listed on, the Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, or the Sectoral Sanctions Identification List, which are all maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order, or regulation, and (c) not a person or entity with whom a U.S. person is prohibited from conducting business under the OFAC Rules.

(k) **Incorporation by Reference**. All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this Lease, such exhibits or addenda shall control, except with respect to a conflict between **Exhibit E** and this Lease in which case this Lease shall control.

(l) **Entire Agreement**. This Lease, including the exhibits attached hereto, constitutes the entire agreement between Landlord and Tenant pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, letters of intent, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements, express or implied, made to either party by the other party in connection with the subject matter hereof except as specifically set forth herein.

(m) **No Accord and Satisfaction**. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Base Rent or any Additional Rent will be other than on account of the earliest stipulated Base Rent and Additional Rent, nor will any endorsement or statement on any check or letter accompanying a check for payment of any Base Rent or Additional Rent be an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue any other remedy provided in this Lease.

(n) **Hazardous Activities**. Notwithstanding any other provision of this Lease, Landlord, for itself and its employees, agents and contractors, reserves the right to refuse to perform any repairs or services in any portion of the Premises which, pursuant to Tenant's routine safety guidelines, practices or custom or prudent industry practices, require any form of protective clothing or equipment other than safety glasses. In any such case, Tenant shall contract with parties who are acceptable to Landlord, in Landlord's reasonable discretion, for all such repairs and services, and Landlord shall, to the extent required, equitably adjust Tenant's Share of Operating Expenses in respect of such repairs or services to reflect that Landlord is not providing such repairs or services to Tenant.

(o) **Intentionally Omitted**.

(p) **EV Charging Stations**. Landlord shall not unreasonably withhold its consent to Tenant's written request to install 1 or more electric vehicle car charging stations ("**EV Stations**") in the parking area serving the Project; provided, however, that Tenant complies with all reasonable requirements, standards, rules and regulations which may be imposed by Landlord, at the time Landlord's consent is granted, in connection with Tenant's installation, maintenance, repair and operation of such EV Stations, which may include, without limitation, Landlord's designation of the location of Tenant's EV Stations, and Tenant's payment of all costs whether incurred by Landlord or Tenant in connection with the installation, maintenance, repair and operation of each Tenant's EV Station(s). Nothing contained in this paragraph is intended to increase the number of parking spaces which Tenant is otherwise entitled to use at the Project under Section 10 of this Lease nor impose any additional obligations on Landlord with respect to Tenant's parking rights at the Project.

(q) **Non-Recurring Payments**. If a time frame for the payment by Tenant of a non-recurring charge, cost or expense payable by Tenant pursuant to this Lease is not set forth in this Lease, such non-recurring charge, cost or expense shall be due within 30 days after Landlord's delivery to Tenant of written demand therefor.

(r) **California Accessibility Disclosure**. For purposes of Section 1938(a) of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Project has not undergone inspection by a Certified Access Specialist (CASp). In addition, the following notice is hereby provided pursuant to Section 1938(e) of the California Civil Code: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of and in connection with such notice: (i) Tenant, having read such notice and understanding Tenant's right to request and obtain a CASp inspection, hereby elects not to obtain such CASp inspection and forever waives its rights to obtain a CASp inspection with respect to the Premises, Building and/or Project to the extent permitted by Legal Requirements; and (ii) if the waiver set forth in clause (i) hereinabove is not enforceable pursuant to Legal Requirements, then Landlord and Tenant hereby agree as follows (which constitutes the mutual agreement of the parties as to the matters described in the last sentence of the foregoing notice): (A) Tenant shall have the one-time right to request for and obtain a CASp inspection, which request must be made, if at all, in a written notice delivered by Tenant to Landlord; (B) any CASp inspection timely requested by Tenant shall be conducted (1) at a time mutually agreed to by Landlord and Tenant, (2) in a professional manner by a CASp designated by Landlord and without any testing that would damage the Premises, Building or Project in any way, and (3) at Tenant's sole cost and expense, including, without limitation, Tenant's payment of the fee for such CASp inspection, the fee for any reports prepared by the CASp in connection with such CASp inspection (collectively, the "**CASp Reports**") and all other costs and expenses in connection therewith; (C) the CASp Reports shall be delivered by the CASp simultaneously to Landlord and Tenant; (D) Tenant, at its sole cost and expense, shall be responsible for making any improvements, alterations, modifications and/or repairs to or within the Premises to correct violations of construction-related accessibility standards including, without limitation, any violations disclosed by such CASp inspection; and (E) if such CASp inspection identifies any improvements, alterations, modifications and/or repairs necessary to correct violations of construction-related accessibility standards relating to those items of the Building and Project located outside the Premises that are Landlord's obligation to repair as set forth in this Lease, then Landlord shall perform such improvements, alterations, modifications and/or repairs as and to the extent required by Legal Requirements to correct such violations, and Tenant shall reimburse Landlord for the cost of such improvements, alterations, modifications and/or repairs within 10 business days after Tenant's receipt of an invoice therefor from Landlord.

(s) **Counterparts**. This Lease may be executed in 2 or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature process complying with the U.S. federal ESIGN Act of 2000) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. Electronic signatures shall be deemed original signatures for purposes of this Lease and all matters related thereto, with such electronic signatures having the same legal effect as original signatures.

[Signatures on next page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT:

CUE HEALTH INC.,
a Delaware corporation

By: /s/ Ayub Khattak
Its: Chief Executive Officer

I hereby certify that the signature, name, and title above are my signature, name and title.

LANDLORD:

ARE-SD REGION NO. 67, LLC,
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership, managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: /s/ Gary Dean
Its: Senior Vice President - Real Estate Legal Affairs

Exhibit 10.18

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement"), is made as of January 20, 2021 (the "Effective Date") by and between Cue Health Inc. (the "Company"), and Erica Palsis (the "Executive") (together, the "Parties").

RECITALS

WHEREAS, the Company desires to employ the Executive as its General Counsel; and WHEREAS, the Executive has agreed to accept such employment on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the respective covenants and agreements of the Parties herein contained, the Parties hereto agree as follows:

1. *Term of Employment*. The Executive's employment shall commence on February 1, 2021 and shall continue until terminated in accordance with this Agreement (such period, the "Term of Employment"). During the Term of Employment, the Executive shall be an at-will employee of the Company and the Executive's employment shall be freely terminable by either the Executive or the Company, for any reason, at any time, with or without Cause (as defined below) or notice, subject to the provisions set forth in Section 8 below.

2. *Position*. During the Term of Employment, the Executive shall serve as the General Counsel of the Company. As the General Counsel, the Executive will be required to travel to the Company's headquarters in San Diego from time to time, as well as engage in other business travel, as required by the Executive's job duties, although the Company recognizes that the Executive will continue to live in the greater Chicago, Illinois area. For the avoidance of doubt, unless otherwise agreed by each of the Parties hereto, Executive's principal place of providing services to the Company will be Chicago, Illinois.

3. *Scope of Employment*.

(a) During the Term of Employment, the Executive shall be responsible for the performance of those duties consistent with the Executive's position as General Counsel, in addition to such other duties as may from time to time be assigned to the Executive by the Company. The Executive shall report to the Chief Executive Officer of the Company and shall perform and discharge faithfully, diligently, and to the best of the Executive's ability, the Executive's duties and responsibilities hereunder.

(b) The Executive agrees to devote the Executive's full business time, best efforts, skill, knowledge, attention and energies to the advancement of the business and interests of the Company and to the performance of the Executive's duties and responsibilities as an employee of the Company; provided that the Executive may (i) engage in charitable, educational, religious, civic and similar types of activities and (ii) serve on the board of directors of for-profit business enterprises, provided that in each case such service is approved by the Company's Board of Directors (the "Board") prior to commencement thereof in the Board's sole discretion and only to the extent that such activities are not competitive with the business of the Company and do not individually or in the aggregate inhibit, interfere with, or prohibit the timely performance of the Executive's duties hereunder, and do not create a potential business or fiduciary conflict. The Executive agrees to abide by the rules, regulations, instructions, personnel practices, and policies of the Company, as well as any applicable codes of ethics or business conduct, and any changes therein that may be adopted from time to time by the Company.

(c) The Executive represents and warrants to the Company that the Executive is under no obligations or commitments, whether contractual or otherwise, that are inconsistent with the Executive's obligations under this Agreement. In connection with the Executive's employment hereunder, the Executive shall not use or disclose any trade secrets or other proprietary information or intellectual property in which the Executive or any other person or entity has any right, title or interest, and Executive's employment with the Company will not infringe or violate the rights of any other person or entity. The Executive represents and warrants to the Company that the Executive has returned all property and confidential information belonging to any prior employer.

4. *Compensation*. As full compensation for all services rendered by the Executive to the Company during the Term of Employment, the Company will provide to the Executive the following:

(a) *Base Salary*. The Executive shall receive a base salary at the annualized rate of $360,000 (the "Base Salary"). The Executive's Base Salary shall be paid in equal installments in accordance with the Company's regularly established payroll procedures. The Executive's Base Salary will be reviewed from time to time by the Board or the Compensation Committee in accordance with normal business practice and is subject to change in the discretion of the Board and/or the Compensation Committee.

(b) *Annual Discretionary Bonus*. Following the end of each calendar year beginning with the 2021 calendar year, the Executive will be eligible to receive an annual performance bonus of up to 33% of the Executive's Base Salary (the "Target Bonus"), based upon the Compensation Committee's and/or the Board's assessment, as the case may be and in its sole discretion, of the Executive's and the Company's attainment of targeted goals (both as set by the Compensation Committee and/or the Board) for the preceding calendar year. The Board or the Compensation Committee may determine to provide the bonus in the form of cash, equity award(s), or a combination of cash and equity. No annual bonus or minimum amount thereof is guaranteed, and the Executive must be an employee in good standing on the date that annual bonuses are paid out in order to be eligible for and to earn any annual bonus, as it also serves as an incentive to remain employed by the Company. The Executive's bonus eligibility will be reviewed from time to time by the Board and/or the Compensation Committee in accordance with normal business practice and is subject to change in the discretion of the Board and/or the Compensation Committee, as the case may be.

(c) *Equity Award*. Subject to the approval of the Board and/or the Compensation Committee, as applicable, the Company shall grant Employee 499,544 restricted stock units (the "RSU Award"). The RSU Award shall be granted in all events by no later than February 1, 2021 (the "Grant Date"). The RSU Award shall vest with respect to one-fourth (1/4) of the shares of the Company's common stock (the "Common Stock") subject thereto on each of the first four (4) anniversaries of the Grant Date, subject to Executive continuing to provide services to the Company through the relevant vesting dates. The RSU Award will be subject to the terms, definitions and provisions of the Company's Amended and Restated 2014 Equity Incentive Plan (the "Equity Plan") and the restricted stock unit agreement by and between Executive and the Company (the "RSU Agreement"), both of which documents are incorporated herein by reference. Executive will be eligible for future awards under the Equity Plan, as determined in the sole discretion of the Board, the Committee or the Delegate, as applicable.

(d) *Paid Time Off*. The Executive shall be eligible for a maximum of four weeks of paid time off ("PTO") per calendar year, which shall accrue at the rate of 1.67 days per month that the Executive is employed during the calendar year. PTO accrual will be capped at 25 days. When the Executive's accrued PTO reaches the cap, the Executive will not accrue additional PTO until some of the previously accrued PTO is used and the accrued amount falls below the cap. PTO must be used in accordance with the Company's paid time off policies as in effect from time to time.

(e) *Benefits*. The Executive may participate in any and all benefit programs that the Company establishes and makes available to its employees or executives from time to time, provided the Executive is eligible under (and subject to all provisions of) the plan documents governing those programs. The benefit programs made available by the Company, and the rules, terms and conditions for participation in such benefit programs, may be changed by the Company at any time without advance notice (other than as required by such programs or under law).

(f) *Withholdings*. All compensation payable to the Executive shall be subject to applicable taxes and withholdings.

5. *Expenses*. The Executive will be reimbursed for the Executive's actual, necessary and reasonable business expenses pursuant to Company policy, subject to the provisions of Section 3 of Exhibit A attached hereto.

6. *Confidentiality Agreement*. As a condition of the Executive's employment, the Executive agrees to execute the Proprietary Rights, Non-Disclosure and Developments Agreement attached hereto as Exhibit B (the "Confidentiality Agreement").

7. *Employment Termination*. This Agreement and the employment of the Executive shall terminate upon the occurrence of any of the following:

(a) Upon the death or "Disability" of the Executive. As used in this Agreement, the term "Disability" shall mean a physical or mental illness or disability that prevents the Executive from performing the duties of the Executive's position for a period of more than any three (3) consecutive months or for periods aggregating more than twenty (20) weeks. The Company shall determine in good faith and in its sole discretion whether the Executive is unable to perform the services provided for herein.

(b) At the election of the Company, with or without "Cause" (as defined below), immediately upon written notice by the Company to the Executive. As used in this Agreement, "Cause" shall mean any of (a) the Executive's conviction of, or plea of guilty or *nolo contendere* to, any crime involving dishonesty or moral turpitude or any felony; or (b) a good faith finding by the Company that the Executive has (i) engaged in dishonesty, willful misconduct or gross negligence with respect to the Company, (ii) (A) committed an act that, (B) abused alcohol or other substances in a manner that, or (C) engaged in other conduct that, has materially injured or would reasonably be expected to materially injure the reputation, business or business relationships of the Company, (iii) materially breached the Confidentiality Agreement or any similar agreement with the Company, (iv) violated Company policies or procedures, and/or (v) failed to perform (other than by reason of physical or mental illness or disability for a period of less than three (3) consecutive months or in aggregate less than twenty (20) weeks) the Executive's assigned duties to the Board's satisfaction, following notice of such failure and, if reasonably curable, a period of thirty (30) days to cure in the Board's reasonable satisfaction.

(c) At the election of the Executive, with or without "Good Reason" (as defined below), immediately upon written notice by the Executive to the Company (subject, if it is with Good Reason, to the timing provisions set forth in the definition of Good Reason). As used in this Agreement, "Good Reason" shall mean the occurrence (without the Executive's consent) of any of the following events:

(i) a material diminution of the Executive's duties, authority and responsibilities;

(ii) the Company's material and adverse breach of this Agreement;

(iii) a requirement that the Executive's principal place of providing services to the Company change by more than fifty (50) miles, other than in a direction that reduces the Executive's daily commuting distance;

(iv) a requirement that the Executive travel to the Company's San Diego headquarters more than 30% of the Executive's time in any calendar year; provided, however, and for the avoidance of doubt, that (x) a requirement by the Company that the Executive travel to the Company's San Diego headquarters less than thirty percent (30%) of the Executive's time shall not constitute or otherwise be grounds for Good Reason hereunder and (y) the Executive must provide written notice to the Company in advance of exceeding such 30% ceiling and the Company must nevertheless require Executive to travel to its San Diego headquarters which would result in travel exceeding such 30% ceiling, for such event to constitute Good Reason hereunder; or

(v) any material reduction in the Executive's base compensation (other than in connection with, and in an amount substantially proportionate to, reductions made by the Company to the base compensation of other executives);

provided, however, that no such event shall constitute Good Reason unless (i) the Executive provides written notice of such event to the Company within thirty (30) days of the occurrence of such event, (ii) the Company fails to cure such event within thirty (30) days following receipt of the Executive's written notice, and (iii) the Executive actually terminates employment with the Company within thirty (30) days following the expiration of the Company's cure period.

