

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

(Mark One)

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended September 30, 2020

OR

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For transition period from _____ to _____

Commission File Number: 000-19756



Delaware
(State or other jurisdiction of incorporation or organization)

94-3023969
(I.R.S. Employer Identification No.)

932 Southwood Boulevard
Incline Village, Nevada 89451
(Address of principal executive offices and Zip Code)

(775) 832-8500
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

<u>Title of each class</u>	<u>Trading symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.01 per share	PDLI	The Nasdaq Stock Market LLC

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

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

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

Large accelerated filer *Accelerated filer* *Non-accelerated filer* *Smaller reporting company* *Emerging growth company*

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

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

As of October 30, 2020, there were 114,226,566 shares of the registrant's Common Stock outstanding.

PDL BIOPHARMA, INC.
2020 Form 10-Q
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We own or have rights to certain trademarks, trade names, copyrights and other intellectual property used in our business, including PDL BioPharma and the PDL logo, each of which is considered a trademark. All other company names, product names, trade names and trademarks included in this Quarterly Report on Form 10-Q are trademarks, registered trademarks or trade names of their respective owners.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED STATEMENT OF NET ASSETS
(Unaudited)
(In thousands)

	September 30, 2020	(Proforma) September 30, 2020
	(Under Liquidation Basis of Accounting) (Note 1)	(Excluding LENSAR - Note 21)
Assets		
Cash and cash equivalents	\$ 125,736	\$ 83,035
Accounts receivable	8,323	5,894
Receivables from asset sales	39,389	39,389
Notes receivable	53,070	52,081
Inventory	13,685	—
Royalty assets	227,738	227,738
Income tax receivable	88,778	76,949
Property and equipment	783	—
Equipment under lease	3,033	—
Intangible assets	42,113	—
Other assets	12,462	7,599
Total assets	\$ 615,110	\$ 492,685
Liabilities		
Accounts payable	\$ 3,639	\$ 1,290
Accrued liabilities, LENSAR	7,678	—
Uncertain tax positions	34,942	34,942
Compensation and benefit costs	21,219	21,219
Lease guarantee	10,700	10,700
Costs to sell assets	5,007	5,007
Other accrued liquidation costs	14,770	14,770
Convertible notes payable	15,238	15,238
Total liabilities	\$ 113,193	\$ 103,166
Net assets in liquidation	\$ 501,917	\$ 389,519

See accompanying notes.

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED BALANCE SHEET
(In thousands, except per share amounts)

December 31,
2019
(Note 1)
(Under Going Concern
Basis of Accounting)

Assets	
Current assets:	
Cash and cash equivalents	\$ 168,982
Accounts receivable, net	6,559
Notes receivable	52,583
Inventory	8,061
Assets held for sale (Note 3)	70,366
Prepaid and other current assets	7,344
Total current assets	313,895
Property and equipment, net	2,560
Notes receivable, long-term	827
Intangible assets, net	13,186
Long-term assets held for sale (Note 3)	377,491
Other assets	9,247
Total assets	\$ 717,206
Liabilities and Stockholders' Equity	
Current liabilities:	
Accounts payable	\$ 2,675
Accrued liabilities	11,923
Liabilities held for sale (Note 3)	31,095
Total current liabilities	45,693
Convertible notes payable	27,250
Liabilities held for sale, long-term (Note 3)	120
Other long-term liabilities	50,865
Total liabilities	123,928
Commitments and contingencies (Note 14)	
Stockholders' equity:	
Preferred stock, par value \$0.01 per share, 10,000 shares authorized; no shares issued and outstanding	—
Common stock, par value \$0.01 per share, 350,000 shares authorized; 124,303 shares issued and outstanding at December 31, 2019	1,243
Additional paid-in capital	(78,875)
Retained earnings	670,832
Total PDL stockholders' equity	593,200
Noncontrolling interests	78
Total stockholders' equity	593,278
Total liabilities and stockholders' equity	\$ 717,206

See accompanying notes.

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED STATEMENT OF CHANGES IN NET ASSETS
(Unaudited)
(In thousands)

	(Note 1) (Under Liquidation Basis of Accounting)
Net assets in liquidation, at September 1, 2020	\$ 446,553
Changes in assets and liabilities in liquidation:	
Decrease in liquidation value of royalty assets	(3,944)
Decrease in receivables from asset sales	(9,078)
Increase in liquidation value of notes receivable	7,460
Increase in other assets	1,768
Increase in income tax receivable	53,106
Decrease in estimated costs to sell assets	3,048
Decrease in uncertain tax positions	4,414
Increase in estimated liquidation costs	(413)
Increase in other liabilities	(997)
Total changes in net assets in liquidation	55,364
Net assets in liquidation, at September 30, 2020	\$ 501,917

See accompanying notes.

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands, except per share amounts)

	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019
(Under Going Concern Basis of Accounting - Note 1)				
Revenues				
Product revenue, net	\$ 2,831	\$ 5,856	\$ 10,946	\$ 15,860
Lease revenue	703	1,322	2,139	3,854
Service revenue	544	898	2,126	2,510
Royalties from Queen et al. patents	—	—	—	9
License and other	37	(45)	110	(48)
Total revenues	4,115	8,031	15,321	22,185
Operating expenses				
Cost of product revenue (excluding intangible asset amortization)	1,127	4,765	6,626	13,494
Amortization of intangible assets	204	321	841	983
Severance and retention	2,400	—	24,713	—
General and administrative	7,224	10,062	29,695	27,067
Sales and marketing	835	1,545	3,322	4,980
Research and development	1,053	4,310	4,374	6,106
Total operating expenses	12,843	21,003	69,571	52,630
Operating loss from continuing operations	(8,728)	(12,972)	(54,250)	(30,445)
Non-operating expense, net				
Interest and other income, net	26	1,460	608	4,984
Interest expense	(210)	(3,011)	(996)	(8,950)
Loss on investment	(5,576)	—	(5,576)	—
Gain on sale of intangible assets	—	3,476	—	3,476
Loss on extinguishment of convertible notes	—	(3,900)	(606)	(3,900)
Total non-operating expense, net	(5,760)	(1,975)	(6,570)	(4,390)
Loss from continuing operations before income taxes	(14,488)	(14,947)	(60,820)	(34,835)
Income tax benefit from continuing operations	(3,636)	(3,136)	(17,780)	(6,558)
Net loss from continuing operations	(10,852)	(11,811)	(43,040)	(28,277)
Income (loss) from discontinued operations before income taxes (including loss on classification as held for sale of zero and \$28,904 for the two and eight months ended August 31, 2020, respectively)	191	(4,962)	(57,921)	18,555
Income tax (benefit) expense of discontinued operations	(15,045)	1,193	(23,006)	6,141
Income (loss) from discontinued operations	15,236	(6,155)	(34,915)	12,414
Net income (loss)	4,384	(17,966)	(77,955)	(15,863)
Less: Net loss attributable to noncontrolling interests	(14)	(182)	(659)	(340)
Net income (loss) attributable to PDL's shareholders	\$ 4,398	\$ (17,784)	\$ (77,296)	\$ (15,523)
Net income (loss) per share - basic				
Net loss from continuing operations	\$ (0.10)	\$ (0.10)	\$ (0.36)	\$ (0.23)
Net income (loss) from discontinued operations	0.14	(0.06)	(0.30)	0.10
Net income (loss) attributable to PDL's shareholders	\$ 0.04	\$ (0.16)	\$ (0.66)	\$ (0.13)
Net income (loss) per share - diluted				
Net loss from continuing operations	\$ (0.10)	\$ (0.10)	\$ (0.36)	\$ (0.23)
Net income (loss) from discontinued operations	0.14	(0.06)	(0.30)	0.10
Net income (loss) attributable to PDL's shareholders	\$ 0.04	\$ (0.16)	\$ (0.66)	\$ (0.13)
Weighted-average shares outstanding				
Basic	113,889	112,986	118,001	119,966
Diluted	113,889	112,986	118,001	119,966

See accompanying notes.

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Unaudited)
(In thousands)

	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019
	(Under Going Concern Basis of Accounting - Note 1)			
Net income (loss)	\$ 4,384	\$ (17,966)	\$ (77,955)	\$ (15,863)
Other comprehensive income (loss), net of tax				
Total other comprehensive income (loss), net of tax	—	—	—	—
Comprehensive income (loss)	4,384	(17,966)	(77,955)	(15,863)
Less: Comprehensive loss attributable to noncontrolling interests	(14)	(182)	(659)	(340)
Comprehensive income (loss) attributable to PDL's shareholders	<u>\$ 4,398</u>	<u>\$ (17,784)</u>	<u>\$ (77,296)</u>	<u>\$ (15,523)</u>

See accompanying notes.

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands, except share amounts)
(Unaudited)

PDL Stockholders' Equity							
	Common Stock		Treasury Stock	Additional Paid-In Capital	Retained Earnings	Non-controlling Interest	Total Stockholders' Equity
	Shares	Amount					
	(Under Going Concern Basis of Accounting - Note 1)						
Balance at December 31, 2019	124,302,616	\$ 1,243	\$ —	\$ (78,875)	\$ 670,832	\$ 78	\$ 593,278
Issuance of common stock, net of forfeitures	1,781,197	18	—	(18)	—	—	—
Stock-based compensation expense	—	—	—	14,453	—	—	14,453
Repurchase and retirement of common stock	(5,564,841)	(56)	(2,244)	—	(17,978)	—	(20,278)
Transfer of subsidiary shares to non-controlling interest	—	—	—	683	—	100	783
Extinguishment of convertible notes	—	—	—	(3,911)	—	—	(3,911)
Capped call transactions	—	—	—	801	—	—	801
Comprehensive loss:							
Net loss	—	—	—	—	(31,723)	(288)	(32,011)
Total comprehensive loss	—	—	—	—	—	—	(32,011)
Balance at March 31, 2020	<u>120,518,972</u>	<u>1,205</u>	<u>(2,244)</u>	<u>(66,867)</u>	<u>621,131</u>	<u>(110)</u>	<u>553,115</u>
Issuance of common stock, net of forfeitures	183,903	2	—	458	—	—	460
Stock-based compensation expense	—	—	—	245	—	—	245
Repurchase and retirement of common stock	(6,758,147)	(68)	2,244	—	(21,267)	—	(19,091)
Noncash liquidating distribution (0.11591985 shares of Evofem Biosciences, Inc. common stock distributed per share of the Company's common stock)	—	—	—	—	(64,400)	—	(64,400)
Comprehensive loss:							
Net loss	—	—	—	—	(49,971)	(357)	(50,328)
Total comprehensive loss	—	—	—	—	—	—	(50,328)
Balance at June 30, 2020	<u>113,944,728</u>	<u>1,139</u>	<u>—</u>	<u>(66,164)</u>	<u>485,493</u>	<u>(467)</u>	<u>420,001</u>
Issuance of common stock, net of forfeitures	166,630	2	—	(2)	—	—	—
Stock-based compensation expense	—	—	—	829	—	—	829
Comprehensive loss:							
Net income (loss)	—	—	—	—	4,398	(14)	4,384
Total comprehensive income	—	—	—	—	—	—	4,384
Balance at August 31, 2020	<u>114,111,358</u>	<u>\$ 1,141</u>	<u>\$ —</u>	<u>\$ (65,337)</u>	<u>\$ 489,891</u>	<u>\$ (481)</u>	<u>\$ 425,214</u>

See accompanying notes.

PDL Stockholders' Equity

	Common Stock		Treasury Stock	Additional Paid-In Capital	Retained Earnings	Non-controlling Interest	Total Stockholders' Equity
	Shares	Amount					
	(Under Going Concern Basis of Accounting - Note 1)						
Balance at December 31, 2018	136,512,522	\$ 1,365	\$ (2,103)	\$ (98,030)	\$ 828,547	\$ —	\$ 729,779
Issuance of common stock, net of forfeitures	764,785	8	—	(8)	—	—	—
Stock-based compensation expense	—	—	—	1,169	—	—	1,169
Repurchase and retirement of common stock	(13,460,164)	(135)	613	—	(44,831)	—	(44,353)
Transfer of subsidiary shares to non-controlling interest	—	—	—	—	—	572	572
Comprehensive income:							
Net income	—	—	—	—	6,680	(63)	6,617
Total comprehensive income	—	—	—	—	—	—	6,617
Balance at March 31, 2019	123,817,143	1,238	(1,490)	(96,869)	790,396	509	693,784
Issuance of common stock, net of forfeitures	37,996	—	—	—	—	—	—
Stock-based compensation expense	—	—	—	2,175	—	—	2,175
Repurchase and retirement of common stock	(8,185,970)	(81)	944	—	(26,897)	—	(26,034)
Transfer of subsidiary shares to non-controlling interest	—	—	—	229	—	(216)	13
Comprehensive loss:							
Net loss	—	—	—	—	(4,419)	(95)	(4,514)
Total comprehensive loss	—	—	—	—	—	—	(4,514)
Balance at June 30, 2019	115,669,169	1,157	(546)	(94,465)	759,080	198	665,424
Issuance of common stock, net of forfeitures	(18,061)	—	—	—	8	—	8
Stock-based compensation expense	—	—	—	2,059	—	—	2,059
Repurchase and retirement of common stock	(1,466,498)	(15)	546	—	(4,609)	—	(4,078)
Convertible Notes Exchange	—	—	—	(8,013)	—	—	(8,013)
Comprehensive loss:							
Net loss	—	—	—	—	(17,784)	(182)	(17,966)
Total comprehensive loss	—	—	—	—	—	—	(17,966)
Balance at September 30, 2019	114,184,610	\$ 1,142	\$ —	\$ (100,419)	\$ 736,695	\$ 16	\$ 637,434

See accompanying notes.