8. *Effect of Termination*.

(a) *All Terminations Other Than by the Company Without Cause or by the Executive With Good Reason*. If the Executive's employment is terminated under any circumstances other than a termination by the Company without Cause or by the Executive with Good Reason (including a voluntary termination by the Executive without Good Reason pursuant to Section 7(c), a termination by the Company for Cause pursuant to Section 7(b), or due to the Executive's death or Disability pursuant to Section 7(a)), the Company's obligations under this Agreement shall immediately cease and the Executive shall only be entitled to receive (i) the Base Salary that has accrued and to which the Executive is entitled as of the effective date of such termination and any accrued but unused paid time off through and including the effective date of such termination, to be paid in accordance with the Company's established payroll procedure and applicable law but no later than the next regularly scheduled pay period, and (ii) unreimbursed business expenses for which expenses the Executive has timely submitted appropriate documentation in accordance with Section 5 hereof (the payments described in this sentence, the "Accrued Obligations").

(b) *Termination by the Company Without Cause or by the Executive With Good Reason.* If the Executive's employment is terminated by the Company without Cause pursuant to Section 7(b) or by the Executive with Good Reason pursuant to Section 7(c), the Executive shall be entitled to the Accrued Obligations. In addition, and subject to Exhibit A and the conditions of Section 8(c) below, the Company shall: (i) continue to pay to the Executive, in accordance with the Company's regularly established payroll procedures, the Executive's Base Salary rate for a period of nine (9) months, (ii) provided the Executive is eligible for and timely elects to continue receiving group medical insurance pursuant to the "COBRA" law, continue to pay, for up to nine (9) months following the Executive's termination date, the share of the premium for such coverage that it pays for active and similarly- situated employees who receive the same type of coverage (single, family, or other), unless the Company's provision of such COBRA payments would violate the nondiscrimination requirements of applicable law, in which case this benefit will not apply, (iii) pay to the Executive any annual discretionary bonus for the preceding calendar year that the Board has approved but has not yet been paid to the Executive, (iv) if the Executive's employment terminates prior to the one (1)-year anniversary of the Grant Date of the RSU Award provided for under Section 4(c) hereof, accelerate the vesting of such number of RSUs subject to the RSU Award that would have vested between the Grant Date and the Executive's termination date had the RSUs vested on a 1/48 per month basis following the Grant Date of such RSU Award, and (v) if the Executive's employment terminates within the period beginning sixty (60) days prior to the closing date of a Change of Control and ending on the one (1)-year anniversary of such closing date, accelerate the vesting of one hundred percent (100%) of the Executive's then-outstanding equity awards granted to the Executive by the Company which awards vest solely based on continued service (collectively, the "Severance Benefits").

(c) *Release*. As a condition of the Executive's receipt of the Severance Benefits, the Executive must execute and deliver to the Company a severance and general release of claims agreement in a form to be provided by the Company (which shall include a release of all releasable claims, confidentiality, cooperation, and non-disparagement obligations) (the "Severance Agreement"), which Severance Agreement must become irrevocable within 60 days following the date of the Executive's termination of employment (or such shorter period as may be directed by the Company). The Severance Benefits will commence being paid in the first regular payroll beginning after the Severance Agreement becomes effective, provided that if the foregoing 60 day period would end in a calendar year subsequent to the year in which the Executive's employment ends, the Severance Benefits will not begin to be paid before the first payroll of the subsequent calendar year. The Executive must continue to comply with the Confidentiality Agreement and any similar agreements with the Company in order to be eligible to continue receiving the Severance Benefits.

(d) *Definition of "Change of Control*." For purposes of this Agreement, "Change of Control" means any of the following events provided that, in any case, such event or transaction constitutes a change in control event within the meaning of Treasury Regulation Section 1.409A-3(i)(5):

(i) the acquisition by an individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "*Person*") of beneficial ownership of any capital stock of the Company if, after such acquisition, such Person beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act) 50% or more of either (x) the then-outstanding shares of common stock of the Company (the "*Outstanding Company Common Stock*") or (y) the combined voting power of the then-outstanding securities of the Company entitled to vote generally in the election of directors (the "*Outstanding Company Voting Securities*"); *provided, however*, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control Event: (1) any acquisition directly from the Company (excluding an acquisition pursuant to the exercise, conversion or exchange of any security exercisable for, convertible into or exchangeable for common stock or voting securities of the Company, unless the Person exercising, converting or exchanging such security acquired such security directly from the Company or an underwriter or agent of the Company), (2) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (3) any acquisition by any corporation pursuant to a Business Combination (as defined below) which complies with clauses (x) and (y) of subsection (iii) of this definition; or

(ii) a change in the composition of the Board that results in the Continuing Directors (as defined below) no longer constituting a majority of the Board (or, if applicable, the Board of Directors of a successor corporation to the Company), where the term "Continuing Director" means at any date a member of the Board (x) who was a member of the Board on the date of the initial adoption of the Plan by the Board or (y) who was nominated or elected subsequent to such date by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or whose election to the Board was recommended or endorsed by at least a majority of the directors who were Continuing Directors at the time of such nomination or election; *provided, however*, that there shall be excluded from this clause (y) any individual whose initial assumption of office occurred as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents, by or on behalf of a person other than the Board; or

(iii) the consummation of a merger, consolidation, reorganization, recapitalization or share exchange involving the Company or a sale or other disposition of all or substantially all of the assets of the Company (a "*Business Combination*"), unless, immediately following such Business Combination, each of the following two conditions is satisfied: (x) all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding securities entitled to vote generally in the election of directors, respectively, of the resulting or acquiring corporation in such Business Combination (which shall include, without limitation, a corporation which as a result of such transaction owns the Company or substantially all of the Company's assets either directly or through one or more subsidiaries) (such resulting or acquiring corporation is referred to herein as the "*Acquiring Corporation*") and (y) no Person (excluding any employee benefit plan (or related trust) maintained or sponsored by the Company or by the Acquiring Corporation) beneficially owns, directly or indirectly, 50% or more of the then-outstanding shares of common stock of the Acquiring Corporation, or of the combined voting power of the then-outstanding securities of such corporation entitled to vote generally in the election of directors (except to the extent that such ownership existed prior to the Business Combination); or

(iv) the liquidation or dissolution of the Company to the extent determined by the Board;

Provided, however, that notwithstanding anything to the contrary in this Section 8, a transaction or series of transactions effected pursuant to an agreement or series of agreements entered into by the Company with a publicly traded blank check or special purpose acquisition company and/or one or more of its subsidiaries ("SPAC"), and for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with the SPAC shall not be deemed a Change of Control for purposes hereof.

9. *Absence of Restrictions*. The Executive represents and warrants that the Executive is not bound by any employment contracts, restrictive covenants or other restrictions that prevent the Executive from entering into employment with, or carrying out the Executive's responsibilities for, the Company, or which are in any way inconsistent with any of the terms of this Agreement.

10. *Notice*. Any notice delivered under this Agreement shall be deemed duly delivered three (3) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, one (1) business day after it is sent for next-business day delivery via a reputable nationwide overnight courier service, or immediately upon hand delivery, in each case to the address of the recipient set forth below.

To Executive:

At the address set forth in the Executive's personnel file

To Company:

Cue Health Inc.
4980 Carroll Canyon Rd.
Suite 100
San Diego, CA 92121
Attn: Ayub Khattak, CEO

Either Party may change the address to which notices are to be delivered by giving notice of such change to the other Party in the manner set forth in this Section 10.

11. *Applicable Law and Forum*. This Agreement shall be governed by and construed in accordance with the laws of the State of California (without reference to the conflict of laws provisions thereof). Any action, suit or other legal proceeding arising under or relating to any provision of this Agreement shall be commenced only in a court of the State of California (or, if appropriate, a federal court located within the State of California), and the Company and the Executive each consents to the jurisdiction of such a court.

12. *Successors and Assigns*. This Agreement shall be binding upon and inure to the benefit of both Parties and their respective successors and assigns, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business; provided, however, that the obligations of the Executive are personal and shall not be assigned by the Executive.

13. *Acknowledgment*. The Executive states and represents that the Executive has had an opportunity to fully discuss and review the terms of this Agreement with an attorney and, if the Executive has not done so, has voluntarily declined to seek such counsel. The Executive further states and represents that the Executive has carefully read this Agreement, understands the contents herein, freely and voluntarily assents to all of the terms and conditions hereof, and signs the Executive's name of the Executive's own free act.

14. *No Oral Modification, Waiver, Cancellation or Discharge*. This Agreement may be amended or modified only by a written instrument executed by both the Company and the Executive. No delay or omission by the Company in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion shall be effective only in that instance and shall not be construed as a bar to or waiver of any right on any other occasion.

15. *Captions and Pronouns*. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

16. *Interpretation*. The Parties agree that this Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the drafting Party. References in this Agreement to "include" or "including" should be read as though they said "without limitation" or equivalent forms. References in this Agreement to the "Board" shall include any authorized committee thereof.

17. *Severability*. Each provision of this Agreement must be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Moreover, if a court of competent jurisdiction determines any of the provisions contained in this Agreement to be unenforceable because the provision is excessively broad in scope, whether as to duration, activity, geographic application, subject or otherwise, it will be construed by limiting or reducing it to the extent legally permitted, so as to be enforceable to the extent compatible with then applicable law to achieve the intent of the Parties.

18. *Entire Agreement*. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement.

[Signatures on Page Following]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year set forth above.

CUE HEALTH INC.

By: /s/ Ayub Khattak

Name: Ayub Khattak

Title: CEO

EXECUTIVE:

/s/ Erica Palsis
Erica Palsis

Exhibit 10.19

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement"), is made as of February 23, 2021 (the "Effective Date") by and between Cue Health Inc. (the "Company"), and John Gallagher (the "Executive") (together, the "Parties").

RECITALS

WHEREAS, the Company desires to employ the Executive as its Chief Financial Officer; and WHEREAS, the Executive has agreed to accept such employment on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the respective covenants and agreements of the Parties herein contained, the Parties hereto agree as follows:

1. *Term of Employment*. The Executive's employment shall commence on March 1, 2021 and shall continue until terminated in accordance with this Agreement (such period, the "Term of Employment"). During the Term of Employment, the Executive shall be an at-will employee of the Company and the Executive's employment shall be freely terminable by either the Executive or the Company, for any reason, at any time, with or without Cause (as defined below) or notice, subject to the provisions set forth in Section 8 below.

2. *Position*. During the Term of Employment, the Executive shall serve as the Chief Financial Officer of the Company. In connection with his employment by the Company, the Executive shall be based at the Company's headquarters in San Diego, and may be required to engage in business travel from time to time, as required by the Executive's job duties; *provided, however*, that the Company agrees that, for the first six months of the Term of Employment, the Executive may continue to reside in the greater New York City metropolitan area.

3. *Scope of Employment*.

(a) During the Term of Employment, the Executive shall be responsible for the performance of those duties consistent with the Executive's position as Chief Financial Officer, in addition to such other duties, commensurate with his title and position, as may from time to time be assigned to the Executive by the Company. The Executive shall report to the Chief Executive Officer of the Company and shall perform and discharge faithfully, diligently, and to the best of the Executive's ability, the Executive's duties and responsibilities hereunder.

(b) The Executive agrees to devote the Executive's full business time, best efforts, skill, knowledge, attention and energies to the advancement of the business and interests of the Company and to the performance of the Executive's duties and responsibilities as an employee of the Company; provided that the Executive may (i) engage in charitable, educational, religious, civic and similar types of activities and (ii) serve on the board of directors of for-profit business enterprises, provided that in each case such service is approved by the Company's Board of Directors (the "Board") prior to commencement thereof in the Board's sole discretion and only to the extent that such activities are not competitive with the business of the Company and do not individually or in the aggregate inhibit, interfere with, or prohibit the timely performance of the Executive's duties hereunder, and do not create a potential business or fiduciary conflict. The Executive agrees to abide by the rules, regulations, instructions, personnel practices, and policies of the Company, as well as any applicable codes of ethics or business conduct, and any changes therein that may be adopted from time to time by the Company.

(c) The Executive represents and warrants to the Company that the Executive is under no obligations or commitments, whether contractual or otherwise, that are inconsistent with the Executive's obligations under this Agreement. In connection with the Executive's employment hereunder, the Executive shall not use or disclose any trade secrets or other proprietary information or intellectual property in which the Executive or any other person or entity has any right, title or interest, and Executive's employment with the Company will not infringe or violate the rights of any other person or entity. The Executive represents and warrants to the Company that the Executive has returned all property and confidential information belonging to any prior employer.

4. *Compensation*. As full compensation for all services rendered by the Executive to the Company during the Term of Employment, the Company will provide to the Executive the following:

(a) *Base Salary*. The Executive shall receive a base salary at the annualized rate of $550,000 (the "Base Salary"). The Executive's Base Salary shall be paid in equal installments in accordance with the Company's regularly established payroll procedures. The Executive's Base Salary will be reviewed from time to time by the Board or the Compensation Committee in accordance with normal business practice and is subject to change in the discretion of the Board and/or the Compensation Committee; provided that the Executive's aggregate compensation package shall be reviewed for merit increase at least annually starting in the first quarter of 2022, based on Executive's performance review and overall Company performance.

(b) *Signing Bonus*. The Executive shall receive a signing bonus equal to $400,000 (the "Signing Bonus"), to be paid as follows: (i) $250,000 to be paid within three business days of the commencement of the Term of Employment, and $150,000 to be paid on the six months anniversary of the commencement of the Term of Employment. The Executive shall be required to promptly repay to the Company an amount equal to the full amount of the Signing Bonus paid prior to the date of termination if the Executive terminates his employment, with or without "Good Reason" (as defined below), at any time prior to the first year anniversary of the commencement of the Term of Employment.

(c) *Annual Discretionary Bonus*. Following the end of each calendar year beginning with the 2021 calendar year, the Executive will be eligible to receive an annual performance bonus of up to 50% of the Executive's Base Salary (the "Target Bonus"), based upon the Compensation Committee's and/or the Board's assessment, as the case may be and in its sole discretion, of the Executive's and the Company's attainment of targeted goals (both as set by the Compensation Committee and/or the Board) for the preceding calendar year. The Board or the Compensation Committee may determine to provide the bonus in the form of cash, equity award(s), or a combination of cash and equity. No annual bonus or minimum amount thereof is guaranteed, and the Executive must be an employee in good standing on the date that annual bonuses are paid out in order to be eligible for and to earn any annual bonus, as it also serves as an incentive to remain employed by the Company; provided that in accordance with Section 8(b)(iii) if the Company terminates the Executive's employment without Cause, or the Executive terminates his employment for Good Reason after the date of the end of bonus determination but before the full payment of the bonus, he shall be entitled to receive the full amount of such earned bonus. The Executive's bonus eligibility will be reviewed from time to time by the Board and/or the Compensation Committee in accordance with normal business practice and is subject to change in the discretion of the Board and/or the Compensation Committee, as the case may be.

(d) *Equity Award*. Subject to the approval of the Board and/or the Compensation Committee, as applicable, the Company shall grant Employee 549,499 restricted stock units (the "RSU Award") in substantially the same form as attached to this Agreement as Exhibit C. The RSU Award is expected to be granted no later than March 1, 2021 (the "Grant Date"). The RSU Award shall vest with respect to one-fourth (1/4) of the shares of the Company's common stock (the "Common Stock") subject thereto on the first anniversary of the Grant Date, and in equal quarterly installments thereafter with the last installment payable on the 4th anniversary of the Grant Date, subject to Executive continuing to provide services to the Company through the relevant vesting dates; provided that (i) 25% of the RSU Award shall become vested upon the closing of the earlier of (A) an underwritten initial public offering of the company's common stock and (B) a "de-SPAC" transaction between the Company and a special purpose acquisition company (SPAC) (such closing, a "Going Public Event") and (ii) following the Going Public Event, the remaining unvested portion of the RSU Award shall vest in equal quarterly installments beginning three months following the closing of the Going Public Event and extending over the shorter of (X) the original remaining vesting schedule and (Y) the three-year period following the Going Public Event. The RSU Award will be subject to the terms, definitions and provisions of the Company's Amended and Restated 2014 Equity Incentive Plan (the "Equity Plan") and the restricted stock unit agreement by and between Executive and the Company (the "RSU Agreement"). The RSU Agreement is incorporated herein by reference. Executive will be eligible for future awards under the Equity Plan, as determined in the sole discretion of the Board, the Committee or the Delegate, as applicable. The parties agree that in the event the Going Public Event does not occur before the first anniversary of the Grant Date, they will in good faith review and renegotiate the terms of the impact of a "Change of Control" (as defined in Section 8(c)) on the RSU Award.

(e) *Paid Time Off*. The Executive shall be eligible for a maximum of 20 days of paid time off ("PTO") per calendar year, which shall accrue at the rate of 1.667 days per month that the Executive is employed during such year. PTO accrual will be capped at 20 days. When the Executive's accrued PTO reaches the cap, the Executive will not accrue additional PTO until some of the previously accrued PTO is used and the accrued amount falls below the cap. PTO must be used in accordance with the Company's paid time off policies as in effect from time to time.

(f) *Benefits*. The Executive may participate in any and all benefit programs that the Company establishes and makes available to its employees or executives from time to time, provided the Executive is eligible under (and subject to all provisions of) the plan documents governing those programs. The benefit programs made available by the Company, and the rules, terms and conditions for participation in such benefit programs, may be changed by the Company at any time without advance notice (other than as required by such programs or under law).

(g) *Withholdings*. All compensation payable to the Executive shall be subject to applicable taxes and withholdings.

5. *Expenses*. The Executive will be reimbursed for the Executive's actual, necessary and reasonable business expenses pursuant to Company policy, subject to the provisions of Section 3 of Exhibit A attached hereto. Additionally, the Executive will be reimbursed for reasonable and documented expenses in an amount of up to $100,000.00 for Executive's relocation from his current residence to San Diego, California, the location of the Company's corporate headquarters.

6. *Confidentiality Agreement*. As a condition of the Executive's employment, the Executive agrees to execute the Proprietary Rights, Non-Disclosure and Developments Agreement attached hereto as Exhibit B (the "Confidentiality Agreement").

7. *Employment Termination*. This Agreement and the employment of the Executive shall terminate upon the occurrence of any of the following:

(a) Upon the death or "Disability" of the Executive. As used in this Agreement, the term "Disability" shall mean a physical or mental illness or disability that prevents the Executive from performing the duties of the Executive's position for a period of more than any three (3) consecutive months or for periods aggregating more than twenty (20) weeks. The Company shall determine in good faith and in its sole discretion whether the Executive is unable to perform the services provided for herein.

(b) At the election of the Company, with or without "Cause" (as defined below), immediately upon written notice by the Company to the Executive. As used in this Agreement, "Cause" shall mean any of (a) the Executive's conviction of, or plea of guilty or *nolo contendere* to, any crime involving dishonesty or moral turpitude or any felony; or (b) a good faith finding by the Company that the Executive has (i) engaged in dishonesty, willful misconduct or gross negligence with respect to the Company, (ii) (A) committed an act that, (B) abused alcohol or other substances in a manner that, or (C) engaged in other conduct that, in each case has materially injured or would reasonably be expected to materially injure the reputation, business or business relationships of the Company, (iii) materially breached the Confidentiality Agreement or any similar agreement with the Company, (iv) violated the Company's material written policies or procedures, and/or (v) failed to perform (other than by reason of physical or mental illness or disability for a period of less than three (3) consecutive months or in aggregate less than twenty (20) weeks) the Executive's assigned duties to the Board's satisfaction; provided that in each of the events under subsection (b) that are reasonably curable the Company shall deliver to the Executive a written notice which describes the basis for the Board's belief that the Executive has committed a breach, and the Executive shall have an opportunity to cure such breach within thirty (30) days after receipt of such notice in the Board's reasonable satisfaction.

(c) At the election of the Executive, with or without "Good Reason" (as defined below), immediately upon written notice by the Executive to the Company (subject, if it is with Good Reason, to the timing provisions set forth in the definition of Good Reason). As used in this Agreement, "Good Reason" shall mean the occurrence (without the Executive's consent) of any of the following events:

(i) a material diminution of the Executive's title, duties, authority and responsibilities;

(ii) the Company's material breach of this Agreement;

(iii) a requirement that the Executive's principal place of providing services to the Company change by more than fifty (50) miles, other than in a direction that reduces the Executive's daily commuting distance; or

(v) a material reduction in the Executive's base compensation (other than in connection with, and in an amount substantially proportionate to, reductions made by the Company to the base compensation of other executives);

provided, however, that no such event shall constitute Good Reason unless (i) the Executive provides written notice of such event to the Company within thirty (30) days of the occurrence or becoming aware, whichever is later, of such event, (ii) the Company fails to cure such event within thirty (30) days following receipt of the Executive's written notice, and (iii) the Executive actually terminates employment with the Company within thirty (30) days following the expiration of the Company's cure period.

8. *Effect of Termination*.

(a) *All Terminations Other Than by the Company Without Cause or by the Executive With Good Reason*. If the Executive's employment is terminated under any circumstances other than a termination by the Company without Cause or by the Executive with Good Reason (including a voluntary termination by the Executive without Good Reason pursuant to Section 7(c), a termination by the Company for Cause pursuant to Section 7(b), or due to the Executive's death or Disability pursuant to Section 7(a)), the Company's obligations under this Agreement shall immediately cease and the Executive shall only be entitled to receive (i) the Base Salary that has accrued and to which the Executive is entitled as of the effective date of such termination and any accrued but unused paid time off through and including the effective date of such termination, to be paid in accordance with the Company's established payroll procedure and applicable law but no later than the next regularly scheduled pay period, and (ii) unreimbursed business expenses for which expenses the Executive has timely submitted appropriate documentation in accordance with Section 5 hereof (the payments described in this sentence, the "Accrued Obligations").

(b) *Termination by the Company Without Cause or by the Executive With Good Reason.* If the Executive's employment is terminated by the Company without Cause pursuant to Section 7(b) or by the Executive with Good Reason pursuant to Section 7(c), the Executive shall be entitled to the Accrued Obligations. In addition, and subject to Exhibit A and the conditions of Section 8(c) below, the Company shall: (i) continue to pay to the Executive, in accordance with the Company's regularly established payroll procedures, the Executive's Base Salary rate for a period of nine (9) months, (ii) provided the Executive is eligible for and timely elects to continue receiving group medical insurance pursuant to the "COBRA" law, continue to pay, for up to nine (9) months following the Executive's termination date, the share of the premium for such coverage that it pays for active and similarly- situated employees who receive the same type of coverage (single, family, or other), unless the Company's provision of such COBRA payments would violate the nondiscrimination requirements of applicable law, in which case this benefit will not apply, (iii) pay to the Executive any annual discretionary bonus for the preceding calendar year that the Board has approved but has not yet been paid to the Executive, (iv) pay to the Executive an amount equal to his Target Bonus at the 50% maximum of Base Salary for the year in which the termination occurs, multiplied by a fraction the numerator of which is the number of days during the year of termination on which the Executive is employed by the Company and the denominator of which is 365, (v) if the Executive's employment terminates prior to the one (1)-year anniversary of the Grant Date of the RSU Award provided for under Section 4(d) hereof, accelerate the vesting of such number of RSUs subject to the RSU Award that would have vested between the Grant Date and the Executive's termination date had the RSUs vested on a 1/48 per month basis following the Grant Date of such RSU Award, and (vi) if the Executive's employment terminates within the period beginning sixty (60) days prior to the closing date of a Change of Control and ending on the one (1)-year anniversary of such closing date, accelerate the vesting of one hundred percent (100%) of the Executive's then-outstanding equity awards granted to the Executive by the Company which awards vest solely based on continued service (collectively, the "Severance Benefits").

(c) *Release*. As a condition of the Executive's receipt of the Severance Benefits, the Executive must execute and deliver to the Company a severance and general release of claims agreement in a form to be provided by the Company (which shall include a release of all releasable claims, confidentiality, cooperation, and non-disparagement obligations) (the "Severance Agreement"), which Severance Agreement must become irrevocable within 60 days following the date of the Executive's termination of employment (or such shorter period as may be directed by the Company). The Severance Benefits will commence being paid in the first regular payroll beginning after the Severance Agreement becomes effective, provided that if the foregoing 60 day period would end in a calendar year subsequent to the year in which the Executive's employment ends, the Severance Benefits will not begin to be paid before the first payroll of the subsequent calendar year. The Executive must continue to comply with the Confidentiality Agreement and any similar agreements with the Company in order to be eligible to continue receiving the Severance Benefits.

(d) *Definition of "Change of Control*." For purposes of this Agreement, "Change of Control" means any of the following events provided that, in any case, such event or transaction constitutes a change in control event within the meaning of Treasury Regulation Section 1.409A-3(i)(5):

(i) the acquisition by an individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "*Person*") of beneficial ownership of any capital stock of the Company if, after such acquisition, such Person beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act) 50% or more of either (x) the then-outstanding shares of common stock of the Company (the "*Outstanding Company Common Stock*") or (y) the combined voting power of the then-outstanding securities of the Company entitled to vote generally in the election of directors (the "*Outstanding Company Voting Securities*"); *provided, however*, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control Event: (1) any acquisition directly from the Company (excluding an acquisition pursuant to the exercise, conversion or exchange of any security exercisable for, convertible into or exchangeable for common stock or voting securities of the Company, unless the Person exercising, converting or exchanging such security acquired such security directly from the Company or an underwriter or agent of the Company), (2) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (3) any acquisition by any corporation pursuant to a Business Combination (as defined below) which complies with clauses (x) and (y) of subsection (iii) of this definition; or

(ii) a change in the composition of the Board that results in the Continuing Directors (as defined below) no longer constituting a majority of the Board (or, if applicable, the Board of Directors of a successor corporation to the Company), where the term "Continuing Director" means at any date a member of the Board (x) who was a member of the Board on the date of the initial adoption of the Plan by the Board or (y) who was nominated or elected subsequent to such date by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or whose election to the Board was recommended or endorsed by at least a majority of the directors who were Continuing Directors at the time of such nomination or election; *provided, however*, that there shall be excluded from this clause (y) any individual whose initial assumption of office occurred as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents, by or on behalf of a person other than the Board; or

(iii) the consummation of a merger, consolidation, reorganization, recapitalization or share exchange involving the Company or a sale or other disposition of all or substantially all of the assets of the Company (a "*Business Combination*"), unless, immediately following such Business Combination, each of the following two conditions is satisfied: (x) all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding securities entitled to vote generally in the election of directors, respectively, of the resulting or acquiring corporation in such Business Combination (which shall include, without limitation, a corporation which as a result of such transaction owns the Company or substantially all of the Company's assets either directly or through one or more subsidiaries) (such resulting or acquiring corporation is referred to herein as the "*Acquiring Corporation*") and (y) no Person (excluding any employee benefit plan (or related trust) maintained or sponsored by the Company or by the Acquiring Corporation) beneficially owns, directly or indirectly, 50% or more of the then-outstanding shares of common stock of the Acquiring Corporation, or of the combined voting power of the then-outstanding securities of such corporation entitled to vote generally in the election of directors (except to the extent that such ownership existed prior to the Business Combination); or

(iv) the liquidation or dissolution of the Company to the extent determined by the Board;

Provided, however, that notwithstanding anything to the contrary in this Section 8, a transaction or series of transactions effected pursuant to an agreement or series of agreements entered into by the Company with a publicly traded blank check or special purpose acquisition company and/or one or more of its subsidiaries ("SPAC"), and for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with the SPAC shall not be deemed a Change of Control for purposes hereof.

9. *Absence of Restrictions*. The Executive represents and warrants that the Executive is not bound by any employment contracts, restrictive covenants or other restrictions that prevent the Executive from entering into employment with, or carrying out the Executive's responsibilities for, the Company, or which are in any way inconsistent with any of the terms of this Agreement.

10. *Notice*. Any notice delivered under this Agreement shall be deemed duly delivered three (3) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, one (1) business day after it is sent for next-business day delivery via a reputable nationwide overnight courier service, or immediately upon hand delivery, in each case to the address of the recipient set forth below.

To Executive:

At the address set forth in the Executive's personnel file To Company:

Cue Health Inc.

4980 Carroll Canyon Rd.
Suite 100
San Diego, CA 92121
Attn: Ayub Khattak, CEO

Either Party may change the address to which notices are to be delivered by giving notice of such change to the other Party in the manner set forth in this Section 10.

11. *Applicable Law and Forum*. This Agreement shall be governed by and construed in accordance with the laws of the State of California (without reference to the conflict of laws provisions thereof). Any action, suit or other legal proceeding arising under or relating to any provision of this Agreement shall be commenced only in a court of the State of California (or, if appropriate, a federal court located within the State of California), and the Company and the Executive each consents to the jurisdiction of such a court.

12. *Successors and Assigns*. This Agreement shall be binding upon and inure to the benefit of both Parties and their respective successors and assigns, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business; provided, however, that the obligations of the Executive are personal and shall not be assigned by the Executive.

14. *Acknowledgment*. The Executive states and represents that the Executive has had an opportunity to fully discuss and review the terms of this Agreement with an attorney and, if the Executive has not done so, has voluntarily declined to seek such counsel. The Executive further states and represents that the Executive has carefully read this Agreement, understands the contents herein, freely and voluntarily assents to all of the terms and conditions hereof, and signs the Executive's name of the Executive's own free act.

15. *No Oral Modification, Waiver, Cancellation or Discharge*. This Agreement may be amended or modified only by a written instrument executed by both the Company and the Executive. No delay or omission by the Company in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion shall be effective only in that instance and shall not be construed as a bar to or waiver of any right on any other occasion.

16. *Captions and Pronouns*. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

17. *Interpretation*. The Parties agree that this Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the drafting Party. References in this Agreement to "include" or "including" should be read as though they said "without limitation" or equivalent forms. References in this Agreement to the "Board" shall include any authorized committee thereof.

18. *Severability*. Each provision of this Agreement must be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of

such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Moreover, if a court of competent jurisdiction determines any of the provisions contained in this Agreement to be unenforceable because the provision is excessively broad in scope, whether as to duration, activity, geographic application, subject or otherwise, it will be construed by limiting or reducing it to the extent legally permitted, so as to be enforceable to the extent compatible with then applicable law to achieve the intent of the Parties.

19. *Entire Agreement*. This Agreement and the RSU Agreement constitute the entire agreement between the Parties and supersede all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement.

[Signatures on Page Following]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year set forth above.

CUE HEALTH INC.