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019
(Under Going Concern Basis of Accounting - Note 1)		
Cash flows from operating activities		
Net loss	\$ (77,955)	\$ (15,863)
Less: (Loss) income from discontinued operations	(34,915)	12,414
Net loss from continuing operations	(43,040)	(28,277)
Adjustments to reconcile net loss to net cash used in operating activities:		
Amortization of convertible notes conversion option and debt issuance costs	622	5,776
Accreted interest on convertible note principal	44	79
Amortization of intangible assets	841	983
Amortization of right-of-use assets	497	544
Loss on investment	5,576	—
Change in fair value of derivative assets	110	(48)
Gain on sale of intangible assets	—	(3,476)
Loss on extinguishment of convertible notes	606	—
Other amortization and depreciation	1,017	2,124
Loss on exchange of convertible notes	—	3,900
Loss on disposal of property and equipment	331	—
Stock-based compensation expense	18,802	5,192
Deferred income taxes	(18,723)	8,936
Changes in assets and liabilities:		
Accounts receivable	3,344	1,462
Prepaid and other current assets	(29,875)	1,706
Inventory	(8,062)	(3,079)
Other assets	306	337
Accounts payable	371	6,502
Accrued liabilities	5,762	3,518
Other long-term liabilities	1,030	493
Net cash (used in) provided by operating activities - continuing operations	(60,441)	6,672
Net cash provided by (used in) operating activities - discontinued operations	28,318	(19,971)
Cash flows from investing activities		
Settlement agreement cash received	7,500	—
Proceeds from the sale of intangible assets	—	5,000
Purchase of intangible assets	—	(1,700)
Property and equipment, net purchases	(221)	(504)
Net cash provided by investing activities - continuing operations	7,279	2,796
Net cash provided by (used in) investing activities - discontinued operations	38,966	(1,710)
Cash flows from financing activities		
Proceeds from the exercise of stock options	461	—
Repurchase of convertible notes	(18,845)	—
Payment to exchange convertible notes	—	(7,451)
Net receipts (payments) for capped call transactions	801	(3,694)
Payment of contingent consideration	—	(1,071)
Repurchase of Company common stock	(39,373)	(75,891)
Net settlement of stock-based compensation awards	(3,462)	—
Net cash used in financing activities - continuing operations	(60,418)	(88,107)
Net cash used in financing activities - discontinued operations	(359)	—
Net decrease in cash and cash equivalents	(46,655)	(100,320)
Cash and cash equivalents at beginning of the period	193,451	394,590
Cash and cash equivalents at end of the period	146,796	294,270
Less: Cash and cash equivalents of discontinued operations	25,060	16,982
Cash and cash equivalents of continuing operations at end of period	\$ 121,736	\$ 277,288
Supplemental cash flow information		
Cash refunded for income taxes	\$ (4)	\$ (2,685)
Cash paid for interest	\$ 298	\$ 2,063
Noncash liquidating distribution	\$ 64,400	\$ —

See accompanying notes.

1. Summary of Significant Accounting Policies

Basis of Presentation

Throughout its history, the mission of PDL BioPharma, Inc. and its subsidiaries (collectively, the “Company” or “PDL”) has been to improve the lives of patients by aiding in the successful development of innovative therapeutics and healthcare technologies. PDL was founded in 1986 as Protein Design Labs, Inc. when it pioneered the humanization of monoclonal antibodies, enabling the discovery of a new generation of targeted treatments that have had a profound impact on patients living with different cancers as well as a variety of other debilitating diseases. In 2006, the Company changed its name to PDL BioPharma, Inc.

Historically, the Company generated a substantial portion of its revenues through license agreements related to patents covering the humanization of antibodies, which it refers to as the Queen et al. patents. In 2012, the Company began providing alternative sources of capital through royalty monetizations and debt facilities, and, in 2016, the Company began acquiring commercial-stage products and launching specialized companies dedicated to the commercialization of these products first with its acquisition of branded prescription pharmaceutical drugs from Novartis AG, Novartis Pharma AG and Speedel Holding AG (collectively, “Novartis”) in 2016 and, in 2017, with the acquisition of LENSAR, Inc. (“LENSAR”), a medical device ophthalmology equipment manufacturing company. In 2019, it entered into a securities purchase agreement with Evofem Biosciences, Inc. (“Evofem”), pursuant to which it invested \$60.0 million in a private placement of securities structured in two tranches. Evofem is a publicly-traded commercial-stage biopharmaceutical company committed to developing and commercializing innovative products to address unmet needs in women’s sexual and reproductive health. Evofem is leveraging its proprietary Multipurpose Vaginal pH Regulator (MVP-R™) platform for Phexxi™ (L-lactic acid, citric acid and potassium bitartrate) for hormone-free birth control.

Based on the composition of its investment portfolio, the Company historically structured its operations in four segments designated as Medical Devices, Strategic Positions, Pharmaceutical and Income Generating Assets. Following is a summary of the Company’s segments including those that have been classified as discontinued operations:

- The Company’s Medical Devices segment consists of revenue derived from the LENSAR® Laser System sales made by the Company’s subsidiary, LENSAR which may include equipment, Patient Interface Devices (“PIDs” or “consumables”), procedure licenses, training, installation, warranty and maintenance agreements.
- The Company’s Strategic Positions segment consisted of an investment in Evofem, which included shares of common stock and warrants to purchase shares of common stock.
- The Company’s Pharmaceutical segment consisted of revenue derived from branded prescription medicine products sold under the name Tekturna® and Tekturna HCT® in the United States and Rasilez® and Rasilez HCT® in the rest of the world and an authorized generic form of Tekturna sold in the United States (collectively, the “Noden Products”). The branded prescription Noden Products were acquired from Novartis in July 2016 (the “Noden Transaction”) by the Company’s wholly-owned subsidiary, Noden Pharma DAC (“Noden DAC”).
- The Company’s Income Generating Assets segment consists of revenue derived from (i) notes and other long-term receivables, (ii) equity investments and (iii) royalties from issued patents in the United States and elsewhere covering the humanization of antibodies (“Queen et al. patents”).

In September 2019, the Company engaged financial and legal advisors and initiated a review of its strategy. This review was completed in December 2019 at which time the Company announced that it decided to halt the execution of its growth strategy, cease additional strategic transactions and investments and instead pursue a formal process to unlock value by monetizing its assets and returning net proceeds to stockholders (the “monetization strategy”). Pursuant to the Company’s monetization strategy, the Company does not expect to enter into any additional strategic investments. The Company further announced in December 2019 that it would explore a variety of potential transactions in connection with the monetization strategy, including a whole Company sale, divestiture of assets, spin-offs of operating entities, merger opportunities or a combination thereof. Over the subsequent months, the Company’s Board of Directors (the “Board”) and management analyzed, together with outside financial and legal advisors, how to best capture value pursuant to the monetization strategy and best return the value of the assets in its portfolio to its stockholders.

PDL BIOPHARMA, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
(Unaudited)

During the first quarter of 2020, the Board approved a plan of complete liquidation (the “Plan of Liquidation”) and passed a resolution to seek stockholder approval to dissolve the Company as permitted by the General Corporation Law of the State of Delaware (the “DGCL”). The proposal was approved by stockholders on August 19, 2020 at the Company’s 2020 Annual Meeting of Stockholders. On November 5, 2020, our Board approved filing a Certificate of Dissolution with the Secretary of State of Delaware on January 4, 2021 (the “Final Record Date”) and proceeding to complete the dissolution process for the Company in accordance with the Delaware General Corporate Law. The liquidation and dissolution process will take a minimum of three years. However, the timing may be extended due to circumstances such as pending litigation or other factors that may affect the ability of the Company to wind down its business. Upon filing the Certificate of Dissolution on January 4, 2021 (the Final Record Date), we will close our stock transfer books. After such time, we will not record any further transfers of our common stock, except pursuant to the provisions of a deceased stockholder’s will, intestate succession, or by operation of law and we will not issue any new stock certificates, other than replacement certificates. In addition, after the Final Record Date, we will not issue any shares of our common stock upon exercise of outstanding stock options. As a result of the closing of our transfer books, it is anticipated that distributions, if any, made in connection with the dissolution will be made pro rata to the same stockholders of record as the stockholders of record as of the Final Record Date, and it is anticipated that no further trading of our common stock will occur after the Final Record Date. In accordance with our dissolution plan, we intend to begin the voluntary delisting process from the Nasdaq Stock Market exchange so that such delisting will occur at market close on December 31, 2020 and we do not anticipate transferring into OTC trading.

Pursuant to the Company’s monetization strategy, the Company explored a variety of potential transactions, including a whole Company sale, divestiture of assets, spin-offs of operating entities, merger opportunities or a combination. During the quarter ended March 31, 2020, the Company’s Pharmaceutical segment and the royalty right assets within the Income Generating Assets segment met the criteria to be classified as held for sale. Those investments are reported as discontinued operations on the Condensed Consolidated Statements of Operations for the two and eight months ended August 31, 2020 and for the three and nine months ended September 30, 2019, and as Assets and Liabilities held for sale on the Condensed Consolidated Balance Sheet as of December 31, 2019.

During the quarter ended June 30, 2020, the Evofem common stock held within the Strategic Positions segment was distributed to the Company’s stockholders and, as a result, the Strategic Positions segment and all investments included in the segment met the criteria to be classified as discontinued operations. Therefore, the Strategic Positions segment is also presented as discontinued operations on the Condensed Consolidated Statements of Operations. The Company continues to hold warrants to purchase shares of Evofem’s common stock.

In September 2020, the Company sold the Noden business, including its Noden Pharma USA, Inc. subsidiary (“Noden USA” and, together with Noden DAC, “Noden”) to a third party. Separately, the Company also sold three royalty right assets in August 2020 to a third party.

As a result of the approval of the Company’s stockholders to pursue dissolution of the Company pursuant to a plan of dissolution, the Company’s basis of accounting transitioned, effective September 1, 2020, from the going concern basis of accounting (“Going Concern Basis”) to the liquidation basis of accounting (“Liquidation Basis”) in accordance with Generally Accepted Accounting Principles (“GAAP”) of the United States. Under the Liquidation Basis, all assets are valued at the estimated amount of cash or other consideration that the Company expects to collect. Liabilities with specified, contractual amounts are measured in accordance with applicable GAAP and all other liabilities are stated at their estimated settlement amounts over the remaining estimated liquidation period. The assets and liabilities of LENSAR included in the Statement of Net Assets reflect the expected distribution value. LENSAR was spun-off on October 1, 2020. See Note 21, *Subsequent Events*, for additional information.

The accompanying unaudited Condensed Consolidated Financial Statements of PDL have been prepared in accordance with GAAP for interim financial information. The financial statements include all adjustments that management of the Company believes are necessary for a fair statement of the periods presented. These interim financial results are not necessarily indicative of results expected for the full fiscal year.

The accompanying unaudited Condensed Consolidated Financial Statements and related financial information should be read in conjunction with the Company’s audited Consolidated Financial Statements and the related notes thereto for the fiscal year ended December 31, 2019, included in its Current Report on Form 8-K, filed with the Securities and Exchange Commission (“SEC”) on June 29, 2020, which re-casts certain historical financial information from our 2019 Annual Report on Form 10-K to present the Pharmaceutical segment and the royalty right assets within the Income Generating Assets segment as

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(Unaudited)

discontinued operations for all periods presented. The Condensed Consolidated Balance Sheet at December 31, 2019, included herein, has been derived from the audited Consolidated Financial Statements at that date, as adjusted to conform with the financial statement presentation as of and for the two and eight months ended August 31, 2020 as discussed in Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, but does not include all disclosures required by GAAP.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the Condensed Consolidated Financial Statements and accompanying Notes to the Condensed Consolidated Financial Statements. The accounting estimates that require management's most significant, difficult and subjective judgments include the estimated sales proceeds of our assets in liquidation and estimated settlement amounts of our liabilities as well as the estimated revenue and operating expenses during dissolution that are projected under the Liquidation Basis. Significant estimates include, the valuation of royalty rights, product revenue recognition and allowances for customer rebates, the valuation of notes receivable and inventory, the assessment of recoverability of intangible assets and their estimated useful lives, the valuation and recognition of stock-based compensation, the recognition and measurement of current and deferred income tax assets and liabilities, including amounts recoverable under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, and the valuation of warrants to acquire shares of common stock. Furthermore, the impact on accounting estimates and judgments on the Company's financial condition and results of operations due to COVID-19 has introduced additional uncertainties. Actual results may differ materially from those estimates.

The Condensed Consolidated Financial Statements included herein include the accounts of the Company and its wholly-owned subsidiaries (up to the date of sale) and majority-owned subsidiary. All intercompany balances and transactions have been eliminated in consolidation.

Certain prior year amounts have been reclassified for consistency with the current year presentation. These reclassifications had no effect on the reported results of operations.

The worldwide spread of coronavirus, or COVID-19, has created significant uncertainty in the global economy. There have been no comparable recent events that provide guidance as to the effect the spread of COVID-19 as a global pandemic may have, and, as a result, the ultimate impact of COVID-19 and the extent to which COVID-19 impacts the Company's business, results of operations and financial condition will depend on future developments, which are highly uncertain and difficult to predict. If the financial markets or the overall economy are impacted for an extended period, the Company's liquidity, revenues and assets may be adversely affected.

Significant Accounting Policies

Liquidation Basis of Accounting

Under the Liquidation Basis, the values of the Company's assets and liabilities include management's estimate of income to be generated from the remaining assets until the anticipated date of sale, estimated sales proceeds, estimates for operating expenses and expected amounts required to settle liabilities. The estimated liquidation values for assets derived from future revenue streams and asset sales and the settlement of estimated liabilities are reflected on the Condensed Consolidated Statement of Net Assets in Liquidation. The actual amounts realized could differ materially from the estimated amounts.