By: /s/ Ayub Khattak

Name: Ayub Khattak

Title: CEO

EXECUTIVE:

/s/ John Gallagher
John Gallagher

Exhibit 10.20

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made as of [_____], 20[ ] by and between Cue Health Inc., a Delaware corporation (the "Company"), and [_____] ("Indemnitee") [[*Solely with respect to officers and directors that execute this form of indemnification agreement on or prior to the Company's initial public offering:*] and shall be effective as of the effectiveness of a Registration Statement on Form S-1 relating to the initial registration under the Securities Act of 1933, as amended, of shares of the Company's common stock].

RECITALS

WHEREAS, the Board of Directors of the Company (the "Board") believes that highly competent persons have become more reluctant to serve publicly-held corporations as directors or officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Certificate of Incorporation of the Company (as the same may be amended from time to time, the "Certificate of Incorporation") requires indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the "DGCL"). The Certificate of Incorporation and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Certificate of Incorporation and any resolutions adopted pursuant thereto, as well as any rights of Indemnitee under any directors' and officers' liability insurance policy, and this Agreement shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Certificate of Incorporation and insurance as adequate in the present circumstances, and may not be willing to serve or continue to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve or continue to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee agrees to serve as a[n] [officer] [director] of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries or any Enterprise), if any, is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries or any Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director or officer of the Company, by the Certificate of Incorporation, the Bylaws of the Company (the "Bylaws"), and the DGCL. The foregoing notwithstanding, this Agreement shall continue in force after Indemnitee has ceased to serve as a[n] [officer] [director] of the Company, as provided in Section 16 hereof.

Section 2. Definitions. As used in this Agreement:

(a) References to "agent" shall mean any person who is or was a director, officer, or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

(b) A "Change in Control" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

i. Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing [fifty percent (50%)] or more of the combined voting power of the Company's then outstanding securities unless the change in relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors;

ii. Change in Board. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(b)(i), 2(b)(iii) or 2(b)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

iii. Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the Surviving Entity) more than fifty-one percent (51%) of the combined voting power of the voting securities of the Surviving Entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such Surviving Entity;

iv. Liquidation or Sale of Assets. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

v. Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 2(b), the following terms shall have the following meanings:

(A) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

(B) "Person" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any entity owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(C) "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner shall exclude any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(D) "Surviving Entity" shall mean the surviving entity in a merger or consolidation or any entity that controls, directly or indirectly, such surviving entity.

(c) "Corporate Status" describes the status of a person who is or was a director, trustee, partner, managing member, officer, employee, agent or fiduciary of the Company or of any other corporation, limited liability company, partnership or joint venture, trust or other enterprise which such person is or was serving at the request of the Company.

(d) "Disinterested Director" shall mean a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" shall mean the Company and any other corporation, limited liability company, partnership, joint venture, trust or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, employee, agent or fiduciary.

(f) "Expenses" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements, obligations or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a deponent or witness in, or otherwise participating in, a Proceeding. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, (ii) expenses incurred in connection with recovery under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee is ultimately determined to be entitled to such indemnification, advancement or Expenses or insurance recovery, as the case may be, and (iii) for purposes of Section 14(d) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, the Certificate of Incorporation, the Bylaws or under any directors' and officers' liability insurance policies maintained by the Company, by litigation or otherwise. The parties agree that for the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee's counsel as being reasonable in the good faith judgment of such counsel shall be presumed conclusively to be reasonable. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) "Independent Counsel" shall mean a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(h) The term "Proceeding" shall include any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, legislative, regulatory or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of Indemnitee's Corporate Status, by reason of any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) on Indemnitee's part while acting pursuant to Indemnitee's Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement. If Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this paragraph.

(i) Reference to "other enterprise" shall include employee benefit plans; references to "fines" shall include any excise tax assessed with respect to any employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

Section 3. Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding had no reasonable cause to believe that Indemnitee's conduct was unlawful. The parties hereto intend that this Agreement shall provide to the fullest extent permitted by law for indemnification in excess of that expressly permitted by statute, including, without limitation, any indemnification provided by the Certificate of Incorporation, the Bylaws, vote of the Company's stockholders or disinterested directors or applicable law.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that the Court of Chancery of the State of Delaware (the "Delaware Court") or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the Delaware Court shall deem proper.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness, or otherwise asked to participate in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

Section 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 8. Additional Indemnification.

(a) Notwithstanding any limitation in Sections 3, 4, or 5, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessment and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding.

(b) For purposes of Section 8(a), the meaning of the phrase "to the fullest extent permitted by applicable law" shall include, but not be limited to:

i. to the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL, and

ii. to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 9. Exclusions. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification payment in connection with any claim involving Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(b) hereof) or similar provisions of state statutory law or common law, or (ii) any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act) or (iii) any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or the compensation committee of the Board, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act; or

(c) except as provided in Section 14(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation, (ii) such payment arises in connection with any mandatory counterclaim or cross claim brought or raised by Indemnitee in any Proceeding (or any part of any Proceeding), or (iii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 10. Advances of Expenses. Notwithstanding any provision of this Agreement to the contrary (other than Section 14(d)), the Company shall advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding (or any part of any Proceeding) (x) not initiated by Indemnitee (other than in connection with any mandatory counterclaim or cross claim brought or raised by Indemnitee therein as provided in Section 9(c)) or (y) initiated by Indemnitee with the prior approval of the Board as provided in Section 9(c), and such advancement shall be made within thirty (30) days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. In accordance with Section 14(d), advances shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement, which shall constitute an undertaking providing that Indemnitee undertakes to repay the amounts advanced (without interest) by the Company pursuant to this Section 10, if and only to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement. This Section 10 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 9.

Section 11. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. The written notification to the Company shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. The omission by Indemnitee to notify the Company hereunder will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

Section 12. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 11(a), a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case: (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Board, by the stockholders of the Company; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Delaware Court has determined that such objection is without merit. If, within twenty (20) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) hereof and the final disposition of the Proceeding, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by such court or by such other person as such court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(a) of this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 14(e), if the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 13(b) shall not apply (i) if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 12(a) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination the Board has resolved to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat, or (ii) if the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser, financial advisor or other expert selected with reasonable care by the Enterprise. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 14. Remedies of Indemnitee.

(a) Subject to Section 14(e), in the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6 or 7 or the second to last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) payment of indemnification pursuant to Section 3, 4 or 8 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 14(a). The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14 the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall, to the fullest extent not prohibited by law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. It is the intent of the Company that, to the fullest extent permitted by law, Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder. The Company shall, to the fullest extent permitted by law, indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefor) advance, to the extent not prohibited by law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company if, in the case of indemnification, Indemnitee is wholly successful on the underlying claims; if Indemnitee is not wholly successful on the underlying claims, then such indemnification shall be only to the extent Indemnitee is successful on such underlying claims or otherwise as permitted by law, whichever is greater.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

Section 15. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Certificate of Incorporation and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) In the event of any payment made by the Company under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, fiduciary, employee or agent of any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such other corporation, limited liability company, partnership, joint venture, trust or other enterprise.[1]

Section 16. Duration of Agreement. This Agreement shall continue until and terminate upon the later of: (a) ten (10) years after the date that Indemnitee shall have ceased to serve as a[n] [officer] [director] of the Company or (b) one (1) year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding (including any appeal thereof) commenced by Indemnitee pursuant to Section 14 of this Agreement relating thereto. The indemnification and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

Section 17. Severability. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

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[1] As applicable, paragraph (e) should be replaced with the following:

"The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of expenses and/or insurance provided by _____, a Delaware limited partnership, and certain of its affiliates (collectively, the "Fund Indemnitors"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the Certificate of Incorporation or Bylaws (or any agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Fund Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Fund Indemnitors are express third party beneficiaries of the terms hereof."

Section 18. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes and replaces all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof, including any agreement covering the subject matter of this Agreement previously entered into between the Company and Indemnitee; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws, any directors' and officers' insurance maintained by the Company and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 19. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise.

Section 21. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide to the Company.

(b) If to the Company, to

Cue Health Inc.
4980 Carroll Canyon Rd.
Suite 100
San Diego, CA 92121
Attn: General Counsel

or to any other address as may have been furnished to Indemnitee by the Company.

Section 22. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company, on the one hand, and Indemnitee, on the other hand, as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its other directors, officers, employees and agents), on the one hand, and Indemnitee, on the other hand, in connection with such event(s) and/or transaction(s).

Section 23. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 24. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 25. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

CUE HEALTH INC.
By: _____
Name:
Title:

INDEMNITEE
By: _____
Name:
Title:

Signature Page to Cue Health Indemnification Agreement

Exhibit 10.21

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement"), is made as of July 8, 2021 by and between Cue Health Inc., a Delaware corporation (the "Company"), and Ayub Khattak (the "Executive") (together, the "Parties").

RECITALS

WHEREAS, the Company desires to continue to employ the Executive as its Chief Executive Officer; and

WHEREAS, the Executive has agreed to accept continued employment on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the respective covenants and agreements of the Parties herein contained, the Parties hereto agree as follows:

1. *Agreement*. Provided the Executive remains employed by the Company as of the date on which the registration statement relating to the Company's initial public offering (the "IPO") is effective (the "Effective Date"), this Agreement shall be effective as of such date. Following the Effective Date, the Executive shall continue to be an employee of the Company until such employment relationship is terminated in accordance with Section 7 hereof.

2. *Position*. While the Executive is employed by the Company, the Executive shall serve as the Chief Executive Officer of the Company and shall serve on the Company's board of directors (the "Board"), subject to his reelection thereto from time to time by the Company's stockholders. The Executive will be based at the Company's headquarters in San Diego, California, traveling as reasonably required by the Executive's job duties.

3. *Scope of Employment.*

(a) While the Executive is employed by the Company, the Executive shall be responsible for the performance of those duties consistent with the Executive's position as Chief Executive Officer, in addition to such other duties as may from time to time be assigned to the Executive by the Board. The Executive shall report to the Board and shall perform and discharge faithfully, diligently, and to the best of the Executive's ability, the Executive's duties and responsibilities hereunder.

(b) The Executive shall devote substantially all of the Executive's full business time, best efforts, skill, knowledge, attention and energies to the advancement of the business and interests of the Company and to the performance of the Executive's duties and responsibilities as an employee of the Company; provided that the Executive may (i) engage in charitable, educational, religious, civic and similar types of activities and (ii) serve on the board of directors of for-profit business enterprises, provided that such board service is approved by the Board prior to commencement thereof in the Board's sole discretion (provided that such approval shall not be unreasonably withheld, conditioned or delayed) and, in each case, only to the extent that such activities are not competitive with the business of the Company and do not individually or in the aggregate inhibit, interfere with, or prohibit the timely performance of the Executive's duties hereunder, and do not create a potential business or fiduciary conflict. The Executive agrees to abide by the rules, regulations, instructions, personnel practices, and policies of the Company, as well as any applicable codes of ethics or business conduct, and any changes therein that may be adopted from time to time by the Company, in each case of which the Executive has knowledge or which has otherwise been communicated in writing or made available to the Executive.

4. *Compensation*. As full compensation for all services rendered by the Executive to the Company while the Executive is employed by the Company, the Company will provide to the Executive the following:

(a) *Base Salary*. Effective as of the Effective Date, the Executive shall receive a base salary at the annualized rate of $575,000 (the "Base Salary"). The Executive's Base Salary shall be paid in equal installments in accordance with the Company's regularly established payroll procedures. The Executive's Base Salary will be reviewed from time to time by the Board in accordance with normal business practice and is subject to change in the discretion of the Board. The parties agree that the Executive's Base Salary shall not be reduced without Executive's prior written consent, provided however, that any such reduction without the Executive's prior written consent shall not constitute a material breach of this Agreement for purposes of Section 7(c)(iii) unless such reduction also constitutes a material diminution of the Executive's base compensation for purposes of Section 7(c)(v).

(b) *Annual Discretionary Bonus*. Effective as of the Effective Date, the Executive's annual discretionary bonus shall be targeted at 100% of the Executive's Base Salary (the "Target Bonus"). For performance year 2021, the amount of any bonus payable to the Executive shall be based on, for the period beginning on January 1, 2021 and ending on the day prior to the Effective Date, the Executive's target bonus and base salary, in each case, as in effect prior to the Effective Date, and for the period beginning on the Effective Date and ending on December 31, 2021, his Target Bonus. The amount of any annual bonus payable to the Executive shall be determined by the Board based upon the Executive's performance as well as the achievement of specific individual and corporate objectives established by the Board following consultation with the Executive. Except as provided in Section 8, the Executive must be an employee on the date that any annual bonus payable to the Executive is approved by the Board in order to earn any annual bonus. Any bonus will be paid in cash and will be paid no later than March 15 of the calendar year following the calendar year to which the bonus relates. The Executive's bonus eligibility will be reviewed from time to time by the Board in accordance with normal business practice and is subject to change in the discretion of the Board.

(c) *Equity Award*. Subject to the approval of the Board, on the Effective Date the Company shall grant the Executive 976,111 restricted stock units (the "Founder IPO RSU Award") in substantially the form attached to this Agreement as Exhibit B and 2,653,114 performance-based restricted stock units (the "Founder IPO PRSU Award", and together with the Founder IPO RSU Award, the "IPO Equity Grant") (in each case, before any stock split or reverse stock split that may occur in connection with the IPO) in substantially the form attached to this Agreement as Exhibit C. For the avoidance of doubt, the treatment of the IPO Equity Grant in connection with a termination of the Executive's employment shall be as set forth in the applicable award agreement.

(d) *Paid Time Off*. The Executive shall be eligible to accrue up to four weeks of paid time off ("PTO") per calendar year, which shall accrue at the rate of 1.67 days per month that the Executive is employed during the calendar year. PTO accrual will be capped in accordance with the Company's PTO policy. When the Executive's accrued PTO reaches the cap, the Executive will not accrue additional PTO until some of the previously accrued PTO is used and the accrued amount falls below the cap. PTO must be used in accordance with the Company's paid time off policies as in effect from time to time.

(e) *Benefits*. The Executive may participate in any and all benefit programs that the Company establishes and makes available to its employees or executives from time to time, provided the Executive is eligible under (and subject to all provisions of) the plan documents governing those programs. The benefit programs made available by the Company, and the rules, terms and conditions for participation in such benefit programs, may be changed by the Company at any time without advance notice (other than as required by such programs or under law).

(f) *Withholdings*. All compensation payable to the Executive shall be subject to applicable taxes and withholdings.

5. *Expenses*. The Executive will be reimbursed for the Executive's actual, necessary and reasonable business expenses pursuant to Company policy, subject to the provisions of Section 3 of Exhibit A attached hereto. The Executive may request, in connection with required business travel, that the Board approve the use of personal security, which request the Board may approve in its reasonable discretion.

6. *Confidentiality Agreement*. The Executive hereby acknowledges and reaffirms the terms of that certain At-Will Employment, Confidential Information, and Invention Assignment Agreement (the "Confidentiality Agreement") by and between the Executive and the Company, which remains in full force and effect and unaltered in all respects.

7. *Employment Termination*. This Agreement and the employment of the Executive shall terminate upon the occurrence of any of the following:

(a) Upon the death or "Disability" of the Executive. As used in this Agreement, the term "Disability" shall mean a physical or mental illness or disability that prevents the Executive from performing the duties of the Executive's position for a period of more than any three (3) consecutive months or for periods aggregating more than twenty (20) weeks in any 12-month period. The Company shall determine in good faith and in its sole discretion whether the Executive is unable to perform the services provided for herein.

(b) At the election of the Company, with or without Cause, immediately upon written notice by the Company to the Executive. As used in this Agreement, "Cause" shall mean any of (a) the Executive's conviction of, or plea of guilty or *nolo contendere* to, any crime involving dishonesty or moral turpitude or any felony; or (b) a good faith finding by the Board that the Executive has (i) engaged in willful misconduct with respect to the Company that causes material harm to the Company or would reasonably be expected to cause material harm to the Company, (ii) engaged in conduct that has materially injured, or would reasonably be expected to materially injure, the reputation, business or business relationships of the Company, (iii) materially breached this Agreement or the Confidentiality Agreement, (iv) knowingly violated material written Company policies that have been provided to the Executive in a manner that causes material harm to the Company or would reasonably be expected to cause material harm to the Company, and/or (v) failed to substantially perform the Executive's duties (other than by reason of physical or mental illness or disability for a period of less than three (3) consecutive months or in aggregate less than twenty (20) weeks in any 12-month period), or was grossly negligent in the performance of the Executive's duties; provided, however, that prior to terminating the Executive's employment for Cause pursuant to Section 7(b)(iii), (iv), or (v), the Board has first provided written notice to the Executive specifying with particularity the grounds supporting a for Cause termination and has granted the Executive a period of thirty (30) days to cure. As of the Effective Date, the Board does not have knowledge of any facts that would support a termination of the Executive's employment for Cause.

(c) At the election of the Executive, with or without "Good Reason" (as defined below), immediately upon written notice by the Executive to the Company (subject, if it is with Good Reason, to the timing provisions set forth in the definition of Good Reason). As used in this Agreement, "Good Reason" shall mean the occurrence (without the Executive's prior written consent) of any of the following events:

(i) a material diminution of the Executive's duties, authority or responsibilities (it being understood that any demotion in Executive's title shall be deemed a material diminution);

(ii) a requirement that the Executive report to a corporate officer or employee instead of reporting directly to the Board;

(iii) the Company's material breach of this Agreement or any other written agreement between the Executive and the Company, including the failure of any successor of the Company to assume the obligations of this Agreement or assume or otherwise provide for the replacement or substitution of any of the Executive's then-outstanding equity awards (for the avoidance of doubt, excluding (A) any equity awards accelerated pursuant to Section 8(c) below or pursuant to any similar provision in an applicable equity award agreement (including the IPO Equity Grant), and (B) any equity awards otherwise accelerated in connection with the applicable transaction) with a substantially equivalent award (provided, with respect to any such substitution, that the substituted awards have the same intrinsic value as of immediately prior to and immediately following such substitution), provided, however, that the cancellation of an equity award with an intrinsic value equal to or less than zero as of immediately prior to a transaction shall not constitute Good Reason;

(iv) a requirement that the Executive's principal place of providing services to the Company changes by more than thirty-five (35) miles, other than in a direction that reduces the Executive's daily commuting distance; or

(v) a material reduction in the Executive's then current base compensation (including, for the avoidance of doubt, the Executive's target bonus opportunity), other than in connection with, and in an amount substantially proportionate to, reductions made by the Company to the base compensation of other similarly situated executives;

provided, *however*, that no such event shall constitute Good Reason unless (i) the Executive provides written notice of such event to the Company within thirty (30) days of Executive's awareness of the occurrence of such event, (ii) the Company fails to cure such event within thirty (30) days following receipt of the Executive's written notice, and (iii) the Executive actually terminates employment with the Company within thirty (30) days following the expiration of the Company's cure period.

8. *Effect of Termination.*

(a) *All Terminations Other Than by the Company Without Cause or by the Executive With Good Reason*. If the Executive's employment is terminated under any circumstances other than a termination by the Company without Cause or by the Executive with Good Reason (including a voluntary termination by the Executive without Good Reason pursuant to Section 7(c), a termination by the Company for Cause pursuant to Section 7(b), or due to the Executive's death or Disability pursuant to Section 7(a)), the Company's obligations under this Agreement shall immediately cease and the Executive shall only be entitled to receive (i) the Base Salary that has accrued and to which the Executive is entitled as of the effective date of such termination, any bonus for any prior performance year which has been approved by the Board but which has not yet been paid, and any accrued but unused paid time off through and including the effective date of such termination, to be paid in accordance with the Company's established payroll procedure and applicable law but no later than the next regularly scheduled pay period, (ii) unreimbursed business expenses for which expenses the Executive has timely submitted appropriate documentation in accordance with Section 5 hereof and (iii) any amounts or benefits to which the Executive is then entitled under the terms of the benefit plans then sponsored by the Company in accordance with their terms (and not accelerated to the extent acceleration does not satisfy Section 409A of the Internal Revenue Code of 1986, as amended (the "Code")) (the payments described in this sentence, the "Accrued Obligations").

(b) *Termination by the Company Without Cause or by the Executive With Good Reason Other than Within the Change in Control Period.* If the Executive's employment is terminated by the Company without Cause or by the Executive with Good Reason other than within the Change in Control Period, the Executive shall be entitled to the Accrued Obligations. In addition, and subject to Exhibit A and the conditions of Section 8(d), the Company shall: (i) continue to pay to the Executive, in accordance with the Company's regularly established payroll procedures, the Executive's Base Salary (calculated at a level without taking into account any reduction thereto that triggered Good Reason, if applicable) for a period of twelve (12) months, (ii) provided the Executive is eligible for and timely elects to continue receiving group medical insurance pursuant to the "COBRA" law, continue to pay for twelve (12) months following the Executive's termination date or until the Executive has secured other employment or is no longer eligible for coverage under COBRA, whichever occurs first, the share of the premium for health coverage that is paid by the Company for active and similarly-situated employees who receive the same type of coverage, unless the Company's provision of such COBRA payments will violate the nondiscrimination requirements of applicable law, in which case this benefit will not apply and (iii) if such termination occurs following the end of the applicable performance year but before any annual bonus payable to the Executive in respect of such performance year is approved by the Board, an amount equal to any annual performance bonus determined to be payable by the Board for such prior performance year, which amount shall be paid in a single lump sum on the later of the Payment Date (as defined below) or the date on which bonuses are paid to executives generally (collectively, the "Severance Benefits").

(c) *Termination by the Company Without Cause or by the Executive With Good Reason Within the Change in Control Period.* If the Executive's employment is terminated by the Company without Cause or by the Executive with Good Reason within the Change in Control Period, then the Executive shall be entitled to the Accrued Obligations. In addition, and subject to Exhibit A and the conditions of Section 8(d), the Company shall: (i) continue to pay to the Executive, in accordance with the Company's regularly established payroll procedures, the Executive's Base Salary (calculated at a level without taking into account any reduction thereto that triggered Good Reason, if applicable) for a period of twelve (12) months (ii) pay to the Executive, in a single lump sum on the Payment Date (as defined below) an amount equal to 100% of the Executive's Target Bonus for the year in which termination occurs (calculated at a level without taking into account any reduction thereto that triggered Good Reason, if applicable) or, if higher, the Executive's Target Bonus immediately prior to the Change in Control, (iii) provided the Executive is eligible for and timely elects to continue receiving group medical insurance pursuant to the "COBRA" law, continue to pay for twelve (12) months following the Executive's termination date or until the Executive has secured other employment or is no longer eligible for coverage under COBRA, whichever occurs first, the share of the premium for health coverage that is paid by the Company for active and similarly- situated employees who receive the same type of coverage, unless the Company's provision of such COBRA payments will violate the nondiscrimination requirements of applicable law, in which case this benefit will not apply, (iv) if such termination occurs following the end of the applicable performance year but before any annual bonus payable to the Executive in respect of such performance year is approved by the Board, an amount equal to any annual performance bonus determined to be payable by the Board for such prior performance year, which amount shall be paid in a single lump sum on the later of the Payment Date or the date on which bonuses are paid to executives generally and (v) other than with respect to the IPO Equity Grant, provide that the vesting of the Executive's then-unvested equity awards that vest based solely on the passage of time shall be accelerated, such that all then-unvested equity awards that vest based solely on the passage of time immediately vest and become fully exercisable or non-forfeitable as of the Executive's termination date (collectively, the "Change in Control Severance Benefits"). Notwithstanding anything herein to the contrary, except with respect to the IPO Equity Grant, in the event the Executive's then-unvested equity awards that vest based solely on the passage of time are not assumed by the resulting or acquiring company (or affiliate thereof) or are not substituted for by substantially equivalent awards by the resulting or acquiring company (or an affiliate thereof) (provided, with respect to any such substitution, that the substituted awards have the same intrinsic value as of immediately prior to and immediately following the Change in Control), the vesting of such equity awards shall be accelerated in full and become immediately exercisable or non-forfeitable as of immediately prior to the consummation of the Change in Control such that the underlying shares will be entitled to participate in the Change in Control on the same basis as equivalent shares (or the vested awards will be treated in an equivalent manner).

(d) *Release*. As a condition of the Executive's receipt of the Severance Benefits or the Change in Control Severance Benefits, as applicable, the Executive must execute and deliver to the Company a severance and release of claims agreement in a form to be provided by the Company and reasonably approved by Executive (the "Severance Agreement"), which Severance Agreement must become irrevocable within sixty (60) days following the date of the Executive's termination of employment (or such shorter period as may be directed by the Company) provided the form of Severance Agreement is delivered to Executive within 10 days after termination. The Severance Benefits or the Change in Control Severance Benefits, as applicable, will be paid or commence to be paid in the first regular payroll beginning after the Severance Agreement becomes effective, provided that, to the extent necessary in order to comply with Section 409A of the Code, if the foregoing sixty (60) day period would end in a calendar year subsequent to the year in which the Executive's employment ends, the Severance Benefits or Change in Control Severance Benefits, as applicable, will not be paid or begin to be paid before the first payroll of the subsequent calendar year (the date the Severance Benefits or Change in Control Severance Benefits, as applicable, commence pursuant to this sentence, the "Payment Date"). The Executive must continue to comply with the Confidentiality Agreement and the Severance Agreement in order to be eligible to receive, continue receiving, or retain the Severance Benefits or Change in Control Severance Benefits, as applicable.

(e) *Definition of "Change in Control."* For purposes of this Agreement, "Change in Control" means any of the following events provided that such event or transaction constitutes a change in control event within the meaning of Treasury Regulation Section 1.409A-3(i)(5) if necessary to avoid a violation of Section 409A of the Code:

(i) the acquisition by an individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "Person") of beneficial ownership of any capital stock of the Company if, after such acquisition, such Person beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act) 50% or more of either (x) the then-outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (y) the combined voting power of the then-outstanding securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); *provided, however*, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (1) any acquisition directly from the Company (excluding an acquisition pursuant to the exercise, conversion or exchange of any security exercisable for, convertible into or exchangeable for common stock or voting securities of the Company, unless the Person exercising, converting or exchanging such security acquired such security directly from the Company or an underwriter or agent of the Company), (2) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (3) any acquisition by any corporation pursuant to a Business Combination (as defined below) which complies with clauses (x) and (y) of subsection (iii) of this definition; or

(ii) a change in the composition of the Board that results in the Continuing Directors (as defined below) no longer constituting a majority of the Board (or, if applicable, the Board of Directors of a successor corporation to the Company), where the term "Continuing Director" means at any date a member of the Board (x) who was a member of the Board on the date of the initial adoption of the Plan by the Board or (y) who was nominated or elected subsequent to such date by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or whose election to the Board was recommended or endorsed by at least a majority of the directors who were Continuing Directors at the time of such nomination or election; *provided, however*, that there shall be excluded from this clause (y) any individual whose initial assumption of office occurred as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents, by or on behalf of a person other than the Board; or

(iii) the consummation of a merger, consolidation, reorganization, recapitalization or share exchange or other transaction or series of related transactions involving the Company or a sale or other disposition of all or substantially all of the assets of the Company (a "Business Combination"), unless, immediately following such Business Combination, each of the following two conditions is satisfied: (x) all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding securities entitled to vote generally in the election of directors, respectively, of the resulting or acquiring corporation in such Business Combination in substantially the same proportion as their ownership of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination (which shall include, without limitation, a corporation which as a result of such transaction owns the Company or substantially all of the Company's assets either directly or through one or more subsidiaries) (such resulting or acquiring corporation is referred to herein as the "Acquiring Corporation") and (y) no Person (excluding any employee benefit plan (or related trust) maintained or sponsored by the Company or by the Acquiring Corporation) beneficially owns, directly or indirectly, 50% or more of the then- outstanding shares of common stock of the Acquiring Corporation, or of the combined voting power of the then-outstanding securities of such corporation entitled to vote generally in the election of directors (except to the extent that such ownership existed prior to the Business Combination); or

(iv) the liquidation or dissolution of the Company.

(f) *Definition of "Change in Control Period*." For purposes of this Agreement, "Change in Control Period" means (i) with respect to the acceleration of any then-unvested equity awards provided pursuant to Section 8(c)(v) hereof, the period (A) beginning three (3) months before a Change in Control, or, in the event the Company has executed a definitive agreement to effect a Change in Control as of the date the Executive's employment is terminated by the Company without Cause or by the Executive with Good Reason, beginning six (6) months before the Change in Control contemplated by such definitive agreement is consummated, and (B) ending twenty- four (24) months following the Change in Control; and (ii) for all other purposes of this Agreement, the period beginning three (3) months before a Change in Control and ending twelve (12) months following the Change in Control.

9. *Notice*. Any notice delivered under this Agreement shall be deemed duly delivered three (3) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, one (1) business day after it is sent for next-business day delivery via a reputable nationwide overnight courier service, or immediately upon hand delivery, in each case to the address of the recipient set forth below.

To Executive:

At the address set forth in the Executive's personnel file

With a copy (which shall not constitute notice) to:

Moulton | Moore | Stella LLP
Frank Gehry Building
2431 Main Street, Suite C
Santa Monica, California 90405
Attention: Adam E. Stella

To Company:

Cue Health Inc.
4980 Carroll Canyon Rd.
Suite 100
San Diego, CA 92121
Attn: General Counsel

Either Party may change the address to which notices are to be delivered by giving notice of such change to the other Party in the manner set forth in this Section 9.

10. *Attorney's Fees*. The Company agrees that it will reimburse the Executive up to a maximum amount of $15,000 for the legal fees incurred by the Executive in connection with the review and negotiation of this Agreement and the terms of the IPO Equity Grant.

11. *Applicable Law and Forum*. This Agreement shall be governed by and construed in accordance with the laws of the State of California (without reference to the conflict of laws provisions thereof). Any action, suit or other legal proceeding arising under or relating to any provision of this Agreement shall be commenced only in a court of the State of California (or, if appropriate, a federal court located within the State of California), and the Company and the Executive each consents to the jurisdiction of such a court.

12. *Successors and Assigns*. This Agreement shall be binding upon and inure to the benefit of both Parties and their respective successors and assigns, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business; provided, however, that the obligations of the Executive are personal and shall not be assigned by the Executive.

13. *At-Will Employment*. While the Executive is employed by the Company, the Executive will continue to be an at-will employee of the Company, which means that, notwithstanding any provision set forth herein, the employment relationship can be terminated by either Party for any reason, at any time, with or without prior notice and with or without Cause; provided, however, that the Executive will endeavor to provide the Company at least thirty (30) days' prior notice in the event of resignation.

14. *Acknowledgment*. The Executive states and represents that the Executive has had an opportunity to fully discuss and review the terms of this Agreement with an attorney and, if the Executive has not done so, has voluntarily declined to seek such counsel. The Executive further states and represents that the Executive has carefully read this Agreement, understands the contents herein, freely and voluntarily assents to all of the terms and conditions hereof, and signs the Executive's name of the Executive's own free act.