Assets Held for Sale

Assets and liabilities are classified as held for sale when all of the following criteria for a plan of sale have been met: (1) management, having the authority to approve the action, commits to a plan to sell the assets; (2) the assets are available for immediate sale, in their present condition, subject only to terms that are usual and customary for sales of such assets; (3) an active program to locate a buyer and other actions required to complete the plan to sell the assets have been initiated; (4) the sale of the assets is probable and is expected to be completed within one year; (5) the assets are being actively marketed for a price that is reasonable in relation to their current fair value; and (6) actions required to complete the plan indicate that it is unlikely that significant changes to the plan will be made or the plan will be withdrawn. When all of these criteria have been met, the assets and liabilities are classified as held for sale in the balance sheet. Assets classified as held for sale are reported at the lower of their carrying value or fair value less costs to sell. Depreciation and amortization of assets ceases upon designation as held for sale. The assets and liabilities held for sale as of December 31, 2019 are recorded on the Company's Condensed Consolidated Balance Sheet as Assets held for sale and Liabilities held for sale, respectively.

Discontinued Operations

Discontinued operations comprise those activities that were disposed of during the period or which were classified as held for sale at the end of the period, represent a separate major line of business or geographical area that can be clearly distinguished for operational and financial reporting purposes and represent a strategic shift that has or will have a major effect on the Company's operations and financial results. The profits and losses are presented on the Condensed Consolidated Statements of Operations as discontinued operations. See Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, for additional information.

Severance and retention

After the Company announced its monetization strategy, it recognized that its ability to execute on its plan and optimize returns to its stockholders depended to a large extent on its ability to retain the necessary expertise to effectively transact with respect to its assets. On December 21, 2019, the Compensation Committee of the Board adopted a Wind Down Retention Plan in which the Company's executive officers and other employees who are participants in the Company's Severance Plan are eligible to participate. Under the Wind Down Retention Plan, participants are eligible to earn a retention benefit in consideration for their continued employment with the Company. The Wind Down Retention benefits are equivalent to previously disclosed compensation payments contemplated in connection with a change in control under the Company's existing Severance Plan. Under the Wind Down Retention Plan, the Company is currently obligated to pay a retention benefit to each participant upon termination of the participant's employment with the Company either by the Company without cause or by the participant for good reason. The retention benefit, if paid, would be in lieu of (and not in addition to) any other severance compensation that could become payable to the participant under the Company's Severance Plan. In connection with the adoption of the Wind Down Retention Plan, a severance liability was being recorded over the remaining service period for the participating employees under the Going Concern Basis. Upon the adoption of the Liquidation Basis on September 1, 2020, all remaining estimated severance and retention costs were accrued. As of September 30, 2020, the Company has recorded a severance liability of \$10.9 million, which is reported as Compensation and benefit costs on the Company's Condensed Consolidated Statement of Net Assets. Expenses associated with severance payments and accruals are reflected in Severance and retention on the Company's Condensed Consolidated Statements of Operations for the two and eight months ended August 31, 2020.

The Wind Down Retention Plan also provides that, consistent with the existing terms of the Company's Amended and Restated 2005 Equity Incentive Plan (the "Equity Plan"), the vesting of all outstanding equity awards held by participants as of the date the Wind Down Retention Plan was adopted will be accelerated upon the earlier of: (i) a termination of the participant's employment with the Company either by the Company without cause or by the participant for good reason or (ii) the consummation of a change in control (as defined in the Equity Plan) of the Company. In addition, the post-termination exercise period for all outstanding stock options will be extended until their expiration date. In connection with the Board adopting the Plan of Liquidation in the first quarter of 2020, all of the outstanding and unvested stock options and restricted stock granted to the Company's employees and executive officers, with the exception of certain outstanding awards under the 2016/20 Long-Term Incentive Plan, accelerated and vested under the change in control definition in the Equity Plan. The expense associated with the accelerated vesting, totaling \$15.7 million is reported as Severance and retention on the Company's Condensed Consolidated Statements of Operations for the two and eight months ended August 31, 2020.

For a discussion of other accounting policies, refer to the Company's Current Report on Form 8-K for the fiscal year ended December 31, 2019. Summarized below are the accounting pronouncements and policies adopted subsequent to December 31, 2019 in addition to those described above.

Adopted Accounting Pronouncements

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses: Measurement of Credit Losses on Financial Instruments*. The guidance amends the impairment model to utilize an expected loss methodology in place of the currently used incurred loss methodology, which will result in more timely recognition of losses. The Company adopted ASU No. 2016-13 on January 1, 2020 using a modified retrospective approach. The adoption of this standard did not have a material impact on the Company's consolidated financial statements. As a consequence of adopting ASU 2016-13, the Company's accounts receivable accounting policy has been updated, as follows:

Accounts and Notes Receivable

The Company makes estimates of the collectability of accounts receivable. In doing so, the Company analyzes historical bad debt trends, customer credit worthiness, current economic trends and changes in customer payment patterns when evaluating the adequacy of the allowance for credit losses. Amounts are charged off against the allowance for credit losses when the Company determines that recovery is unlikely and the Company ceases collection efforts. The Company applies the practical expedient for its collateral-dependent notes receivable. Estimated credit losses are based on the fair value of the collateral (less costs to sell, as applicable).

In April 2020, the FASB issued a staff question-and-answer document, “Topic 842 and Topic 840: Accounting for Lease Concessions Related to the Effects of the COVID-19 Pandemic” (the “COVID-19 Q&A”), to address certain frequently-asked questions pertaining to lease concessions arising from the effects of the COVID-19 pandemic. Existing lease guidance requires entities to determine if a lease concession was a result of a new arrangement reached with the lessee (which would be addressed under the lease modification accounting framework) or if a lease concession was under the enforceable rights and obligations within the existing lease agreement (which would not fall under the lease modification framework). The COVID-19 Q&A clarifies that entities may elect to not evaluate whether lease-related relief granted in light of the effects of COVID-19 is a lease or obligations of the lease. This election is available for concessions that result in the total payments required by the modified contract being substantially the same or less than the total payments required by the original contract.

As a result of the COVID-19 pandemic, LENSAR entered into agreements with 23 customers through which LENSAR agreed to waive monthly rental and minimum monthly license fees ranging from one to four months for an aggregate of \$0.9 million of revenue for the eight months ended August 31, 2020, consisting of \$0.5 million in Product revenue, \$0.3 million in Lease revenue, and \$0.1 million in Service revenue. In return for these concessions the related contracts were extended by the same number of months waived. No amounts of accounts receivable or notes receivable were deemed uncollectible due to COVID-19 during the 2020 periods presented herein; however, the Company considered the effects of COVID-19 in estimating its credit losses for the period.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement*. The new guidance modifies disclosure requirements related to fair value measurement. The Company adopted ASU No. 2018-13 on January 1, 2020. The adoption did not have an effect on the Consolidated Financial Statements on the adoption date and no adjustment to prior year Consolidated Financial Statements was required.

In August 2018, the FASB issued ASU No. 2018-15, *Intangibles-Goodwill and Other-Internal-Use Software*. The new guidance reduces complexity for the accounting for costs of implementing a cloud computing service arrangement and aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal use software license). The Company adopted ASU No. 2018-15 on January 1, 2020 using the prospective transition option. The adoption did not have an effect on the Consolidated Financial Statements on the adoption date and no adjustment to prior year Consolidated Financial Statements was required.

Recently Issued Accounting Pronouncements

In December 2019, the FASB issued ASU 2019-12, which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. For public companies, the amendments in ASU No. 2019-12 are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. The Company is currently evaluating the impact of this guidance on its Consolidated Financial Statements.

2. Net Assets in Liquidation

Upon adoption of the Liquidation Basis on September 1, 2020, the Company has estimated the net assets in liquidation, which represents the expected future cash flows related to the remaining assets and estimated liabilities and operating costs through dissolution. The actual cash inflows and outflows may differ from the estimated amounts.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
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(in thousands)

Consolidated Net Equity, as of August 31, 2020	\$	425,214
Effect of adopting the liquidation basis of accounting:		
Change in the estimated value of royalty rights ⁽¹⁾		13,770
Change in the receivable from the sale of Noden ⁽²⁾		9,056
Increase in intangible assets ⁽³⁾		28,702
Change in the estimated value of other assets ⁽⁴⁾		(4,813)
Estimated liquidation and future operating costs ⁽⁵⁾		(25,376)
Total effect of adopting the liquidation basis of accounting		21,339
Net assets in liquidation, as of September 1, 2020	\$	446,553

⁽¹⁾ The royalty assets, consisting of Assertio and University of Michigan (“U-M”), are valued using undiscounted estimated cash receipts until the estimated date of sale plus a discounted value of the remaining estimated cash flows to determine the expected cash consideration from such sale. Previously, under the going concern basis of accounting, royalty assets were valued using discounted cash flow models, see Note 7, *Fair Value Measurements*.

(in thousands)

<i>(in thousands)</i>	August 31, 2020 (Going Concern Basis)	September 1, 2020 (Liquidation Basis)	Change
Assertio	\$ 200,463	\$ 211,626	\$ 11,163
U-M	17,450	20,057	2,607
Total	<u>\$ 217,913</u>	<u>\$ 231,683</u>	<u>\$ 13,770</u>

⁽²⁾ Adjustments reflect Liquidation Basis which does not discount future estimated cash receipts. Previously, under the going concern basis of accounting we had estimated the fair value of Noden, as an asset held for sale, using a discounted cash flow model, see Note 7, *Fair Value Measurements*.

⁽³⁾ The increase in intangible assets represents the difference between the existing assets and liabilities of LENSAR upon adoption of liquidation basis of accounting and its enterprise value that will be distributed to PDL shareholders in the spin-off. The enterprise value was determined through an analysis of comparable public companies combined with cash flow forecasts. Also see Note 10, *Intangible Assets* and Note 21, *Subsequent Events*.

⁽⁴⁾ Adjustments to other assets include a liquidity discount for the Evofem warrants and the write-off of certain assets that will not be converted to cash such as prepaid expenses, fixed assets and right of use assets.

⁽⁵⁾ Represents estimated future expenses related to operating the business through dissolution and settlement of future liabilities including estimated costs to dispose of our assets. Some of the estimated costs to dispose of our assets had already been accrued under the Going Concern Basis and were presented net with our assets held for sale.

3. Discontinued Operations Classified as Assets and Liabilities Held for Sale under Going Concern Basis

As a result of the above-described monetization strategy and subsequent efforts to monetize the Company’s key assets, representing a strategic shift in the operations of the Company, the assets held for sale and discontinued operations criteria were met for the Company’s royalty assets (included in the Income Generating Assets segment) and its Noden subsidiaries (Pharmaceutical segment) during the first quarter of 2020. The discontinued operations criteria were met for the Company’s investment in Evofem (Strategic Positions segment) during the second quarter of 2020 after the Company distributed all of its shares of common stock of Evofem to the Company’s stockholders. The historical financial results of the investment in Evofem, royalty assets and Noden are reflected in the Company’s consolidated financial statements as discontinued operations for all Going Concern Basis periods presented herein, and assets and liabilities were retrospectively reclassified as assets and liabilities held for sale.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
(Unaudited)

On July 30, 2020, the Company signed a definitive agreement for the sale of the Company's interest in Noden DAC and Noden USA to CAT Capital Bidco Limited ("Stanley Capital"). In accordance with the terms of the agreement, the Company will receive consideration of up to \$52.8 million. Stanley Capital made an initial cash payment to the Company of \$12.2 million on the September 9, 2020 closing date. The Company is also entitled to recover \$0.5 million related to value-added tax ("VAT") for inventory purchases from Novartis. The agreement provides for an additional \$33.0 million to be paid to the Company in twelve equal quarterly installments from January 2021 to October 2023. An additional \$3.9 million will be paid in four equal quarterly installments from January 2023 to October 2023. The agreement also provides for the potential for additional contingent payments to the Company. The Company is entitled to receive \$2.5 million upon Stanley Capital or any of its affiliates entering into a binding agreement for a specified transaction within one year of the closing date. The Company is also entitled to 50% of a license fee from a third party distributor within 10 days of receipt by Noden. Upon closing, the Company recorded a gain of \$0.2 million. In connection with the closing of the transaction, the guaranty agreement between Novartis and the Company which guaranteed certain payments owed to Novartis by Noden was terminated.

On August 31, 2020, the Company announced the signing and closing of a definitive agreement for the sale of its royalty interests for Kybella[®], Zalviso[®], and Coflex[®] to SWK Funding, LLC, a wholly owned subsidiary of SWK Holdings Corporation, for \$4.35 million in cash.

Components of amounts reflected in Income (loss) from discontinued operations on the Company's Condensed Consolidated Statement of Operations are as follows:

<i>(in thousands)</i>	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019
Revenues				
Product revenue, net	\$ 6,281	\$ 12,269	\$ 29,479	\$ 42,644
Royalty rights - change in fair value	(1,893)	23,865	(8,804)	(4,277)
Total revenues	4,388	36,134	20,675	38,367
Operating expenses				
Cost of product revenue (excluding intangible asset amortization)	3,894	10,268	17,576	26,697
Amortization of intangible assets	—	1,253	389	3,760
General and administrative	1,540	2,029	6,105	5,969
Sales and marketing	59	168	257	1,536
Research and development	—	—	—	(41)
Total operating expenses	5,493	13,718	24,327	37,921
Operating (loss) income from discontinued operations	(1,105)	22,416	(3,652)	446
Non-operating income (expense), net				
Equity affiliate - change in fair value	1,296	(27,378)	(25,365)	18,109
Loss on classification as held for sale	—	—	(28,904)	—
Total non-operating income (expense), net	1,296	(27,378)	(54,269)	18,109
Income (loss) from discontinued operations before income taxes	191	(4,962)	(57,921)	18,555
Income tax (benefit) expense from discontinued operations	(15,045)	1,193	(23,006)	6,141
Income (loss) from discontinued operations	\$ 15,236	\$ (6,155)	\$ (34,915)	\$ 12,414

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
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The carrying amounts of the major classes of assets reported as “Assets held for sale” on the Company’s Condensed Consolidated Balance Sheet consisted of the following:

<i>(in thousands)</i>	December 31, 2019
Cash and cash equivalents ⁽¹⁾	\$ 24,469
Accounts receivable, net	6,993
Inventory	31,712
Prepaid and other current assets	7,192
Property and equipment, net	2,960
Royalty rights - at fair value	266,196
Investment in equity affiliate	82,267
Intangible assets, net	10,112
Other assets	15,956
Total assets held for sale	<u>\$ 447,857</u>

⁽¹⁾ Cash and cash equivalents represent balances maintained by Noden as of December 31, 2019, which were retained by the buyer upon the sale of the Noden business and used to settle the commitment with Novartis as further described in Note 14, *Commitments and Contingencies*.