15. *No Oral Modification, Waiver, Cancellation or Discharge*. This Agreement may be amended or modified only by a written instrument executed by both the Company and the Executive. No delay or omission by the Company or Executive in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company or Executive on any one occasion shall be effective only in that instance and shall not be construed as a bar to or waiver of any right on any other occasion.

16. *Captions and Pronouns*. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

17. *Interpretation*. The Parties agree that this Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the drafting Party. References in this Agreement to "include" or "including" should be read as though they said "without limitation" or equivalent forms. References herein to the Board include the Compensation Committee of the Board or any other committee of the Board, or designee of the Board to which the Board has delegated its authority with respect to the matters herein.

18. *Severability*. Each provision of this Agreement must be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Moreover, if a court of competent jurisdiction determines any of the provisions contained in this Agreement to be unenforceable because the provision is excessively broad in scope, whether as to duration, activity, geographic application, subject or otherwise, it will be construed by limiting or reducing it to the extent legally permitted, so as to be enforceable to the extent compatible with then applicable law to achieve the intent of the Parties.

19. *Entire Agreement*. This Agreement and the agreements referenced herein constitute the entire agreement between the Parties and supersede all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement; provided, however, and for the avoidance of doubt, that nothing herein shall be deemed to supersede the Confidentiality Agreement, which remains in full force and effect as set forth in Section 6 above.

[Signatures on Page Following]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year set forth above.

CUE HEALTH INC.

By: /s/ Erica Palsis
Name: Erica Palsis
Title: General Counsel

EXECUTIVE:

/s/Ayub Khattak
Ayub Khattak

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement"), is made as of July 8, 2021 by and between Cue Health Inc., a Delaware corporation (the "Company"), and Clint Sever (the "Executive") (together, the "Parties").

RECITALS

WHEREAS, the Company desires to continue to employ the Executive as its Chief Product Officer; and

WHEREAS, the Executive has agreed to accept continued employment on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the respective covenants and agreements of the Parties herein contained, the Parties hereto agree as follows:

1. *Agreement*. Provided the Executive remains employed by the Company as of the date on which the registration statement relating to the Company's initial public offering (the "IPO") is effective (the "Effective Date"), this Agreement shall be effective as of such date. Following the Effective Date, the Executive shall continue to be an employee of the Company until such employment relationship is terminated in accordance with Section 7 hereof.

2. *Position*. While the Executive is employed by the Company, the Executive shall serve as the Chief Product Officer of the Company. The Executive will be based at the Company's headquarters in San Diego, California, traveling as reasonably required by the Executive's job duties.

3. *Scope of Employment*.

(a) While the Executive is employed by the Company, the Executive shall be responsible for the performance of those duties consistent with the Executive's position as Chief Product Officer, in addition to such other duties as may from time to time be assigned to the Executive by the Chief Executive Officer. The Executive shall report to the Chief Executive Officer of the Company and shall perform and discharge faithfully, diligently, and to the best of the Executive's ability, the Executive's duties and responsibilities hereunder.

(b) The Executive shall devote substantially all of the Executive's full business time, best efforts, skill, knowledge, attention and energies to the advancement of the business and interests of the Company and to the performance of the Executive's duties and responsibilities as an employee of the Company; provided that the Executive may (i) engage in charitable, educational, religious, civic and similar types of activities and (ii) serve on the board of directors of for-profit business enterprises, provided that such board service is approved by the Company's board of directors (the "Board") prior to commencement thereof in the Board's sole discretion (provided that such approval shall not be unreasonably withheld, conditioned or delayed) and, in each case, only to the extent that such activities are not competitive with the business of the Company and do not individually or in the aggregate inhibit, interfere with, or prohibit the timely performance of the Executive's duties hereunder, and do not create a potential business or fiduciary conflict. The Executive agrees to abide by the rules, regulations, instructions, personnel practices, and policies of the Company, as well as any applicable codes of ethics or business conduct, and any changes therein that may be adopted from time to time by the Company, in each case of which the Executive has knowledge or which has otherwise been communicated in writing or made available to the Executive.

4. *Compensation*. As full compensation for all services rendered by the Executive to the Company while the Executive is employed by the Company, the Company will provide to the Executive the following:

(a) *Base Salary*. Effective as of the Effective Date, the Executive shall receive a base salary at the annualized rate of $500,000 (the "Base Salary"). The Executive's Base Salary shall be paid in equal installments in accordance with the Company's regularly established payroll procedures. The Executive's Base Salary will be reviewed from time to time by the Board in accordance with normal business practice and is subject to change in the discretion of the Board. The parties agree that the Executive's Base Salary shall not be reduced without Executive's prior written consent, provided however, that any such reduction without the Executive's prior written consent shall not constitute a material breach of this Agreement for purposes of Section 7(c)(iii) unless such reduction also constitutes a material diminution of the Executive's base compensation for purposes of Section 7(c)(v).

(b) *Annual Discretionary Bonus*. Effective as of the Effective Date, the Executive's annual discretionary bonus shall be targeted at 75% of the Executive's Base Salary (the "Target Bonus"). For performance year 2021, the amount of any bonus payable to the Executive shall be based on, for the period beginning on January 1, 2021 and ending on the day prior to the Effective Date, the Executive's target bonus and base salary, in each case, as in effect prior to the Effective Date, and for the period beginning on the Effective Date and ending on December 31, 2021, his Target Bonus. The amount of any annual bonus payable to the Executive shall be determined by the Board based upon the Executive's performance as well as the achievement of specific individual and corporate objectives established by the Board following consultation with the Executive. Except as provided in Section 8, the Executive must be an employee on the date that any annual bonus payable to the Executive is approved by the Board in order to earn any annual bonus. Any bonus will be paid in cash and will be paid no later than March 15 of the calendar year following the calendar year to which the bonus relates. The Executive's bonus eligibility will be reviewed from time to time by the Board in accordance with normal business practice and is subject to change in the discretion of the Board.

(c) *Equity Award*. Subject to the approval of the Board, on the Effective Date the Company shall grant the Executive 798,636 restricted stock units (the "Founder IPO RSU Award") in substantially the form attached to this Agreement as Exhibit B and 2,279,459 performance-based restricted stock units (the "Founder IPO PRSU Award", and together with the Founder IPO RSU Award, the "IPO Equity Grant") (in each case, before any stock split or reverse stock split that may occur in connection with the IPO) in substantially the form attached to this Agreement as Exhibit C. For the avoidance of doubt, the treatment of the IPO Equity Grant in connection with a termination of the Executive's employment shall be as set forth in the applicable award agreement.

(d) *Paid Time Off*. The Executive shall be eligible to accrue up to four weeks of paid time off ("PTO") per calendar year, which shall accrue at the rate of 1.67 days per month that the Executive is employed during the calendar year. PTO accrual will be capped in accordance with the Company's PTO policy. When the Executive's accrued PTO reaches the cap, the Executive will not accrue additional PTO until some of the previously accrued PTO is used and the accrued amount falls below the cap. PTO must be used in accordance with the Company's paid time off policies as in effect from time to time.

(e) *Benefits*. The Executive may participate in any and all benefit programs that the Company establishes and makes available to its employees or executives from time to time, provided the Executive is eligible under (and subject to all provisions of) the plan documents governing those programs. The benefit programs made available by the Company, and the rules, terms and conditions for participation in such benefit programs, may be changed by the Company at any time without advance notice (other than as required by such programs or under law).

(f) *Withholdings*. All compensation payable to the Executive shall be subject to applicable taxes and withholdings.

5. *Expenses*. The Executive will be reimbursed for the Executive's actual, necessary and reasonable business expenses pursuant to Company policy, subject to the provisions of Section 3 of Exhibit A attached hereto. The Executive may request, in connection with required business travel, that the Board approve the use of personal security, which request the Board may approve in its reasonable discretion.

6. *Confidentiality Agreement*. The Executive hereby acknowledges and reaffirms the terms of that certain At-Will Employment, Confidential Information, and Invention Assignment Agreement (the "Confidentiality Agreement") by and between the Executive and the Company, which remains in full force and effect and unaltered in all respects.

7. *Employment Termination*. This Agreement and the employment of the Executive shall terminate upon the occurrence of any of the following:

(a) Upon the death or "Disability" of the Executive. As used in this Agreement, the term "Disability" shall mean a physical or mental illness or disability that prevents the Executive from performing the duties of the Executive's position for a period of more than any three (3) consecutive months or for periods aggregating more than twenty (20) weeks in any 12-month period. The Company shall determine in good faith and in its sole discretion whether the Executive is unable to perform the services provided for herein.

(b) At the election of the Company, with or without Cause, immediately upon written notice by the Company to the Executive. As used in this Agreement, "Cause" shall mean any of (a) the Executive's conviction of, or plea of guilty or *nolo contendere* to, any crime involving dishonesty or moral turpitude or any felony; or (b) a good faith finding by the Board that the Executive has (i) engaged in willful misconduct with respect to the Company that causes material harm to the Company or would reasonably be expected to cause material harm to the Company, (ii) engaged in conduct that has materially injured, or would reasonably be expected to materially injure, the reputation, business or business relationships of the Company, (iii) materially breached this Agreement or the Confidentiality Agreement, (iv) knowingly violated material written Company policies that have been provided to the Executive in a manner that causes material harm to the Company or would reasonably be expected to cause material harm to the Company, and/or (v) failed to substantially perform the Executive's duties (other than by reason of physical or mental illness or disability for a period of less than three (3) consecutive months or in aggregate less than twenty (20) weeks in any 12-month period), or was grossly negligent in the performance of the Executive's duties; provided, however, that prior to terminating the Executive's employment for Cause pursuant to Section 7(b)(iii), (iv), or (v), the Board has first provided written notice to the Executive specifying with particularity the grounds supporting a for Cause termination and has granted the Executive a period of thirty (30) days to cure. As of the Effective Date, the Board does not have knowledge of any facts that would support a termination of the Executive's employment for Cause.

(c) At the election of the Executive, with or without "Good Reason" (as defined below), immediately upon written notice by the Executive to the Company (subject, if it is with Good Reason, to the timing provisions set forth in the definition of Good Reason). As used in this Agreement, "Good Reason" shall mean the occurrence (without the Executive's prior written consent) of any of the following events:

(i) a material diminution of the Executive's duties, authority or responsibilities (it being understood that any demotion in Executive's title shall be deemed a material diminution);

(ii) a requirement that the Executive report to a corporate officer other than the person then serving as the Company's Chief Executive Officer, which change in reporting relationship is approved by the Board;

(iii) the Company's material breach of this Agreement or any other written agreement between the Executive and the Company, including the failure of any successor of the Company to assume the obligations of this Agreement or assume or otherwise provide for the replacement or substitution of any of the Executive's then-outstanding equity awards (for the avoidance of doubt, excluding (A) any equity awards accelerated pursuant to Section 8(c) below or pursuant to any similar provision in an applicable equity award agreement (including the IPO Equity Grant), and (B) any equity awards otherwise accelerated in connection with the applicable transaction) with a substantially equivalent award (provided, with respect to any such substitution, that the substituted awards have the same intrinsic value as of immediately prior to and immediately following such substitution), provided, however, that the cancellation of an equity award with an intrinsic value equal to or less than zero as of immediately prior to a transaction shall not constitute Good Reason;

(iv) a requirement that the Executive's principal place of providing services to the Company changes by more than thirty-five (35) miles, other than in a direction that reduces the Executive's daily commuting distance; or

(v) a material reduction in the Executive's then current base compensation (including, for the avoidance of doubt, the Executive's target bonus opportunity), other than in connection with, and in an amount substantially proportionate to, reductions made by the Company to the base compensation of other similarly situated executives;

provided, *however*, that no such event shall constitute Good Reason unless (i) the Executive provides written notice of such event to the Company within thirty (30) days of Executive's awareness of the occurrence of such event, (ii) the Company fails to cure such event within thirty (30) days following receipt of the Executive's written notice, and (iii) the Executive actually terminates employment with the Company within thirty (30) days following the expiration of the Company's cure period.

8. *Effect of Termination.*

(a) *All Terminations Other Than by the Company Without Cause or by the Executive With Good Reason*. If the Executive's employment is terminated under any circumstances other than a termination by the Company without Cause or by the Executive with Good Reason (including a voluntary termination by the Executive without Good Reason pursuant to Section 7(c), a termination by the Company for Cause pursuant to Section 7(b), or due to the Executive's death or Disability pursuant to Section 7(a)), the Company's obligations under this Agreement shall immediately cease and the Executive shall only be entitled to receive (i) the Base Salary that has accrued and to which the Executive is entitled as of the effective date of such termination, any bonus for any prior performance year which has been approved by the Board but which has not yet been paid, and any accrued but unused paid time off through and including the effective date of such termination, to be paid in accordance with the Company's established payroll procedure and applicable law but no later than the next regularly scheduled pay period, (ii) unreimbursed business expenses for which expenses the Executive has timely submitted appropriate documentation in accordance with Section 5 hereof and (iii) any amounts or benefits to which the Executive is then entitled under the terms of the benefit plans then sponsored by the Company in accordance with their terms (and not accelerated to the extent acceleration does not satisfy Section 409A of the Internal Revenue Code of 1986, as amended (the "Code")) (the payments described in this sentence, the "Accrued Obligations").

(b) *Termination by the Company Without Cause or by the Executive With Good Reason Other than Within the Change in Control Period.* If the Executive's employment is terminated by the Company without Cause or by the Executive with Good Reason other than within the Change in Control Period, the Executive shall be entitled to the Accrued Obligations. In addition, and subject to Exhibit A and the conditions of Section 8(d), the Company shall: (i) continue to pay to the Executive, in accordance with the Company's regularly established payroll procedures, the Executive's Base Salary (calculated at a level without taking into account any reduction thereto that triggered Good Reason, if applicable) for a period of twelve (12) months, (ii) provided the Executive is eligible for and timely elects to continue receiving group medical insurance pursuant to the "COBRA" law, continue to pay for twelve (12) months following the Executive's termination date or until the Executive has secured other employment or is no longer eligible for coverage under COBRA, whichever occurs first, the share of the premium for health coverage that is paid by the Company for active and similarly-situated employees who receive the same type of coverage, unless the Company's provision of such COBRA payments will violate the nondiscrimination requirements of applicable law, in which case this benefit will not apply and (iii) if such termination occurs following the end of the applicable performance year but before any annual bonus payable to the Executive in respect of such performance year is approved by the Board, an amount equal to any annual performance bonus determined to be payable by the Board for such prior performance year, which amount shall be paid in a single lump sum on the later of the Payment Date (as defined below) or the date on which bonuses are paid to executives generally (collectively, the "Severance Benefits").