The carrying amounts of the major classes of liabilities reported as “Liabilities held for sale” on the Company’s Condensed Consolidated Balance Sheet consisted of the following:

<i>(in thousands)</i>	December 31, 2019
Accounts payable	\$ 14,695
Accrued liabilities	16,400
Other long-term liabilities	120
Total liabilities held for sale	<u>\$ 31,215</u>

4. Investment in Evofem Biosciences, Inc.

On April 10, 2019, the Company entered into a securities purchase agreement with Evofem and two other purchasers pursuant to which the Company purchased \$60.0 million of Evofem securities in a private placement. The transaction was structured in two tranches.

The first tranche closed on April 11, 2019, pursuant to which the Company invested \$30.0 million to purchase 6,666,667 shares of Evofem common stock at \$4.50 per share and was also issued warrants to purchase up to 1,666,667 shares of Evofem common stock. The warrants are exercisable beginning six months after the issuance date for a period of seven years from the issuance date at an exercise price of \$6.38 per share.

The second tranche closed on June 10, 2019, pursuant to which the Company invested an additional \$30.0 million to purchase 6,666,667 additional shares of Evofem common stock at \$4.50 per share and was also issued warrants to purchase up to an additional 1,666,667 shares of Evofem common stock with the same terms as the warrants issued in the first tranche.

On May 21, 2020, the Company announced that it had completed the distribution of all of the Company’s 13,333,334 shares of common stock of Evofem to the Company’s stockholders, which represented approximately 26.7% of the outstanding shares of Evofem common stock as of the close of business on May 15, 2020. The distribution was recorded as a noncash distribution of \$64.4 million, reducing retained earnings.

Following the distribution, the Company continues to hold warrants to purchase up to 3,333,334 shares of Evofem common stock. As of September 30, 2020, the Evofem warrants were valued under the Liquidation Basis at \$2.5 million and are classified as “Other assets” on the Company’s Condensed Consolidated Statement of Net Assets. The Evofem common stock

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and the Evofem warrants are included in “Long-term assets held for sale” on the Company’s December 31, 2019 Condensed Consolidated Balance Sheet. See Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, for additional information.

For the eight months ended August 31, 2020, the Company recorded a loss of \$17.9 million in Income (loss) from discontinued operations before income taxes on the Company’s Condensed, Consolidated Statement of Operations for the change in fair value of the Evofem common stock.

For the two and eight months ended August 31, 2020, the Company recorded an unrealized gain of \$1.3 million and an unrealized loss of \$7.5 million, respectively, for the change in fair value of the Evofem warrants. These amounts are included in Income (loss) from discontinued operations before income taxes on the Company’s Condensed, Consolidated Statements of Operations.

5. Cash and Cash Equivalents

As of September 30, 2020 and December 31, 2019, the Company had invested its excess cash balances primarily in cash and money market funds. The fair values of cash equivalents approximate their carrying values due to the short-term nature of such financial instruments.

The following table summarizes the Company’s cash and cash equivalents by significant investment category reported as cash and cash equivalents on the Condensed Consolidated Statement of Net Assets and the Condensed Consolidated Balance Sheet as of September 30, 2020 and December 31, 2019, respectively:

<i>(in thousands)</i>	September 30, 2020 (Liquidation Basis)	December 31, 2019 (Going Concern Basis)
Cash ^{(1) (2)}	\$ 74,580	\$ 37,718
Money market funds	51,156	131,264
Total	\$ 125,736	\$ 168,982

⁽¹⁾ The December 31, 2019 cash amount excludes \$24.5 million of cash at Noden classified as held for sale. See Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, for additional information.

⁽²⁾ The table above includes amounts held by LENSAR which was spun-off on October 1, 2020. See Note 21, *Subsequent Events*, for additional information.

6. Inventories

Inventories consisted of the following:

<i>(in thousands)</i>	September 30, 2020 (Liquidation Basis)	December 31, 2019 (Going Concern Basis)
Raw materials	\$ 3,840	\$ 3,739
Work in process	2,039	1,170
Finished goods	7,806	3,152
Total inventory ^{(1) (2)}	\$ 13,685	\$ 8,061

⁽¹⁾ The December 31, 2019 amounts presented above exclude \$31.7 million of inventory in aggregate at Noden classified as held for sale. See Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, for additional information.

⁽²⁾ The table above includes amounts held by LENSAR which was spun-off on October 1, 2020. See Note 21, *Subsequent Events*, for additional information.

7. Fair Value Measurements

The fair value of the Company’s financial instruments are estimates of the amounts that would be received if the Company were to sell an asset or pay to transfer a liability (exit price) in an orderly transaction between market participants at the measurement date. The assets and liabilities are categorized and disclosed in one of the following three categories:

Level 1 – based on quoted market prices in active markets for identical assets and liabilities;

Level 2 – based on observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities; and

Level 3 – based on unobservable inputs using management’s best estimate and assumptions when inputs are unavailable.

Assets/Liabilities Measured and Recorded at Fair Value on a Recurring Basis

The following table presents the fair value of the Company’s financial instruments measured at fair value on a recurring basis by level within the valuation hierarchy under the Going Concern Basis:

<i>(in thousands)</i>	December 31, 2019			
	Level 1	Level 2	Level 3	Total
Financial assets:				
Money market funds	\$ 131,264	\$ —	\$ —	\$ 131,264
Corporate securities ⁽¹⁾	82,267	—	—	82,267
Warrants ⁽²⁾	—	14,152	—	14,152
Royalty rights - at fair value ⁽³⁾	—	—	266,196	266,196
Total	\$ 213,531	\$ 14,152	\$ 266,196	\$ 493,879

⁽¹⁾ Corporate securities are classified as “Long-term assets held for sale” on the December 31, 2019 Condensed Consolidated Balance Sheet.

⁽²⁾ Warrants consist of Evofem warrants, which are classified as “Long-term assets held for sale” and CareView Communications, Inc. (“CareView”) warrants, classified as “Other assets” on the Condensed Consolidated Balance Sheet as of December 31, 2019.

⁽³⁾ Royalty rights are classified as “Long-term assets held for sale” on the Condensed Consolidated Balance Sheet as of December 31, 2019.

Money Market Funds - The fair values of cash equivalents approximate their carrying values due to the short-term nature of such financial instruments.

Corporate Securities - Corporate securities consisted of common stock shares of Evofem, a commercial-stage biopharmaceutical company listed on Nasdaq (EVFM). For additional information, see Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, and Note 4, *Investment in Evofem Biosciences, Inc.*

Warrants - Warrants consist of rights to purchase shares of common stock in Evofem and CareView, see Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, Note 4, *Investment in Evofem Biosciences, Inc.* and Note 8, *Notes and Other Long-Term Receivables*. The fair value of the warrants is based upon recently quoted market prices of the underlying equity security and the Black-Scholes option pricing model and adjusted by an estimated discount to sell.

Royalty Rights - At Fair Value

During the quarter ended March 31, 2020, it was determined that the Company’s royalty assets met the criteria as an asset held for sale, see Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*. Assets classified as held for sale are reported at the lower of their carrying value or fair value less costs to sale under the Going Concern Basis.

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The Company historically accounted for such royalty rights assets at fair value, which, as discussed below, primarily reflected the expected future cash to be received but did not consider the expected costs to sell the assets. The Company's royalty assets are comprised of several separate and distinct royalty rights.

Assertio (Depomed) Royalty Agreement

On October 18, 2013, the Company entered into the Royalty Purchase and Sale Agreement (the "Assertio Royalty Agreement") with Assertio Therapeutics, Inc. (formerly known as Depomed, Inc.), and Depo DR Sub, LLC (together, "Assertio"), whereby the Company acquired the rights to receive royalties and milestones payable on sales of five Type 2 diabetes products licensed by Assertio in exchange for a \$240.5 million cash payment. Total consideration was \$241.3 million, which was comprised of the \$240.5 million cash payment to Assertio and \$0.8 million in transaction costs.

The rights acquired include Assertio's royalty and milestone payments accruing from and after October 1, 2013: (a) from Santarus, Inc., which was subsequently acquired by Salix Pharmaceuticals, Inc., which itself was acquired by Valeant Pharmaceuticals International, Inc. ("Valeant"), which, in July 2018, changed its name to Bausch Health Companies Inc. ("Bausch Health") with respect to sales of Glumetza (metformin HCL extended-release tablets) in the United States; (b) from Merck & Co., Inc. with respect to sales of Janumet[®] XR (sitagliptin and metformin HCL extended-release tablets); (c) from Janssen Pharmaceutica N.V. with respect to potential future development milestones and sales of its approved fixed-dose combination of Invokana[®] (canagliflozin, a sodium glucose cotransporter 2 (SGLT2) inhibitor) and extended-release metformin tablets, marketed as Invokamet XR[®]; (d) from Boehringer Ingelheim and Eli Lilly ("Lilly") and Company with respect to potential future development milestones and sales of the investigational fixed-dose combinations of drugs and extended-release metformin subject to Assertio's license agreement with Boehringer Ingelheim, including its approved products, Jentaducto XR[®] and Synjardy XR[®]; and (e) from LG Chem, Ltd. and Bausch Health for sales of extended-release metformin tablets in Korea and Canada, respectively.

In February 2013, a generic equivalent to Glumetza was approved by the U.S. Food and Drug Administration ("FDA") and in August 2016, two additional generic equivalents to Glumetza were approved by the FDA. In February 2016, Lupin Pharmaceuticals, Inc., in August 2017, Teva Pharmaceutical Industries Ltd., and in July 2018, Sun Pharmaceutical, Inc. ("Sun") each launched a generic equivalent approved product. In May 2017, the Company received notification that a subsidiary of Valeant had launched an authorized generic equivalent product in February 2017, and the Company received royalties on such authorized generic equivalent product under the same terms as the branded Glumetza product, retroactive to February 2017. The Company continues to monitor whether the generic competition further affects sales of Glumetza and thus royalties on such sales paid to the Company, and the impact of the launched authorized generic equivalent. Due to the uncertainty around Bausch Health's marketing and pricing strategy, as well as Sun's generic product and limited historical demand data after generic market entrance, the Company may need to further evaluate future cash flows in the event of more rapid reduction or increase in market share of Glumetza and its authorized generic equivalent product and/or a further erosion in net pricing.

The Company determined that its royalty purchase interest in Depo DR Sub, LLC represented a variable interest in a variable interest entity. However, the Company did not have the power to direct the activities of Depo DR Sub, LLC that most significantly impact Depo DR Sub, LLC's economic performance and was not the primary beneficiary of Depo DR Sub, LLC; therefore, Depo DR Sub, LLC was not subject to consolidation by the Company.

On August 2, 2018, PDL Investment Holding, LLC ("PDLIH"), a wholly-owned subsidiary of the Company and assignee from the Company under the Assertio Royalty Agreement, entered into an amendment to the Assertio Royalty Agreement with Assertio. Pursuant to the amendment, PDLIH purchased all of Assertio's remaining interests in royalty and milestone payments payable on sales of Type 2 diabetes products licensed by Assertio for \$20.0 million. Prior to the amendment, the Assertio Royalty Agreement provided that the Company would have received all royalty and milestone payments due under license agreements between Assertio and its licensees until the Company received payments equal to two times the cash payment it made to Assertio, or approximately \$481.0 million, after which all net payments received by Assertio would have been shared equally between the Company and Assertio. Following the amendment, the Assertio Royalty Agreement provides that the Company will receive all royalty and milestone payments due under the license agreements between Assertio and its licensees. After the amendment, the Company elected to continue to follow the fair value option and carry the financial asset at fair value.

The Assertio Royalty Agreement terminates on the third anniversary following the date upon which the later of the following occurs: (a) October 25, 2021, or (b) at such time as no royalty payments remain payable under any license agreement and each of the license agreements has expired by its terms.

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As of December 31, 2018, in conjunction with the amendment described above, the Company was provided the power to direct the activities of Depo DR Sub, LLC and is the primary beneficiary of Depo DR Sub, LLC; therefore, Depo DR Sub, LLC is subject to consolidation by the Company. As of December 31, 2019 and the current periods, Depo DR Sub, LLC did not have any assets or liabilities of value for consolidation with the Company.

The financial asset acquired represents a single unit of accounting. Under Going Concern Basis, this financial asset is classified as a Level 3 asset as of December 31, 2019 within the fair value hierarchy, as the Company's valuation utilized significant unobservable inputs, including estimates as to the probability and timing of future commercialization for products not yet approved by regulatory agencies outside of the United States. The estimated fair value of the financial asset acquired was determined by using a discounted cash flow analysis related to the expected amount and timing future cash flows to be generated by each licensed product. The discounted cash flows are based upon expected royalties from sales of licensed products over approximately an eight-year period. Significant judgment is required in selecting appropriate discount rates. The discount rates utilized range from 10% to 24%. The estimated fair value of the asset is subject to variation should those cash flows vary significantly from the Company's estimates. The Company periodically assesses the expected future cash flows and to the extent such payments are greater or less than its initial estimates, or the timing of such payments is materially different than the original estimates, the Company will adjust the estimated value of the asset. A third-party expert is engaged to assist management with the development of its estimate of the expected future cash flows, when deemed necessary.

Refer to Note 2, *Net Assets in Liquidation*, for a discussion of the valuation of Assertio under the Liquidation Basis of accounting.

Viscogliosi Brothers Royalty Agreement

On June 26, 2014, the Company entered into a Royalty Purchase and Sale Agreement (the "VB Royalty Agreement") with Viscogliosi Brothers, LLC ("VB"), whereby VB conveyed to the Company the right to receive royalties payable on sales of a spinal implant that received pre-market approval from the FDA held by VB and commercialized by Paradigm Spine, LLC ("Paradigm Spine") in exchange for a \$15.5 million cash payment, less fees. Paradigm Spine was acquired in March 2019 by RTI Surgical Holdings, Inc.

The royalty rights acquired include royalties accruing from and after April 1, 2014. Under the terms of the VB Royalty Agreement, the Company was eligible to receive all royalty payments due to VB pursuant to certain technology transfer agreements between VB and Paradigm Spine until the Company received payments equal to 2.3 times the cash payment made to VB, after which all rights to receive royalties would be returned to VB. VB's ability to repurchase the royalty right for a specified amount expired on June 26, 2018.

In August 2020, the Company sold the royalty rights to a third-party for \$4.2 million. No gain or loss was recognized on the date of sale due to an adjustment to the royalty rights fair value in the prior quarter that was informed by bids received.

University of Michigan Royalty Agreement

On November 6, 2014, the Company acquired a portion of all royalty payments of the Regents of the University of Michigan's ("U-M") worldwide royalty interest in Cerdelga[®] (eliglustat) for \$65.6 million pursuant to the Royalty Purchase and Sale Agreement with U-M (the "U-M Royalty Agreement"). Under the terms of the U-M Royalty Agreement, the Company receives 75% of all royalty payments due under the U-M license agreement with Genzyme Corporation, a Sanofi company ("Genzyme") until expiration of the licensed patents, excluding any patent term extension. Cerdelga, an oral therapy for adult patients with Gaucher disease type 1, was developed by Genzyme. Cerdelga was approved in the United States in August 2014, in the European Union ("EU") in January 2015, and in Japan in March 2015. In addition, marketing applications for Cerdelga are under review by other regulatory authorities. While marketing applications have been approved in the United States, the EU and Japan, national pricing and reimbursement decisions are delayed in some countries.

The estimated fair value of the royalty right at December 31, 2019 was determined by using a discounted cash flow analysis related to the expected future cash flows to be received. Under Going Concern Basis, this asset was classified as a Level 3 asset as the Company's valuation utilized significant unobservable inputs, including estimates as to the probability and timing of future sales of the licensed product. The estimated fair value of the financial asset acquired was determined by using a discounted cash flow analysis related to the expected amount and timing of future cash flows. The discounted cash flow was

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based upon expected royalties from sales of licensed product over approximately a two-year period. Significant judgment is required in selecting the appropriate discount rate. The discount rate utilized was approximately 12.8%. The estimated fair value of the asset is subject to variation should those cash flows vary significantly from the Company's estimates. An evaluation of those estimates is performed in each reporting period. A third-party expert is engaged to assist management with the development of its estimate of the expected future cash flows, when deemed necessary.

Refer to Note 2, *Net Assets in Liquidation*, for a discussion of the valuation of the U-M Royalty Agreement under the Liquidation Basis of accounting.

AcelRx Royalty Agreement

On September 18, 2015, the Company entered into a royalty interest assignment agreement (the "AcelRx Royalty Agreement") with ARPI LLC, a wholly-owned subsidiary of AcelRx Pharmaceuticals, Inc. ("AcelRx"), whereby the Company acquired the rights to receive a portion of the royalties and certain milestone payments on sales of Zalviso[®] (sufentanil sublingual tablet system) in the EU, Switzerland and Australia by AcelRx's commercial partner, Grünenthal, in exchange for a \$65.0 million cash payment. Under the terms of the AcelRx Royalty Agreement, the Company was eligible to receive 75% of all royalty payments and 80% of the first four commercial milestone payments due under AcelRx's license agreement with Grünenthal until the earlier to occur of (i) receipt by the Company of payments equal to three times the cash payments made to AcelRx and (ii) the expiration of the licensed patents. Zalviso received marketing approval by the European Commission in September 2015. Grünenthal launched Zalviso in the second quarter of 2016 and the Company started to receive royalties in the third quarter of 2016. On May 15, 2020, AcelRx received notice that the product marketer of Zalviso, Grünenthal GmbH, would exercise its right to terminate the license agreement with AcelRx, effective as of 180 days from the date of the notice. AcelRx is obligated to use commercially reasonable efforts to find a new license agreement under the terms no less favorable than those in the license with Grünenthal.

In August 2020, the Company sold the asset to a third-party for zero consideration. No gain or loss was recognized on the date of sale, due to an adjustment to the royalty rights fair value in the prior quarter that resulted from the notification that the license agreement was terminated by the marketer of the product.

Kybella Royalty Agreement

On July 8, 2016, the Company entered into a royalty purchase and sales agreement with an individual, whereby the Company acquired that individual's rights to receive certain royalties on sales of KYBELLA[®] by Allergan plc in exchange for a \$9.5 million cash payment and up to \$1.0 million in future milestone payments based upon product sales targets. The Company started to receive royalty payments during the third quarter of 2016.

In August 2020, the Company sold the asset to a third-party for \$0.2 million. No gain or loss was recognized on the date of sale, due to an adjustment to the royalty rights fair value in the prior quarter that was informed by bids received.

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The following tables summarize the changes in Level 3 Royalty Right Assets and the gains and losses included in earnings for the eight months ended August 31, 2020 under the Going Concern Basis:

Fair Value Measurements Using Significant Unobservable Inputs (Level 3) - Royalty Right Assets

<i>(in thousands)</i>	Royalty Rights - At Fair Value
Fair value as of December 31, 2019	\$ 266,196
Total net change in fair value for the period	
Change in fair value of royalty rights - at fair value	(8,804)
Cash received from royalty rights	(35,129)
Total net change in fair value for the period	(43,933)
Sale of royalty rights	(4,350)
Fair value as of August 31, 2020	<u>\$ 217,913</u>

The table above does not include the aggregate remaining estimated cost to sell the royalty right assets of \$4.6 million.

Fair Value Measurements Using Significant Unobservable Inputs (Level 3) - Royalty Right Assets

<i>(in thousands)</i>	Fair Value as of December 31, 2019	Sale of Royalty Rights ⁽¹⁾	Royalty Rights - Change in Fair Value	Fair Value as of August 31, 2020 ⁽²⁾
Assertio	\$ 218,672	\$ —	\$ (18,209)	\$ 200,463
VB	13,590	(4,182)	(9,408)	—
U-M	20,398	—	(2,948)	17,450
AcelRx	12,952	—	(12,952)	—
KYBELLA	584	(168)	(416)	—
	<u>\$ 266,196</u>	<u>\$ (4,350)</u>	<u>\$ (43,933)</u>	<u>\$ 217,913</u>

⁽¹⁾ In August 2020 the Company sold the royalty rights to VB, AcelRx, and KYBELLA to a third party.

⁽²⁾ Excludes the aggregate remaining estimated costs to sell of \$4.6 million.

Assets/Liabilities Measured and Recorded at Fair Value on a Nonrecurring Basis

The Company remeasures the fair value of certain assets and liabilities upon the occurrence of certain events. Such assets consist of long-lived assets, including property and equipment and intangible assets and the shares of AEON BioPharma, Inc. (“AEON”) and Alphaeon 1, LLC, (formerly collectively referred to as “Alphaeon” and currently and collectively referred to as “AEON”), common stock, received in connection with the loans made to LENSAR by the Company prior to its acquisition of LENSAR. The Company’s carrying values of the 1.7 million shares of AEON common stock as of December 31, 2019 under Going Concern Basis was \$6.6 million based on an estimated per share value of \$3.84, which was established by a valuation performed when the shares were acquired. The value of the Company’s investment in AEON is not readily determinable as AEON’s shares are not publicly traded. Under the Going Concern Basis, the Company evaluated the fair value of this investment by performing a qualitative assessment each reporting period. If the results of this qualitative assessment indicate that the fair value was less than the carrying value, the investment is written down to its fair value. Based on additional financial information received from AEON, the Company performed an analysis on August 31, 2020 and concluded the investment was impaired and wrote it down to \$1.0 million. The loss is reported as Loss on investment on the Company’s Condensed Consolidated Statement of Operations. This investment is included in Other Assets on the Company’s Condensed Consolidated Statement of Net Assets as of September 30, 2020 and as Other long-term assets on the December 31, 2019 Condensed Consolidated Balance Sheet. For additional information on the AEON investment, see Note 8, *Notes and Other Long-Term Receivables*.

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During the quarter ended March 31, 2020, it was determined that Noden met the criteria as an asset held for sale. As a result of the Company's analysis of the fair value of Noden, the Company recorded a loss on classification as held for sale of \$6.7 million during the quarter ended March 31, 2020 of which \$1.8 million related to the estimated costs to sell Noden and \$4.9 million related to the difference in carrying value versus fair value. The fair value calculation was made using a discounted cash flow model, utilizing a discount rate of approximately 19%, and included level 3 inputs. During the quarter ended June 30, 2020, the Company recorded an additional loss of \$16.8 million related primarily to the difference in carrying value and fair value. The reduction in fair value reflected lower estimated sales proceeds as informed by the Company's sales process. At June 30, 2020, the fair value calculation was made using a discounted cash flow model, utilizing a discount rate of approximately 17%, and included level 3 inputs. For information on the sale of the business in September 2020, see Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*.

Assets/Liabilities Not Subject to Fair Value Recognition

The Company has two notes receivable assets with an aggregate carrying value of \$52.1 million as of December 31, 2019 under the Going Concern Basis. The estimated fair value of these notes receivable of \$57.3 million exceeded the carrying value as of December 31, 2019. The notes receivable were classified under the Going Concern Basis as Level 3 in the fair value hierarchy as the Company's valuations utilized significant unobservable inputs, including estimates of future revenues, discount rates, expectations about settlement, terminal values, required yield and the value of underlying collateral. The Company engages third-party valuation experts when deemed necessary to assist in evaluating its investments and the related inputs needed to estimate the fair value of certain investments.

As of December 31, 2019 under the Going Concern Basis, the estimated fair value of the CareView note receivable was determined using a liquidation analysis. A liquidation analysis considers the asset side of the balance sheet and adjusts the value in accordance with the relative risk associated with the asset and the probable liquidation value. The asset recovery rates varied by asset. As of December 31, 2019 under the Going Concern Basis, the estimated fair value of the Wellstat Diagnostics note receivable was determined by using an asset approach and discounted cash flow model related to the underlying collateral and adjusted to consider estimated costs to sell the asset.

The Company's liabilities not subject to fair value recognition under the Going Concern Basis consist of its 2021 and 2024 convertible notes. The fair values of the Company's convertible senior notes were determined using quoted market pricing and were classified as Level 2 in the fair value hierarchy. The aggregate carrying value of the convertible notes was \$27.3 million as of December 31, 2019. The aggregate fair values of the convertible notes was \$33.9 million as of December 31, 2019.

The following table represents significant unobservable inputs used in determining the estimated fair value of the Wellstat Diagnostics note receivable investment under the Going Concern Basis:

Asset	Valuation Technique	Unobservable Input	December 31, 2019
Wellstat Diagnostics			
<i>Wellstat Guarantors intellectual property</i>	<i>Income Approach</i>		
		Discount rate	12%
		Undiscounted royalty amount	\$21 million
<i>Settlement Amount</i>	<i>Income Approach</i>		
		Discount rate	15%
		Undiscounted settlement amount	\$28 million
<i>Real Estate Property</i>	<i>Market Approach</i>		
		Annual appreciation rate	—%
		Estimated realtor fee	6%
		Undiscounted market value	\$16 million

8. Notes and Other Long-Term Receivables

Notes and other long-term receivables included the following significant agreements:

Wellstat Diagnostics Note Receivable and Credit Agreement and Related Litigation

On November 2, 2012, the Company and Wellstat Diagnostics entered into a \$40.0 million credit agreement pursuant to which the Company was to accrue quarterly interest payments at the rate of 5% per annum (payable in cash or in kind). In addition, the Company was to receive quarterly royalty payments based on a low double-digit royalty rate of Wellstat Diagnostics' net revenues, generated by the sale, distribution or other use of Wellstat Diagnostics' products, if any, commencing upon the commercialization of its products. A portion of the proceeds of the \$40.0 million credit agreement were used to repay certain notes receivable which Wellstat Diagnostics entered into in March 2012.

In January 2013, the Company was informed that, as of December 31, 2012, Wellstat Diagnostics had used funds contrary to the terms of the credit agreement and breached Sections 2.1.2 and 7 of the credit agreement. The Company sent Wellstat Diagnostics a notice of default on January 22, 2013, and accelerated the amounts owed under the credit agreement. In connection with the notice of default, the Company exercised one of its available remedies and transferred approximately \$8.1 million of available cash from a bank account of Wellstat Diagnostics to the Company and applied the funds to amounts due under the credit agreement. On February 28, 2013, the parties entered into a forbearance agreement whereby the Company agreed to refrain from exercising additional remedies for 120 days. During such forbearance period, the Company provided approximately \$1.3 million to Wellstat Diagnostics to fund ongoing operations of the business. During the year ended December 31, 2013, approximately \$8.7 million was advanced pursuant to the forbearance agreement.