(c) *Termination by the Company Without Cause or by the Executive With Good Reason Within the Change in Control Period.* If the Executive's employment is terminated by the Company without Cause or by the Executive with Good Reason within the Change in Control Period, then the Executive shall be entitled to the Accrued Obligations. In addition, and subject to Exhibit A and the conditions of Section 8(d), the Company shall: (i) continue to pay to the Executive, in accordance with the Company's regularly established payroll procedures, the Executive's Base Salary (calculated at a level without taking into account any reduction thereto that triggered Good Reason, if applicable) for a period of twelve (12) months (ii) pay to the Executive, in a single lump sum on the Payment Date (as defined below) an amount equal to 100% of the Executive's Target Bonus for the year in which termination occurs (calculated at a level without taking into account any reduction thereto that triggered Good Reason, if applicable) or, if higher, the Executive's Target Bonus immediately prior to the Change in Control, (iii) provided the Executive is eligible for and timely elects to continue receiving group medical insurance pursuant to the "COBRA" law, continue to pay for twelve (12) months following the Executive's termination date or until the Executive has secured other employment or is no longer eligible for coverage under COBRA, whichever occurs first, the share of the premium for health coverage that is paid by the Company for active and similarly- situated employees who receive the same type of coverage, unless the Company's provision of such COBRA payments will violate the nondiscrimination requirements of applicable law, in which case this benefit will not apply, (iv) if such termination occurs following the end of the applicable performance year but before any annual bonus payable to the Executive in respect of such performance year is approved by the Board, an amount equal to any annual performance bonus determined to be payable by the Board for such prior performance year, which amount shall be paid in a single lump sum on the later of the Payment Date or the date on which bonuses are paid to executives generally and (v) other than with respect to the IPO Equity Grant, provide that the vesting of the Executive's then-unvested equity awards that vest based solely on the passage of time shall be accelerated, such that all then-unvested equity awards that vest based solely on the passage of time immediately vest and become fully exercisable or non-forfeitable as of the Executive's termination date (collectively, the "Change in Control Severance Benefits"). Notwithstanding anything herein to the contrary, except with respect to the IPO Equity Grant, in the event the Executive's then-unvested equity awards that vest based solely on the passage of time are not assumed by the resulting or acquiring company (or affiliate thereof) or are not substituted for by substantially equivalent awards by the resulting or acquiring company (or an affiliate thereof) (provided, with respect to any such substitution, that the substituted awards have the same intrinsic value as of immediately prior to and immediately following the Change in Control), the vesting of such equity awards shall be accelerated in full and become immediately exercisable or non-forfeitable as of immediately prior to the consummation of the Change in Control such that the underlying shares will be entitled to participate in the Change in Control on the same basis as equivalent shares (or the vested awards will be treated in an equivalent manner).

(d) *Release*. As a condition of the Executive's receipt of the Severance Benefits or the Change in Control Severance Benefits, as applicable, the Executive must execute and deliver to the Company a severance and release of claims agreement in a form to be provided by the Company and reasonably approved by Executive (the "Severance Agreement"), which Severance Agreement must become irrevocable within sixty (60) days following the date of the Executive's termination of employment (or such shorter period as may be directed by the Company) provided the form of Severance Agreement is delivered to Executive within 10 days after termination. The Severance Benefits or the Change in Control Severance Benefits, as applicable, will be paid or commence to be paid in the first regular payroll beginning after the Severance Agreement becomes effective, provided that, to the extent necessary in order to comply with Section 409A of the Code, if the foregoing sixty (60) day period would end in a calendar year subsequent to the year in which the Executive's employment ends, the Severance Benefits or Change in Control Severance Benefits, as applicable, will not be paid or begin to be paid before the first payroll of the subsequent calendar year (the date the Severance Benefits or Change in Control Severance Benefits, as applicable, commence pursuant to this sentence, the "Payment Date"). The Executive must continue to comply with the Confidentiality Agreement and the Severance Agreement in order to be eligible to receive, continue receiving, or retain the Severance Benefits or Change in Control Severance Benefits, as applicable.

(e) *Definition of "Change in Control*." For purposes of this Agreement, "Change in Control" means any of the following events provided that such event or transaction constitutes a change in control event within the meaning of Treasury Regulation Section 1.409A-3(i)(5) if necessary to avoid a violation of Section 409A of the Code:

(i) the acquisition by an individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "Person") of beneficial ownership of any capital stock of the Company if, after such acquisition, such Person beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act) 50% or more of either (x) the then-outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (y) the combined voting power of the then-outstanding securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); *provided, however*, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (1) any acquisition directly from the Company (excluding an acquisition pursuant to the exercise, conversion or exchange of any security exercisable for, convertible into or exchangeable for common stock or voting securities of the Company, unless the Person exercising, converting or exchanging such security acquired such security directly from the Company or an underwriter or agent of the Company), (2) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (3) any acquisition by any corporation pursuant to a Business Combination (as defined below) which complies with clauses (x) and (y) of subsection (iii) of this definition; or

(ii) a change in the composition of the Board that results in the Continuing Directors (as defined below) no longer constituting a majority of the Board (or, if applicable, the Board of Directors of a successor corporation to the Company), where the term "Continuing Director" means at any date a member of the Board (x) who was a member of the Board on the date of the initial adoption of the Plan by the Board or (y) who was nominated or elected subsequent to such date by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or whose election to the Board was recommended or endorsed by at least a majority of the directors who were Continuing Directors at the time of such nomination or election; *provided, however*, that there shall be excluded from this clause (y) any individual whose initial assumption of office occurred as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents, by or on behalf of a person other than the Board; or

(iii) the consummation of a merger, consolidation, reorganization, recapitalization or share exchange or other transaction or series of related transactions involving the Company or a sale or other disposition of all or substantially all of the assets of the Company (a "Business Combination"), unless, immediately following such Business Combination, each of the following two conditions is satisfied: (x) all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding securities entitled to vote generally in the election of directors, respectively, of the resulting or acquiring corporation in such Business Combination in substantially the same proportion as their ownership of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination (which shall include, without limitation, a corporation which as a result of such transaction owns the Company or substantially all of the Company's assets either directly or through one or more subsidiaries) (such resulting or acquiring corporation is referred to herein as the "Acquiring Corporation") and (y) no Person (excluding any employee benefit plan (or related trust) maintained or sponsored by the Company or by the Acquiring Corporation) beneficially owns, directly or indirectly, 50% or more of the then- outstanding shares of common stock of the Acquiring Corporation, or of the combined voting power of the then-outstanding securities of such corporation entitled to vote generally in the election of directors (except to the extent that such ownership existed prior to the Business Combination); or

(iv) the liquidation or dissolution of the Company.

(f) *Definition of "Change in Control Period*." For purposes of this Agreement, "Change in Control Period" means (i) with respect to the acceleration of any then-unvested equity awards provided pursuant to Section 8(c)(v) hereof, the period (A) beginning three (3) months before a Change in Control, or, in the event the Company has executed a definitive agreement to effect a Change in Control as of the date the Executive's employment is terminated by the Company without Cause or by the Executive with Good Reason, beginning six (6) months before the Change in Control contemplated by such definitive agreement is consummated, and (B) ending twenty- four (24) months following the Change in Control; and (ii) for all other purposes of this Agreement, the period beginning three (3) months before a Change in Control and ending twelve (12) months following the Change in Control.

9. *Notice*. Any notice delivered under this Agreement shall be deemed duly delivered three (3) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, one (1) business day after it is sent for next-business day delivery via a reputable nationwide overnight courier service, or immediately upon hand delivery, in each case to the address of the recipient set forth below.

To Executive:

At the address set forth in the Executive's personnel file

With a copy (which shall not constitute notice) to:

Moulton | Moore | Stella LLP
Frank Gehry Building
2431 Main Street, Suite C
Santa Monica, California 90405
Attention: Adam E. Stella

To Company:

Cue Health Inc.
4980 Carroll Canyon Rd.
Suite 100
San Diego, CA 92121
Attn: General Counsel

Either Party may change the address to which notices are to be delivered by giving notice of such change to the other Party in the manner set forth in this Section 9.

10. *Attorney's Fees*. The Company agrees that it will reimburse the Executive up to a maximum amount of $15,000 for the legal fees incurred by the Executive in connection with the review and negotiation of this Agreement and the terms of the IPO Equity Grant.

11. *Applicable Law and Forum*. This Agreement shall be governed by and construed in accordance with the laws of the State of California (without reference to the conflict of laws provisions thereof). Any action, suit or other legal proceeding arising under or relating to any provision of this Agreement shall be commenced only in a court of the State of California (or, if appropriate, a federal court located within the State of California), and the Company and the Executive each consents to the jurisdiction of such a court.

12. *Successors and Assigns*. This Agreement shall be binding upon and inure to the benefit of both Parties and their respective successors and assigns, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business; provided, however, that the obligations of the Executive are personal and shall not be assigned by the Executive.

13. *At-Will Employment*. While the Executive is employed by the Company, the Executive will continue to be an at-will employee of the Company, which means that, notwithstanding any provision set forth herein, the employment relationship can be terminated by either Party for any reason, at any time, with or without prior notice and with or without Cause; provided, however, that the Executive will endeavor to provide the Company at least thirty (30) days' prior notice in the event of resignation.

14. *Acknowledgment*. The Executive states and represents that the Executive has had an opportunity to fully discuss and review the terms of this Agreement with an attorney and, if the Executive has not done so, has voluntarily declined to seek such counsel. The Executive further states and represents that the Executive has carefully read this Agreement, understands the contents herein, freely and voluntarily assents to all of the terms and conditions hereof, and signs the Executive's name of the Executive's own free act.

15. *No Oral Modification, Waiver, Cancellation or Discharge*. This Agreement may be amended or modified only by a written instrument executed by both the Company and the Executive. No delay or omission by the Company or Executive in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company or Executive on any one occasion shall be effective only in that instance and shall not be construed as a bar to or waiver of any right on any other occasion.

16. *Captions and Pronouns*. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

17. *Interpretation*. The Parties agree that this Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the drafting Party. References in this Agreement to "include" or "including" should be read as though they said "without limitation" or equivalent forms. References herein to the Board include the Compensation Committee of the Board or any other committee of the Board, or designee of the Board to which the Board has delegated its authority with respect to the matters herein.

18. *Severability*. Each provision of this Agreement must be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Moreover, if a court of competent jurisdiction determines any of the provisions contained in this Agreement to be unenforceable because the provision is excessively broad in scope, whether as to duration, activity, geographic application, subject or otherwise, it will be construed by limiting or reducing it to the extent legally permitted, so as to be enforceable to the extent compatible with then applicable law to achieve the intent of the Parties.

19. *Entire Agreement*. This Agreement and the agreements referenced herein constitute the entire agreement between the Parties and supersede all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement; provided, however, and for the avoidance of doubt, that nothing herein shall be deemed to supersede the Confidentiality Agreement, which remains in full force and effect as set forth in Section 6 above.

[Signatures on Page Following]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year set forth above.

CUE HEALTH INC.

By: /s/ Ayub Khattak
Name: Ayub Khattak
Title: CEO

EXECUTIVE:

/s/ Clint Sever
Clint Sever

Exhibit 10.23

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement"), is made as of July 8, 2021 by and between Cue Health Inc. (the "Company"), and Chris Achar (the "Executive") (together, the "Parties").

RECITALS

WHEREAS, the Company desires to employ the Executive as its Chief Strategy Officer; and

WHEREAS, the Executive has agreed to accept such employment on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the respective covenants and agreements of the Parties herein contained, the Parties hereto agree as follows:

1. *Term of Employment*. The Executive's employment shall commence on July 8, 2021 and shall continue until terminated in accordance with this Agreement (such period, the "Term of Employment"). During the Term of Employment, the Executive shall be an at-will employee of the Company and the Executive's employment shall be freely terminable by either the Executive or the Company, for any reason, at any time, with or without Cause (as defined below) or notice, subject to the provisions set forth in Section 8 below.

2. *Position*. During the Term of Employment, the Executive shall serve as the Chief Strategy Officer. As the Chief Strategy Officer, the Executive will be required to travel to the Company's headquarters in San Diego from time to time, as well as engage in other business travel, as required by the Executive's job duties, although the Company recognizes that the Executive will continue to live in the greater Los Angeles, CA area. For the avoidance of doubt, unless otherwise agreed by each of the Parties hereto, Executive's principal place of providing services to the Company will be Los Angeles, CA.

3. *Scope of Employment*.

(a) During the Term of Employment, the Executive shall be responsible for the performance of those duties consistent with the Executive's position as Chief Strategy Officer, in addition to such other duties as may from time to time be assigned to the Executive by the Company. The Executive shall report to the Chief Executive Officer of the Company and shall perform and discharge faithfully, diligently, and to the best of the Executive's ability, the Executive's duties and responsibilities hereunder.

(b) The Executive agrees to devote the Executive's full business time, best efforts, skill, knowledge, attention and energies to the advancement of the business and interests of the Company and to the performance of the Executive's duties and responsibilities as an employee of the Company; provided that the Executive may (i) engage in charitable, educational, religious, civic and similar types of activities and (ii) serve on the board of directors of for-profit business enterprises, provided that in each case such service is approved by the Company's Board of Directors (the "Board") prior to commencement thereof in the Board's sole discretion and only to the extent that such activities are not competitive with the business of the Company and do not individually or in the aggregate inhibit, interfere with, or prohibit the timely performance of the Executive's duties hereunder, and do not create a potential business or fiduciary conflict. The Executive agrees to abide by the rules, regulations, instructions, personnel practices, and policies of the Company, as well as any applicable codes of ethics or business conduct, and any changes therein that may be adopted from time to time by the Company.

(c) The Executive represents and warrants to the Company that the Executive is under no obligations or commitments, whether contractual or otherwise, that are inconsistent with the Executive's obligations under this Agreement. In connection with the Executive's employment hereunder, the Executive shall not use or disclose any trade secrets or other proprietary information or intellectual property in which the Executive or any other person or entity has any right, title or interest, and Executive's employment with the Company will not infringe or violate the rights of any other person or entity. The Executive represents and warrants to the Company that the Executive has returned all property and confidential information belonging to any prior employer.

4. *Compensation*. As full compensation for all services rendered by the Executive to the Company during the Term of Employment, the Company will provide to the Executive the following:

(a) *Base Salary*. The Executive shall receive a base salary at the annualized rate of $400,000 (the "Base Salary"). The Executive's Base Salary shall be paid in equal installments in accordance with the Company's regularly established payroll procedures. The Executive's Base Salary will be reviewed from time to time by the Board and/or the Compensation Committee in accordance with normal business practice and is subject to change in the discretion of the Board and/or the Compensation Committee.

(b) *Annual Discretionary Bonus*. Following the end of each calendar year beginning with the 2021 calendar year, the Executive will be eligible to receive an annual performance bonus of up to 40% of the Executive's Base Salary (the "Target Bonus"), based upon the Compensation Committee's and/or the Board's assessment, as the case may be and in its sole discretion, of the Executive's and the Company's attainment of targeted goals (both as set by the Compensation Committee and/or the Board) for the preceding calendar year. The Board or the Compensation Committee may determine to provide the bonus in the form of cash, equity award(s), or a combination of cash and equity. No annual bonus or minimum amount thereof is guaranteed, and the Executive must be an employee in good standing on the date that annual bonuses are paid out in order to be eligible for and to earn any annual bonus, as it also serves as an incentive to remain employed by the Company. The Executive's bonus eligibility will be reviewed from time to time by the Board and/or the Compensation Committee in accordance with normal business practice and is subject to change in the discretion of the Board and/or the Compensation Committee, as the case may be. Any bonus for the 2021 calendar year will not be prorated based on the Executive's start date.

(c) *Equity Award*. Subject to the approval of the Board and/or the Compensation Committee, as applicable, the Company shall grant the Executive 1,388,246 restricted stock units (before any stock split or reverse stock split that may occur in connection with the IPO) (the "RSU Award"). The RSU Award shall vest with respect to one-fourth (1/4) of the shares of the Company's common stock (the "Common Stock") subject thereto on each of the first four (4) anniversaries of effective date of grant (the "Grant Date") of the award, subject to the Executive continuing to provide services to the Company through the relevant vesting dates. The RSU Award will be subject to the terms, definitions and provisions of the Company's 2021 Stock Incentive Plan (the "Equity Plan") and the restricted stock unit agreement by and between Executive and the Company (the "RSU Agreement"). Executive will be eligible for future awards under the Equity Plan, as determined in the sole discretion of the Board and/or the Compensation Committee, as applicable.