On August 15, 2013, the Company entered into an amended and restated credit agreement with Wellstat Diagnostics. The Company determined that the new agreement should be accounted for as a modification of the existing agreement.

Except as otherwise described herein, the material terms of the amended and restated credit agreement are substantially the same as those of the original credit agreement, including quarterly interest payments at the rate of 5% per annum (payable in cash or in kind). In addition, the Company was to continue to receive quarterly royalty payments based on a low double-digit royalty rate of Wellstat Diagnostics' net revenues. However, pursuant to the amended and restated credit agreement: (i) the principal amount was reset to approximately \$44.1 million, which was comprised of approximately \$33.7 million original loan principal and interest, \$1.3 million term loan principal and interest and \$9.1 million forbearance principal and interest; (ii) the specified internal rates of return increased; (iii) the default interest rate was increased; (iv) Wellstat Diagnostics' obligation to provide certain financial information increased in frequency to monthly; (v) internal financial controls were strengthened by requiring Wellstat Diagnostics to maintain an independent, third-party financial professional with control over fund disbursements; (vi) the Company waived the existing events of default; and (vii) the owners and affiliates of Wellstat Diagnostics were required to contribute additional capital to Wellstat Diagnostics upon the sale of an affiliate entity. The amended and restated credit agreement had an ultimate maturity date of December 31, 2021 (but has subsequently been accelerated as described below).

In June 2014, the Company received information from Wellstat Diagnostics showing that it was generally unable to pay its debts as they became due, constituting an event of default under the amended and restated credit agreement.

On August 5, 2014, the Company delivered a notice of default to Wellstat Diagnostics, which accelerated all obligations under the amended and restated credit agreement and demanded immediate payment in full in an amount equal to approximately \$53.9 million, (which amount, in accordance with the terms of the amended and restated credit agreement, included an amount that, together with interest and royalty payments already made to the Company, would generate a specified internal rate of return to the Company), plus accruing fees, costs and interest, and demanded that Wellstat Diagnostics protect and preserve all collateral securing its obligations.

On August 7, 2014, the Company delivered a notice to each of the guarantors of Wellstat Diagnostics' obligations to the Company (collectively, the "Wellstat Diagnostics Guarantors") under the credit agreement, which included a demand that the guarantors remit payment to the Company in the amount of the outstanding obligations. The guarantors include certain affiliates and related companies of Wellstat Diagnostics, including Wellstat Therapeutics and Wellstat Diagnostics' stockholders.

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On September 24, 2014, the Company filed an ex-parte petition for appointment of receiver with the Circuit Court of Montgomery County, Maryland, which was granted on the same day. Wellstat Diagnostics remained in operation during the period of the receivership with incremental additional funding from the Company. On May 24, 2017, Wellstat Diagnostics transferred substantially all of its assets to the Company pursuant to a credit bid. The credit bid reduced the outstanding balance of the loan by an immaterial amount.

On September 4, 2015, the Company filed in the Supreme Court of New York a motion for summary judgment in lieu of complaint which requested that the court enter judgment against certain of the Wellstat Diagnostics Guarantors for the total amount due on the Wellstat Diagnostics debt, plus all costs and expenses including lawyers' fees incurred by the Company in enforcement of the related guarantees. On September 23, 2015, the Company filed in the same court an ex parte application for a temporary restraining order and order of attachment of the Wellstat Diagnostics Guarantor defendants' assets. Although the court denied the Company's request for a temporary restraining order at a hearing on September 24, 2015, it ordered that assets of the Wellstat Diagnostics Guarantor defendants should be held in *status quo ante* and only used in the normal course of business.

On July 29, 2016, the Supreme Court of New York granted the Company's motion for summary judgment and held that the Wellstat Diagnostics Guarantor defendants are liable for all "Obligations" owed by Wellstat Diagnostics to the Company. After appeal by the Wellstat Diagnostics Guarantor defendants on February 14, 2017, the Appellate Division of the Supreme Court of New York reversed on procedural grounds a portion of the Memorandum of Decision granting the Company summary judgment in lieu of complaint, but affirmed the portion of the Memorandum of Decision denying the Wellstat Diagnostics Guarantor defendants' motion for summary judgment in which they sought a determination that the guarantees had been released. As a result, the litigation has been remanded to the Supreme Court of New York to proceed on the Company's claims as a plenary action. On June 21, 2017, the Supreme Court of New York ordered the Company to file a Complaint, which was filed by the Company on July 20, 2017. The Wellstat Diagnostics Guarantors filed their answer on August 9, 2017, including counterclaims against the Company alleging breach of contract, breach of fiduciary duty, and tortious interference with prospective economic advantage.

On October 14, 2016, the Company sent a notice of default and reference to foreclosure proceedings to certain of the Wellstat Diagnostics Guarantors which are not defendants in the New York action, but which are owners of real estate assets over which a deed of trust in favor of the Company securing the guarantee of the loan to Wellstat Diagnostics had been executed. On March 2, 2017, the Company sent a second notice to foreclose on the real estate assets, and noticed the sale for March 29, 2017. The sale was taken off the calendar by the trustee under the deed of trust and has not been re-scheduled yet. On March 6, 2017, the Company sent a letter to the Wellstat Diagnostics Guarantors seeking information in preparation for a UCC Article 9 sale of some or all of the intellectual property-related collateral of the Wellstat Diagnostics Guarantors. The Wellstat Diagnostics Guarantors did not respond to the Company's letter, but on March 17, 2017, filed an order to show cause with the Supreme Court of New York to enjoin the Company's sale of the real estate or enforcing its security interests in the Wellstat Diagnostics Guarantors' intellectual property during the pendency of any action involving the guarantees at issue. On February 6, 2018, the Supreme Court of New York issued an order from the bench which enjoins the Wellstat Diagnostics Guarantors from selling, encumbering, removing, transferring or altering the collateral pending the outcome of the proceedings before it. The Supreme Court of New York also issued an order precluding the Company from foreclosing on certain of the Wellstat Diagnostics Guarantors' collateral pending the outcome of the proceedings before it. In September of 2018, discovery in the New York action was completed. Summary judgment motions were filed by Wellstat Diagnostics and the Company in 2018 and a hearing was held on May 22, 2019. On September 11, 2019, the Supreme Court of New York granted the Company's summary judgment motion, the court holding that the guarantees executed by the Wellstat Diagnostics Guarantors are valid and enforceable, and that the Wellstat Diagnostics Guarantors are liable for the amount owed under the loan agreement. The court ordered a damages inquest before a special referee to calculate the amount owed under the loan agreement between Wellstat Diagnostics and the Company. On September 12, 2019, the Wellstat Diagnostics Guarantors filed a notice of appeal in relation to the court's decision. On September 17, 2019, the Wellstat Diagnostics Guarantors requested a stay of the enforcement of the New York Supreme Court's decision pending their appeal of the decision, which was denied on November 21, 2019. A damages hearing was scheduled to begin before a judicial hearing officer on December 17, 2019. At the request of the judicial hearing officer, the parties agreed to mediate their dispute prior to the commencement of the damages hearing. As a result, no decision has been made by the hearing officer with respect to the amount of damages owed to the Company.

In an unrelated litigation, Wellstat Therapeutics filed a lawsuit against BTG International, Inc. for breach of contract (the "BTG Litigation"). In September 2017, the Delaware Chancery Court found in favor of Wellstat Therapeutics and awarded a judgment of \$55.8 million in damages, plus interest. In October 2017, the Company filed a motion with the Supreme Court of New York

requesting a pre-judgment attachment of the award. In June 2018, the Delaware Supreme Court largely affirmed the September 2017 decision of the Delaware Chancery Court, including the \$55.8 million awarded in judgment. In August of 2018, in a letter to the Company's counsel, Wellstat Diagnostics Guarantors' counsel confirmed that the Wellstat Diagnostics Guarantors are preserving the BTG Litigation judgment award proceeds consistent with the New York Court's prior directions.

On October 22, 2015, certain of the Wellstat Diagnostics Guarantors filed a separate complaint against the Company in the Supreme Court of New York seeking a declaratory judgment that certain contractual arrangements entered into between the parties subsequent to Wellstat Diagnostics' default, and which relate to a split of proceeds in the event that the Wellstat Diagnostics Guarantors voluntarily monetize any assets that are the Company's collateral, is of no force or effect. This case has been joined for all purposes, including discovery and trial, and consolidated with the pending case filed by the Company. The Wellstat Diagnostic Guarantors filed a summary judgment motion with regard to this case, which was also heard by the court at the hearing on May 22, 2019. The court, in its September 11, 2019 decision, denied in its entirety the Wellstat Diagnostics Guarantors' motion for summary judgment.

Effective April 1, 2014, and as a result of the event of default, the Company determined the loan to be impaired and it ceased to accrue interest revenue. As of December 31, 2019, it was determined that an allowance on the carrying value of the note was not necessary, as the Company believed the value of the collateral securing Wellstat Diagnostics' obligations is in-line with the carrying value of the asset and was sufficient to enable the Company to recover the carrying value at December 31, 2019 of \$50.2 million.

In August 2020, the Company entered into a settlement agreement (the "Settlement Agreement") with related entities of Defined Diagnostics, LLC resolving litigation relating to loans made to Wellstat Diagnostics by the Company. Wellstat paid the company an amount of \$7.5 million upon the signing of the Settlement Agreement and must pay either (1) \$5.0 million by February 10, 2021 and \$55.0 million by July 26, 2021; or (2) \$67.5 million by July 26, 2021. Further under the terms of the Settlement Agreement, upon payment of either \$5.0 million prior to April 21, 2021 or completion of the payment of \$67.5 million by July 26, 2021, the Company will transfer to Wellstat Diagnostics on an "as is" and "where is" basis certain assets currently owned by the Company which were obtained through the Company's credit bid in 2017 for the assets of Wellstat Diagnostics. If the Wellstat Parties fail to make payment in full by July 26, 2021, the Company shall be authorized to record and confess judgment against the Wellstat Parties for an amount of \$92.5 million or such lesser amount as may be owed under the Settlement Agreement. The \$7.5 million initial signing payment was received by the Company in August 2020. The Company's Settlement Agreement with Defined Diagnostics, LLC and related entities also settled its disputes with Hyperion (a Wellstat Diagnostics Guarantor).

As of September 30, 2020 under the Liquidation Basis, the estimated realizable value of \$51.4 million has been reflected as "Notes Receivable" on the Company's Condensed Consolidated Statement of Net Assets.

CareView Credit Agreement

On June 26, 2015, the Company entered into a credit agreement with CareView, under which the Company made available to CareView up to \$40.0 million in loans comprised of two tranches of \$20.0 million each, subject to CareView's attainment of specified milestones relating to the placement of CareView Systems. On October 7, 2015, the Company and CareView entered into an amendment of the credit agreement to modify certain definitions related to the first and second tranche milestones and the Company funded the first tranche of \$20.0 million, net of fees, based on CareView's attainment of the first milestone, as amended. The second \$20.0 million tranche was not funded due to CareView's failure to achieve the related funding milestones and there is no additional funding obligation due from the Company. Outstanding borrowings under the credit agreement bear interest at the rate of 13.5% per annum and are payable quarterly in arrears. The CareView note receivable is secured by substantially all assets of, and equity interests in CareView's subsidiaries.

As part of the original credit agreement, the Company received a warrant to purchase approximately 4.4 million shares of common stock of CareView at an exercise price of \$0.45 per share. The Company has accounted for the warrant as a derivative asset with an offsetting credit as debt discount. At each reporting period under the Going Concern Basis the warrant was marked to market for changes in fair value.

In connection with the October 2015 amendment of the credit agreement, the Company and CareView also agreed to amend the warrant to purchase common stock agreement by reducing the warrant's exercise price from \$0.45 to \$0.40 per share.

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In February 2018, the Company entered into a modification agreement with CareView (the “February 2018 Modification Agreement”) whereby the Company agreed, effective December 28, 2017, to modify the credit agreement before remedies could otherwise have become available to the Company under the credit agreement in relation to certain obligations of CareView that would potentially not be met, including the requirement to make principal payments. Under the February 2018 Modification Agreement, the Company agreed that (i) a lower liquidity covenant would be applicable and (ii) principal repayment would be delayed until December 31, 2018. In exchange for agreeing to these modifications, among other things, the exercise price of the Company’s warrants to purchase 4.4 million shares of common stock of CareView was repriced from \$0.40 to \$0.03 per share and, subject to the occurrence of certain events, CareView agreed to grant the Company additional equity interests. As a result of the February 2018 Modification Agreement, the Company determined the loan to be impaired and it ceased to accrue interest revenue effective October 1, 2017.

In September 2018, the Company entered into an amendment to the February 2018 Modification Agreement with CareView whereby the Company agreed, effective as of September 28, 2018, that a lower liquidity covenant would be applicable. In December 2018, the Company further modified the loan by agreeing that (i) a lower liquidity covenant would be applicable, (ii) the first principal payment would be deferred until January 31, 2019, and (iii) the scheduled interest payment due December 31, 2018 would be deferred until January 31, 2019. In December 2018, and in consideration of the further modification to the credit agreement, the Company completed an impairment analysis and determined that the note was impaired and recorded an impairment loss of \$8.2 million. As of March 31, 2019, the principal repayment and interest payments were deferred until April 30, 2019. The principal repayment and interest payment were subsequently deferred until May 15, 2019 under additional amendments. In May 2019, and in consideration of additional capital raised by CareView, the Company further modified the loan by agreeing that (i) the first principal and interest payments would be deferred until September 30, 2019 and (ii) the remaining liquidity covenant would be removed. In September 2019, the Company further modified the loan by agreeing that the first principal and interest payments would be deferred, and (iii) the interest rate would be increased to 15.5%. Pursuant to further amendments to the February 2018 Modification Agreement in September 2019, December 2019, January 2020, April 2020, and September 2020, the Company agreed to defer principal and interest payments until November 30, 2020. For additional information see Note 7, *Fair Value Measurements*.

In December 2019, and in consideration of the further modification to the credit agreement and February 2018 Modification Agreement, the Company updated its impairment analysis and determined that an additional impairment was necessary and recorded an impairment loss of \$10.8 million. At September 30, 2020, the Company estimated the value of the warrant to be \$0.1 million.

9. Leases

Lessor arrangements

The Company has operating leases for medical device equipment generated from its medical devices segment. The components of Lease revenue are as follows:

<i>(in thousands)</i>	Classification	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019
Operating lease income	Lease revenue	\$ 703	\$ 1,322	\$ 2,139	\$ 3,854

Lessee arrangements

The Company has operating leases for corporate offices and certain equipment. On August 20, 2020, LENSAR amended its lease for corporate offices pursuant to which the term of the lease was extended through November 30, 2027 commencing on September 1, 2020. The lease amendment constitutes a modification as it extends the original lease term, which requires evaluation of the remeasurement of the lease liability and corresponding right-of-use-asset. The reassessment resulted in continuing to classify the lease as an operating lease and remeasurement of the lease liability on the basis of the extended lease term and the incremental borrowing rate at the effective date of modification of 10%. The remeasurement for the modification resulted in an increase to the lease liability and the right-of-use-asset of \$3.3 million.

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Following the change, the Company's future minimum lease payments under non-cancellable leases as of September 30, 2020 were as follows (in thousands):

Fiscal Year	Amount
Remainder of 2020	\$ 88
2021	704
2022	613
2023	552
2024 and thereafter	2,309
Total operating lease payments	4,266
Less: imputed interest	(121)
Total operating lease liabilities	<u>\$ 4,145</u>

On October 1, 2020, the Company spun off the LENSAR business. See Note 21, *Subsequent Events*, for additional information.

10. Intangible Assets

The Company acquired certain intangible assets (customer relationships, acquired technology and acquired trademarks) as part of its acquisition of LENSAR in May 2017. They were being amortized on a straight-line basis over a weighted-average period of 15 years. The intangible assets for customer relationships were being amortized using a double-declining method of amortization as such method better represents the economic benefits to be obtained.

Subsequent to the May 2017 acquisition, LENSAR further acquired certain intangible assets for customer relationships from a domestic distributor in an asset acquisition, which were being amortized on a straight-line basis over a period of 10 years.

LENSAR also acquired certain intangible assets from a medical technology company in an assets acquisition, which were being amortized on a straight-line basis over a period of 15 years.

The components of intangible assets as of December 31, 2019 were as follows:

<i>(in thousands)</i>	December 31, 2019		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Finite-lived intangible assets:			
Customer relationships	\$ 4,045	\$ (884)	\$ 3,161
Acquired technology	11,500	(1,741)	9,759
Acquired trademarks	570	(304)	266
Total	<u>\$ 16,115</u>	<u>\$ (2,929)</u>	<u>\$ 13,186</u>

Intangible assets of \$42.1 million at September 30, 2020 reflect the estimated value of LENSAR under the liquidation basis of accounting. These assets, which relate in their entirety to LENSAR, represent customer relationships, acquired technology and acquired trademarks, as well as previously expensed research and development costs incurred to develop the current LENSAR Laser system and the next-generation ALLY system. These research and development costs were previously required to be expensed as incurred under the going concern basis of accounting.

LENSAR was spun-off on October 1, 2020. See Note 21, *Subsequent Events*, for additional information.

For the two and eight months ended August 31, 2020, amortization expense was \$0.2 million and \$0.8 million, respectively, and for the three and nine months ended September 30, 2019, amortization expense was \$0.3 million and \$1.0 million, respectively.

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11. Accrued Liabilities

Accrued liabilities under Going Concern Basis consisted of the following:

<i>(in thousands)</i>	December 31, 2019
Compensation	\$ 6,823
Deferred revenue	959
Interest	70
Legal	921
Accrued rebates, chargebacks and other revenue reserves	5
Other	3,145
Total ⁽¹⁾⁽²⁾	\$ 11,923

⁽¹⁾ The amounts above exclude \$16.4 million of accrued liabilities at Noden classified as held for sale as of December 31, 2019. See Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, for additional information.

⁽²⁾ The table above includes amounts held by LENSAR which was spun-off on October 1, 2020. See Note 21, *Subsequent Events*, for additional information.

Upon adoption of the Liquidation Basis of accounting, the Company accrued for all future estimated expenses and liabilities. For additional information, see Note 2, *Net Assets in Liquidation*.

12. Convertible Senior Notes

Description <i>(in thousands)</i>	Maturity Date	Principal Balance Outstanding September 30, 2020	Carrying Value	
			September 30, 2020 <small>(Liquidation Basis)</small>	December 31, 2019 <small>(Going Concern Basis)</small>
Convertible Senior Notes				
December 2021 Notes	December 1, 2021	\$ 13,805	\$ 14,238	\$ 16,950
December 2024 Notes	December 1, 2024	1,000	1,000	10,300
Total		\$ 14,805	\$ 15,238	\$ 27,250

December 2021 Notes

On November 22, 2016, the Company issued \$150.0 million in aggregate principal amount, at par, of 2.75% Convertible Senior Notes due December 1, 2021 (the “December 2021 Notes”) in an underwritten public offering, for net proceeds of \$145.7 million. The December 2021 Notes are due December 1, 2021, and the Company pays interest at 2.75% on the December 2021 Notes semiannually in arrears on June 1 and December 1 of each year, beginning June 1, 2017.

In September 2019, the Company entered into privately negotiated exchange agreements with certain holders of approximately \$86.1 million aggregate principal amount of outstanding December 2021 Notes. The Company exchanged \$86.1 million aggregate principal of December 2021 Notes for an identical principal amount of 2.75% Convertible Senior Notes due December 1, 2024 (the “December 2024 Notes”), plus a cash payment of \$70.00 for each \$1,000 principal amount tendered (“September 2019 Exchange Transaction”). See “December 2024 Notes” below. The terms of the remaining December 2021

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Notes remained unchanged. The September 2019 Exchange Transaction qualified as a debt extinguishment and the Company recognized a loss on exchange of the convertible notes of \$3.9 million in the third quarter of 2019.

Upon the occurrence of a fundamental change, as defined in the indenture, entered into in connection with the December 2021 Notes (the “December 2021 Notes Indenture”), holders have the option to require the Company to repurchase their December 2021 Notes at a purchase price equal to 100% of the principal, plus accrued interest.

A fundamental change was triggered as a result of the stockholders’ approval of the dissolution of the Company on August 19, 2020 pursuant to the Plan of Dissolution. This fundamental change also constituted a make-whole fundamental change as defined in the December 2021 Notes Indenture. Upon the occurrence of a fundamental change, as discussed above, the Company is required to repurchase for cash, at the bondholder’s option, all of the bondholder’s December 2021 Notes, or any portion of the principal amount thereof equal to \$1,000 or an integral multiple of \$1,000 at a price equal to 100% of the principal amount, plus accrued and unpaid interest thereon. The fundamental change repurchase right ended on September 29, 2020. No December 2021 Notes were tendered for repurchase under this offer.

As a result of the fundamental change and the make-whole fundamental change, and notwithstanding the fundamental change repurchase right, the December 2021 Notes were convertible, at the option of the bondholder, at any time up to and including September 28, 2020 (the “September 2020 Conversion Period”). During the September 2020 Conversion Period, the Company received notification that bondholders exercised their right to convert a total of \$11.2 million par value of the December 2021 Notes (the “September 2020 Conversion”). The Company intends to settle all notes submitted for conversion entirely in cash. The cash settlement price for each conversion notice received is equal to the sum of the daily conversion values, as defined in the December 2021 Notes Indenture, over a 60-trading day observation period (the “Observation Period”). The daily conversion value is calculated as the product of the daily volume-weighted stock price and the conversion rate in effect on each trading day. The carrying amount as of September 30, 2020 includes the estimated conversion settlement in excess of par value.

The December 2021 Notes are convertible under any of the following circumstances at any time prior to the close of business on the business day immediately preceding June 1, 2021 (or at any time beginning on June 1, 2021 until the close of business on the second scheduled trading day immediately preceding the stated maturity):

- During any fiscal quarter (and only during such fiscal quarter) commencing after the fiscal quarter ended June 30, 2017, if the last reported sale price of Company common stock for at least 20 trading days (whether or not consecutive), in the period of 30 consecutive trading days, ending on, and including, the last trading day of the immediately preceding fiscal quarter, exceeds 130% of the conversion price for the notes on each applicable trading day;
- During the five business-day period immediately after any five consecutive trading-day period, which the Company refers to as the measurement period, in which the trading price per \$1,000 principal amount of notes for each trading day of that measurement period was less than 98% of the product of the last reported sale price of Company common stock and the conversion rate for the notes for each such trading day; or
- Upon the occurrence of specified corporate events as described in the December 2021 Notes Indenture.

The initial conversion rate for the December 2021 Notes was 262.2951 shares of the Company’s common stock per \$1,000 principal amount of December 2021 Notes, equivalent to an initial conversion price of approximately \$3.81 per share of common stock, subject to adjustments upon the occurrence of certain specified events as set forth in the December 2021 Notes Indenture. After the distribution by the Company of its stock in Evofem to the PDL stockholders in May 2020, the conversion rate for the December 2021 Notes increased to 316.5801 shares of the Company’s common stock per \$1,000 principal amount of December 2021 Notes equating to a conversion price of \$3.16 per share of common stock. After the stockholders’ approval of the dissolution of the Company on August 19, 2020, a fundamental make-whole change was triggered and the conversion rate for the December 2021 Notes was increased to 343.1098.

In accordance with the accounting guidance for convertible debt instruments that may be settled in cash or other assets on conversion, the Company was required to separately account for the liability component of the instrument in a manner that reflects the market interest rate for a similar nonconvertible instrument at the date of issuance. As a result, the Company separated the principal balance of the December 2021 Notes between the fair value of the debt component with the remainder of the consideration being allocated to the equity component. Using an assumed borrowing rate of 9.5%, which represented the estimated market interest rate for a similar nonconvertible instrument available to the Company on the date of issuance, the Company recorded a debt discount of \$4.3 million, allocated \$23.8 million to Additional paid-in capital for the conversion

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feature and allocated \$12.8 million to deferred tax liability. Under Going Concern Basis, the debt discount, including the conversion feature and issuance costs allocated to debt, which remained after amortization and the effect of the September 2019 Exchange Transaction, was being amortized to interest expense over the term of the December 2021 Notes and increased interest expense during the term of the December 2021 Notes from the 2.75% cash coupon interest rate to an effective interest rate of 9.7%.

On December 17, 2019, the Company repurchased \$44.8 million in aggregate principal amount of its December 2021 Notes for \$39.9 million in cash and 3.5 million shares of its common stock in privately negotiated transactions (the "December 2019 Exchange Transaction"). It was determined that the repurchase of the principal amount should be accounted for as a partial extinguishment of the December 2021 Notes. As a result, a loss on extinguishment of \$2.5 million was recorded at closing of the transaction.

During the eight months ended August 31, 2020, the Company repurchased \$5.4 million in aggregate principal amount of its December 2021 notes for \$6.0 million in cash. It was determined that the repurchase of the principal amount should be accounted for as a partial extinguishment of the December 2021 Notes. As a result, a loss on extinguishment of \$0.1 million was recorded at closing of the transaction.

The carrying value of the December 2021 Notes as of September 30, 2020 and December 31, 2019 were as follows:

<i>(in thousands)</i>	September 30, 2020	December 31, 2019
	(Liquidation Basis)	(Going Concern Basis)
Principal amount of the December 2021 Notes	\$ 13,805	\$ 19,170
Estimated conversion settlement above par value	433	—
Unamortized discount of liability component	—	(2,220)
Carrying value of the December 2021 Notes	<u>\$ 14,238</u>	<u>\$ 16,950</u>

Interest expense for the December 2021 Notes included in the Company's Condensed Consolidated Statements of Operations under the Going Concern Basis was as follows:

<i>(in thousands)</i>	Two Months Ended	Three Months Ended	Eight Months Ended	Nine Months Ended
	August 31,	September 30,	August 31,	September 30,
	2020	2019	2020	2019
Contractual coupon interest	\$ 63	\$ 939	\$ 281	\$ 3,002
Amortization of debt issuance costs	1	17	5	57
Amortization of debt discount	9	130	39	406
Amortization of conversion feature	125	1,692	544	5,252
Total	<u>\$ 198</u>	<u>\$ 2,778</u>	<u>\$ 869</u>	<u>\$ 8,717</u>

As of September 30, 2020, the December 2021 Notes are not convertible.

Capped Call Transaction

In connection with the offering of the December 2021 Notes, the Company entered into a privately-negotiated capped call transaction with an affiliate of the underwriter of such issuance. The aggregate cost of the capped call transaction was \$14.4 million. The capped call transaction is generally expected to reduce the potential dilution upon conversion of the December 2021 Notes and/or partially offset any cash payments the Company is required to make in excess of the principal amount of converted December 2021 Notes in the event that the market price per share of the Company's common stock, as measured under the terms of the capped call transaction, is greater than the strike price of the capped call transaction. This initially corresponded to the approximate \$3.81 per share conversion price of the December 2021 Notes and was subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the December 2021 Notes. The cap price of the capped call transaction was initially \$4.88 per share subject to certain adjustments under the terms of the capped call transaction. Upon the distribution by the Company of its stock in Evofem to the PDL stockholders in May 2020, the

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conversion price of the December 2021 Notes was adjusted to \$3.16 per share and the cap price was adjusted to \$4.04 per share. The Company will not be required to make any cash payments to the option counterparty upon the exercise of the options that are a part of the capped call transaction, but the Company will be entitled to receive from it an aggregate amount of cash and/or number of shares of the Company's common stock, based on the settlement method election chosen for the related convertible senior notes, with a value equal to the amount by which the market price per share of the Company's common stock, as measured under the terms of the capped call transaction, is greater than the strike price of the capped call transaction during the relevant valuation period under the capped call transaction, with such number of shares of the Company's common stock and/or amount of cash subject to the cap price.