(d) *Paid Time Off*. The Executive shall be eligible for a maximum of four weeks of paid time off ("PTO") per calendar year, which shall accrue at the rate of 1.67 days per month that the Executive is employed during the calendar year. PTO accrual will be capped at 25 days. When the Executive's accrued PTO reaches the cap, the Executive will not accrue additional PTO until some of the previously accrued PTO is used and the accrued amount falls below the cap. PTO must be used in accordance with the Company's paid time off policies as in effect from time to time.

(e) *Benefits*. The Executive may participate in any and all benefit programs that the Company establishes and makes available to its employees or executives from time to time, provided the Executive is eligible under (and subject to all provisions of) the plan documents governing those programs. The benefit programs made available by the Company, and the rules, terms and conditions for participation in such benefit programs, may be changed by the Company at any time without advance notice (other than as required by such programs or under law).

(f) *Withholdings*. All compensation payable to the Executive shall be subject to applicable taxes and withholdings.

5. *Expenses*. The Executive will be reimbursed for the Executive's actual, necessary and reasonable business expenses pursuant to Company policy, subject to the provisions of Section 3 of Exhibit A attached hereto.

6. *Confidentiality Agreement*. As a condition of the Executive's employment, the Executive agrees to execute the Proprietary Rights, Non-Disclosure and Developments Agreement attached hereto as Exhibit B (the "Confidentiality Agreement").

7. *Employment Termination*. This Agreement and the employment of the Executive shall terminate upon the occurrence of any of the following:

(a) Upon the death or "Disability" of the Executive. As used in this Agreement, the term "Disability" shall mean a physical or mental illness or disability that prevents the Executive from performing the duties of the Executive's position for a period of more than any three (3) consecutive months or for periods aggregating more than twenty (20) weeks. The Company shall determine in good faith and in its sole discretion whether the Executive is unable to perform the services provided for herein.

(b) At the election of the Company, with or without "Cause" (as defined below), immediately upon written notice by the Company to the Executive. As used in this Agreement, "Cause" shall mean any of (a) the Executive's conviction of, or plea of guilty or *nolo contendere* to, any crime involving dishonesty or moral turpitude or any felony; or (b) a good faith finding by the Company that the Executive has (i) engaged in dishonesty, willful misconduct or gross negligence with respect to the Company, (ii) (A) committed an act that, (B) abused alcohol or other substances in a manner that, or (C) engaged in other conduct that, has materially injured or would reasonably be expected to materially injure the reputation, business or business relationships of the Company, (iii) materially breached the Confidentiality Agreement or any similar agreement with the Company, (iv) violated Company policies or procedures, and/or (v) failed to perform (other than by reason of physical or mental illness or disability for a period of less than three (3) consecutive months or in aggregate less than twenty (20) weeks) the Executive's assigned duties to the Board's satisfaction, following notice of such failure and, if reasonably curable, a period of thirty (30) days to cure in the Board's reasonable satisfaction.

(c) At the election of the Executive, with or without "Good Reason" (as defined below), immediately upon written notice by the Executive to the Company (subject, if it is with Good Reason, to the timing provisions set forth in the definition of Good Reason). As used in this Agreement, "Good Reason" shall mean the occurrence (without the Executive's consent) of any of the following events:

(i) a material diminution of the Executive's duties, authority and responsibilities;

(ii) the Company's material and adverse breach of this Agreement;

(iii) a requirement that the Executive's principal place of providing services to the Company change by more than fifty (50) miles, other than in a direction that reduces the Executive's daily commuting distance; or

(iv) any material reduction in the Executive's base compensation (other than in connection with, and in an amount substantially proportionate to, reductions made by the Company to the base compensation of other executives);

provided, however, that no such event shall constitute Good Reason unless (i) the Executive provides written notice of such event to the Company within thirty (30) days of the occurrence of such event, (ii) the Company fails to cure such event within thirty (30) days following receipt of the Executive's written notice, and (iii) the Executive actually terminates employment with the Company within thirty (30) days following the expiration of the Company's cure period.

8. *Effect of Termination*.

(a) *All Terminations Other Than by the Company Without Cause or by the Executive With Good Reason*. If the Executive's employment is terminated under any circumstances other than a termination by the Company without Cause or by the Executive with Good Reason (including a voluntary termination by the Executive without Good Reason pursuant to Section 7(c), a termination by the Company for Cause pursuant to Section 7(b), or due to the Executive's death or Disability pursuant to Section 7(a)), the Company's obligations under this Agreement shall immediately cease and the Executive shall only be entitled to receive (i) the Base Salary that has accrued and to which the Executive is entitled as of the effective date of such termination and any accrued but unused paid time off through and including the effective date of such termination, to be paid in accordance with the Company's established payroll procedure and applicable law but no later than the next regularly scheduled pay period, and (ii) unreimbursed business expenses for which expenses the Executive has timely submitted appropriate documentation in accordance with Section 5 hereof (the payments described in this sentence, the "Accrued Obligations").

(b) *Termination by the Company Without Cause or by the Executive With Good Reason.* If the Executive's employment is terminated by the Company without Cause pursuant to Section 7(b) or by the Executive with Good Reason pursuant to Section 7(c), the Executive shall be entitled to the Accrued Obligations. In addition, and subject to Exhibit A and the conditions of Section 8(c) below, the Company shall: (i) continue to pay to the Executive, in accordance with the Company's regularly established payroll procedures, the Executive's Base Salary rate for a period of nine (9) months, (ii) provided the Executive is eligible for and timely elects to continue receiving group medical insurance pursuant to the "COBRA" law, continue to pay, for up to nine (9) months following the Executive's termination date, the share of the premium for such coverage that it pays for active and similarly-situated employees who receive the same type of coverage (single, family, or other), unless the Company's provision of such COBRA payments would violate the nondiscrimination requirements of applicable law, in which case this benefit will not apply, (iii) pay to the Executive any annual discretionary bonus for the preceding calendar year that the Board has approved but has not yet been paid to the Executive, (iv) if the Executive's employment terminates prior to the one (1)-year anniversary of the Grant Date of the RSU Award provided for under Section 4(c) hereof, accelerate the vesting of such number of RSUs subject to the RSU Award that would have vested between the Grant Date and the Executive's termination date had the RSUs vested on a 1/48 per month basis following the Grant Date of such RSU Award, and (v) if the Executive's employment terminates within the period beginning sixty (60) days prior to the closing date of a Change of Control and ending on the one (1)-year anniversary of such closing date, accelerate the vesting of one hundred percent (100%) of the Executive's then-outstanding equity awards granted to the Executive by the Company which awards vest solely based on continued service (collectively, the "Severance Benefits").

(c) *Release*. As a condition of the Executive's receipt of the Severance Benefits, the Executive must execute and deliver to the Company a severance and general release of claims agreement in a form to be provided by the Company (which shall include a release of all releasable claims, confidentiality, cooperation, and non-disparagement obligations) (the "Severance Agreement"), which Severance Agreement must become irrevocable within 60 days following the date of the Executive's termination of employment (or such shorter period as may be directed by the Company). The Severance Benefits will commence being paid in the first regular payroll beginning after the Severance Agreement becomes effective, provided that if the foregoing 60-day period would end in a calendar year subsequent to the year in which the Executive's employment ends, the Severance Benefits will not begin to be paid before the first payroll of the subsequent calendar year. The Executive must continue to comply with the Confidentiality Agreement and any similar agreements with the Company in order to be eligible to continue receiving the Severance Benefits.

(d) *Definition of* "*Change of Control*." For purposes of this Agreement, "Change of Control" means any of the following events provided that, in any case, such event or transaction constitutes a change in control event within the meaning of Treasury Regulation Section 1.409A-3(i)(5):

(i) the acquisition by an individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "*Person*") of beneficial ownership of any capital stock of the Company if, after such acquisition, such Person beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act) 50% or more of either (x) the then-outstanding shares of common stock of the Company (the "*Outstanding Company Common Stock*") or (y) the combined voting power of the then-outstanding securities of the Company entitled to vote generally in the election of directors (the "*Outstanding Company Voting Securities*"); *provided, however*, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control Event: (1) any acquisition directly from the Company (excluding an acquisition pursuant to the exercise, conversion or exchange of any security exercisable for, convertible into or exchangeable for common stock or voting securities of the Company, unless the Person exercising, converting or exchanging such security acquired such security directly from the Company or an underwriter or agent of the Company), (2) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (3) any acquisition by any corporation pursuant to a Business Combination (as defined below) which complies with clauses (x) and (y) of subsection (iii) of this definition; or

(ii) a change in the composition of the Board that results in the Continuing Directors (as defined below) no longer constituting a majority of the Board (or, if applicable, the Board of Directors of a successor corporation to the Company), where the term "Continuing Director" means at any date a member of the Board (x) who was a member of the Board on the date of the initial adoption of the Plan by the Board or (y) who was nominated or elected subsequent to such date by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or whose election to the Board was recommended or endorsed by at least a majority of the directors who were Continuing Directors at the time of such nomination or election; *provided, however*, that there shall be excluded from this clause (y) any individual whose initial assumption of office occurred as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents, by or on behalf of a person other than the Board; or

(iii) the consummation of a merger, consolidation, reorganization, recapitalization or share exchange involving the Company or a sale or other disposition of all or substantially all of the assets of the Company (a "*Business Combination*"), unless, immediately following such Business Combination, each of the following two conditions is satisfied: (x) all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding securities entitled to vote generally in the election of directors, respectively, of the resulting or acquiring corporation in such Business Combination (which shall include, without limitation, a corporation which as a result of such transaction owns the Company or substantially all of the Company's assets either directly or through one or more subsidiaries) (such resulting or acquiring corporation is referred to herein as the "*Acquiring Corporation*") and (y) no Person (excluding any employee benefit plan (or related trust) maintained or sponsored by the Company or by the Acquiring Corporation) beneficially owns, directly or indirectly, 50% or more of the then-outstanding shares of common stock of the Acquiring Corporation, or of the combined voting power of the then-outstanding securities of such corporation entitled to vote generally in the election of directors (except to the extent that such ownership existed prior to the Business Combination); or

(iv) the liquidation or dissolution of the Company to the extent determined by the Board;

Provided, however, that notwithstanding anything to the contrary in this Section 8, a transaction or series of transactions effected pursuant to an agreement or series of agreements entered into by the Company with a publicly traded blank check or special purpose acquisition company and/or one or more of its subsidiaries ("SPAC"), and for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with the SPAC shall not be deemed a Change of Control for purposes hereof.

9. *Absence of Restrictions*. The Executive represents and warrants that the Executive is not bound by any employment contracts, restrictive covenants or other restrictions that prevent the Executive from entering into employment with, or carrying out the Executive's responsibilities for, the Company, or which are in any way inconsistent with any of the terms of this Agreement.

10. *Notice*. Any notice delivered under this Agreement shall be deemed duly delivered three (3) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, one (1) business day after it is sent for next-business day delivery via a reputable nationwide overnight courier service, or immediately upon hand delivery, in each case to the address of the recipient set forth below.

To Executive:

At the address set forth in the Executive's personnel file

To Company:

Cue Health Inc.
4980 Carroll Canyon Rd.
Suite 100
San Diego, CA 92121
Attn: Ayub Khattak, CEO

Either Party may change the address to which notices are to be delivered by giving notice of such change to the other Party in the manner set forth in this Section 10.

11. *Applicable Law and Forum*. This Agreement shall be governed by and construed in accordance with the laws of the State of California (without reference to the conflict of laws provisions thereof). Any action, suit or other legal proceeding arising under or relating to any provision of this Agreement shall be commenced only in a court of the State of California (or, if appropriate, a federal court located within the State of California), and the Company and the Executive each consents to the jurisdiction of such a court.

12. *Successors and Assigns*. This Agreement shall be binding upon and inure to the benefit of both Parties and their respective successors and assigns, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business; provided, however, that the obligations of the Executive are personal and shall not be assigned by the Executive.

14. *Acknowledgment*. The Executive states and represents that the Executive has had an opportunity to fully discuss and review the terms of this Agreement with an attorney and, if the Executive has not done so, has voluntarily declined to seek such counsel. The Executive further states and represents that the Executive has carefully read this Agreement, understands the contents herein, freely and voluntarily assents to all of the terms and conditions hereof, and signs the Executive's name of the Executive's own free act.

15. *No Oral Modification, Waiver, Cancellation or Discharge*. This Agreement may be amended or modified only by a written instrument executed by both the Company and the Executive. No delay or omission by the Company in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion shall be effective only in that instance and shall not be construed as a bar to or waiver of any right on any other occasion.

16. *Captions and Pronouns*. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

17. *Interpretation*. The Parties agree that this Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the drafting Party. References in this Agreement to "include" or "including" should be read as though they said "without limitation" or equivalent forms. References in this Agreement to the "Board" shall include any authorized committee thereof.

18. *Severability*. Each provision of this Agreement must be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Moreover, if a court of competent jurisdiction determines any of the provisions contained in this Agreement to be unenforceable because the provision is excessively broad in scope, whether as to duration, activity, geographic application, subject or otherwise, it will be construed by limiting or reducing it to the extent legally permitted, so as to be enforceable to the extent compatible with then applicable law to achieve the intent of the Parties.

19. *Entire Agreement*. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement.

[Signatures on Page Following]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year set forth above.

CUE HEALTH INC.

By: /s/ Ayub Khattak
Name: Ayub Khattak
Title: CEO

EXECUTIVE:

/s/ Chris Achar
Chris Achar

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

Cue Health Inc.
San Diego, California

We hereby consent to the use in the Prospectus constituting a part of this Registration Statement of our report dated April 19, 2021, relating to the financial statements of Cue Health Inc. (the "Company"), which is contained in that Prospectus. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

We also consent to the reference to us under the caption "Experts" in the Prospectus.

/s/ BDO USA, LLP

San Diego, California
September 1, 2021

Exhibit 99.1

CONSENT OF JOANNE BRADFORD

Cue Health Inc. intends to file a Registration Statement on Form S-1 (together with any amendments or supplements thereto, the "Registration Statement"), registering securities for issuance in its initial public offering. As required by Rule 438 under the Securities Act of 1933, as amended, the undersigned hereby consents to being named in the Registration Statement as a Director Nominee.

July 8, 2021

/s/ Joanne Bradford

Joanne Bradford

Exhibit 99.2

CONSENT OF CAROLE FAIG

Cue Health Inc. intends to file a Registration Statement on Form S-1 (together with any amendments or supplements thereto, the "Registration Statement"), registering securities for issuance in its initial public offering. As required by Rule 438 under the Securities Act of 1933, as amended, the undersigned hereby consents to being named in the Registration Statement as a Director Nominee.

July 1, 2021

/s/ Carole Faig

Carole Faig

Exhibit 99.3

CONSENT OF MARIA MARTINEZ

Cue Health Inc. intends to file a Registration Statement on Form S-1 (together with any amendments or supplements thereto, the "Registration Statement"), registering securities for issuance in its initial public offering. As required by Rule 438 under the Securities Act of 1933, as amended, the undersigned hereby consents to being named in the Registration Statement as a Director Nominee.

July 19, 2021

/s/ Maria Martinez

Maria Martinez