The Company evaluated the capped call transaction under authoritative accounting guidance and determined that it should be accounted for as separate transaction and classified as a net reduction to Additional paid-in capital within stockholders' equity with no recurring fair value measurement recorded.

In connection with the September 2019 Exchange Transaction, the Company unwound a portion of the capped call entered into when the December 2021 Notes were issued, as they were no longer scheduled to mature in 2021. In connection with the December 2019 Exchange Transaction, the Company unwound a corresponding portion of the capped call related to the notes and repurchased 1.6 million shares of its common stock from the counterparty. In connection with the repurchases of the December 2021 Notes in the eight months ended August 31, 2020, the Company unwound a corresponding portion of the capped call related to the notes. As the individual Observation Period for the above-described September 2020 Note Conversion will not elapse until December 2020, the unwinding of a corresponding portion of the capped call will not occur until such time.

December 2024 Notes

On September 17, 2019, in connection with the September 2019 Exchange Transaction, the Company exchanged \$86.1 million aggregate principal of December 2021 Notes for an identical aggregate original principal amount of December 2024 Notes, plus a cash payment of \$70.00 for each \$1,000 principal amount exchanged, totaling approximately \$6.0 million. The December 2024 Notes are due December 1, 2024, and the Company pays interest at 2.75% on the December 2024 Notes semiannually in arrears on June 1 and December 1 of each year, beginning December 1, 2019. The original principal of the December 2024 Notes will accrete at a rate of 2.375% per year ("Accretion Interest") commencing September 17, 2019 through the maturity of the December 2024 Notes. The accreted principal amount of the December 2024 Notes is payable in cash upon maturity and is included in Other accrued liquidation costs on the Company's Condensed Consolidated Statement of Net Assets.

Upon the occurrence of a fundamental change, as defined in the indenture entered into in connection with the December 2024 Notes (the "December 2024 Notes Indenture"), holders have the option to require the Company to repurchase all of the their December 2024 Notes, or any portion of the principal amount thereof equal to \$1,000 or an integral multiple of \$1,000 at a purchase price equal to 100% of the accreted principal amount of such December 2024 Notes, plus accrued interest on the original principal amount thereon.

A fundamental change, which constituted a make-whole fundamental change as defined in the December 2024 Notes Indenture, was triggered as a result of the stockholders' approval of the dissolution of the Company on August 19, 2020 pursuant to the Plan of Dissolution. The fundamental change repurchase right ended on September 29, 2020. No December 2024 Notes were tendered for repurchase under this offer.

As a result of the fundamental change and the make-whole fundamental change, and notwithstanding the fundamental change repurchase right, the December 2024 Notes were convertible, at the option of the bondholder, at any time up to and including September 28, 2020 (the "September 2020 Conversion Period"). No conversion notices were received for the December 2024 Notes during the September 2020 Conversion Period.

The December 2024 Notes are convertible under any of the following circumstances at any time prior to the close of business on the business day immediately preceding June 1, 2024 (or at any time beginning on June 1, 2024 until the close of business on the second scheduled trading day immediately preceding the stated maturity):

- During any fiscal quarter (and only during such fiscal quarter) commencing after the fiscal quarter ended December 31, 2019, if the last reported sale price of Company common stock for at least 20 trading days (whether or not consecutive), in the period of 30 consecutive trading days, ending on, and including, the last trading day of the

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immediately preceding fiscal quarter, exceeds 130% of the conversion price for the notes on each applicable trading day;

- During the five business-day period immediately after any five consecutive trading-day period, which the Company refers to as the measurement period, in which the trading price per \$1,000 original principal amount of notes for each trading day of that measurement period was less than 98% of the product of the last reported sale price of Company common stock and the conversion rate for the notes for each such trading day;
- Upon the occurrence of specified corporate events or upon a redemption of the notes, in each case as described in the December 2024 Notes Indenture; or
- On or after June 1, 2024, at the option of the holder prior to the second scheduled trading day preceding December 1, 2024.

In accordance with the terms of the December 2024 Notes Indenture, the Company has the right, but not the obligation, to redeem all or any portion of the December 2024 Notes that is equal to \$1,000 original principal amount or an integral multiple of \$1,000 prior to their scheduled maturity on a redemption date beginning on or after December 1, 2021 and on or before the 60th scheduled trading day before December 1, 2024, for a cash purchase price equal to the redemption price, but only if the last reported sale price of Company common stock exceeds 128% of the conversion price for the December 2024 Notes on (i) each of at least 20 trading Days (whether or not consecutive) during the 30 consecutive trading days ending on, and including, the trading day immediately before the redemption notice date for such redemption; and (ii) the trading day immediately before such redemption notice date. The redemption price for the December 2024 Notes called for redemption is equal to the then accreted principal amount of such December 2024 Notes plus accrued but unpaid interest on the original principal amount thereon. The calling of any December 2024 Notes for redemption will constitute a make-whole fundamental change with respect to such notes, entitling the holders who convert such December 2024 Notes called for redemption prior to the applicable redemption date to receive an increase in the applicable conversion rate, as described in the December 2024 Notes Indenture.

The initial conversion rate for the December 2024 Notes was 262.2951 shares of the Company's common stock per \$1,000 original principal amount of December 2024 Notes, equivalent to an initial conversion price of approximately \$3.81 per share of common stock, subject to adjustments upon the occurrence of certain specified events as set forth in the December 2024 Notes Indenture. After the distribution by the Company of its stock in Evofem to the PDL stockholders, the conversion rate for the December 2024 Notes was 316.5801 shares of the Company's common stock per \$1,000 principal amount of December 2024 Notes equating to a conversion price of \$3.16 per share of common stock. After the stockholders' approval of the dissolution of the Company on August 19, 2020, a fundamental make-whole change was triggered and the conversion rate for the December 2024 Notes was increased to 378.8004.

In accordance with the accounting guidance for an extinguishment of convertible debt instruments with a cash conversion feature, the Company was required to allocate the fair value of the consideration transferred between the liability component and the equity component. To calculate the fair value of the debt immediately prior to derecognition, the carrying value was recalculated in a manner that reflected the estimated market interest rate for a similar nonconvertible instrument at the date of issuance. Using an assumed borrowing rate of 7.05% the Company calculated the fair value of the debt representing the amount allocated to the liability component of the December 2024 Notes with the remainder of the consideration allocated to the equity conversion feature, to reflect the reacquisition of the embedded conversion option. The conversion feature together with the fees allocated to the debt are accounted for as a debt discount. As a result of the September Exchange Transaction, the Company recorded a total debt discount of \$9.4 million, which included the cash conversion feature of \$8.1 million and the debt issuance fees of \$1.3 million, charged \$5.5 million to Additional paid-in capital (\$13.5 million charge to Additional paid-in capital representing the reduction to the 2021 equity component, partially offset by the \$8.1 million allocated to equity for the 2024 notes) and recorded \$1.2 million to deferred tax liability. The net amount charged to Additional paid-in capital represents the difference between the consideration paid for the September Exchange Transaction and the fair value of the convertible debt prior to the extinguishment.

Under Going Concern Basis, the Accretion Interest and debt discount, including the conversion feature and issuance costs allocated to debt, were being amortized to interest expense over the term of the December 2024 Notes which increases interest expense during the term of the December 2024 Notes from the 2.75% cash coupon interest rate to an effective interest rate of 7.5%.

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On December 17, 2019, in connection with the December Exchange Transaction, the Company repurchased \$74.6 million in aggregate principal amount of its December 2024 Notes for \$58.0 million in cash and 9.9 million shares of its common stock in privately negotiated transactions, resulting in a loss on extinguishment of \$2.1 million.

During the eight months ended August 31, 2020 the Company repurchased \$10.5 million in aggregate principal amount of its December 2024 notes for \$12.9 million in cash, resulting in a loss on extinguishment of \$0.5 million.

The carrying value, accretion and unamortized discount of the December 2024 Notes as of September 30, 2020 and December 31, 2019 were as follows:

<i>(in thousands)</i>	September 30, 2020	December 31, 2019
	(Liquidation Basis)	(Going Concern Basis)
Principal amount of the December 2024 Notes	\$ 1,000	\$ 11,500
Unamortized discount of liability component	—	(1,200)
Carrying value of the December 2024 Notes	<u>\$ 1,000</u>	<u>\$ 10,300</u>

Interest expense for the December 2024 Notes included in the Company's Condensed Consolidated Statements of Operations under the Going Concern Basis was as follows:

<i>(in thousands)</i>	Two Months Ended	Three Months Ended	Eight Months Ended	Nine Months Ended
	August 31,	September 30,	August 31,	September 30,
	2020	2019	2020	2019
Contractual coupon interest	\$ 5	\$ 92	\$ 49	\$ 92
Accretion interest on outstanding principal	4	79	42	79
Amortization of debt issuance costs	1	8	6	8
Amortization of conversion feature	2	54	29	54
Total	<u>\$ 12</u>	<u>\$ 233</u>	<u>\$ 126</u>	<u>\$ 233</u>

Capped Call Transaction

In connection with the issuance of the December 2024 Notes in the September Exchange Transaction, the Company entered into a privately-negotiated capped call transaction with an affiliate of the underwriter of such issuance. The aggregate cost of the capped call transaction was \$4.5 million. The capped call transaction is generally expected to reduce the potential dilution upon conversion of the December 2024 Notes and/or partially offset any cash payments the Company is required to make in excess of the principal amount of converted December 2024 Notes in the event that the market price per share of the Company's common stock, as measured under the terms of the capped call transaction, is greater than the strike price of the capped call transaction. This initially corresponded to the approximate \$3.81 per share conversion price of the December 2024 Notes subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the December 2024 Notes. The cap price of the capped call transaction was initially \$4.88 per share subject to certain adjustments under the terms of the capped call transaction. Upon the distribution by the Company of its stock in Evofem to the PDL stockholders in May 2020, the conversion price of the December 2024 Notes was adjusted to \$3.16 per share and the cap price was adjusted to \$4.04 per share. The Company will not be required to make any cash payments to the option counterparty upon the exercise of the options that are a part of the capped call transaction, but the Company will be entitled to receive from it an aggregate amount of cash and/or number of shares of the Company's common stock, based on the settlement method election chosen for the related convertible senior notes, with a value equal to the amount by which the market price per share of the Company's common stock, as measured under the terms of the capped call transaction, is greater than the strike price of the capped call transaction during the relevant valuation period under the capped call transaction, with such number of shares of the Company's common stock and/or amount of cash subject to the cap price.

The Company evaluated the capped call transaction under authoritative accounting guidance and determined that it should be accounted for as a separate transaction and classified as a net reduction to Additional paid-in capital within stockholders' equity with no recurring fair value measurement recorded. In connection with the December Exchange Transaction, the Company

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unwound a corresponding portion of the capped call related to the notes and repurchased 1.6 million shares of its common stock from the counterparty. In connection with the repurchases of the December 2024 Notes in the eight months ended August 31, 2020, the Company unwound a corresponding portion of the capped call entered into when the December 2024 Notes were issued.

13. Other Long-Term Liabilities

Other long-term liabilities under Going Concern Basis consisted of the following:

<i>(in thousands)</i>	December 31, 2019
Uncertain tax positions	\$ 37,574
Deferred tax liabilities	1,571
Accrued lease guarantee	10,700
Other	1,020
Total ^{(1) (2)}	<u>\$ 50,865</u>

⁽¹⁾ The amounts above exclude \$0.1 million of Other long-term liabilities at Noden classified as held for sale as of December 31, 2019. See Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, for additional information.

⁽²⁾ The table above includes amounts held by LENSAR which was spun-off on October 1, 2020. See Note 21, *Subsequent Events*, for additional information.

Upon adoption of the Liquidation Basis of accounting, the Company accrued for all future estimated expenses and liabilities. For additional information, see Note 2, *Net Assets in Liquidation*.

14. Commitments and Contingencies

Lease Guarantee

In connection with the spin-off by the Company of Facet Biotech Corporation (“Facet”), the Company entered into amendments to the leases for the Company’s former facilities in Redwood City, California, under which Facet was added as a co-tenant, and a Co-Tenancy Agreement, under which Facet agreed to indemnify the Company for all matters related to the leases attributable to the period after the spin-off date. In April 2010, Abbott Laboratories acquired Facet and later renamed the entity AbbVie Biotherapeutics, Inc. (“AbbVie”). If AbbVie were to default under its lease obligations, the Company could be held liable by the landlord as a co-tenant and, thus, the Company has in substance guaranteed the payments under the lease agreements for the Redwood City facilities. As of September 30, 2020, the total lease payments for the duration of the guarantee, which runs through December 2021, are approximately \$14.1 million.

The Company prepared a discounted, probability weighted cash flow analysis to calculate the estimated fair value of the lease guarantee as of the spin-off. The Company was required to make assumptions regarding the probability of Facet’s default on the lease payment, the likelihood of a sublease being executed and the times at which these events could occur. These assumptions are based on information that the Company received from real estate brokers and the then-current economic conditions, as well as expectations of future economic conditions. The fair value of this lease guarantee was charged to Additional paid-in capital upon the spin-off. In future periods, the Company may adjust this liability for any changes in the ultimate outcome of this matter that are both probable and estimable.

The Company has recorded a liability of \$10.7 million on its Condensed Consolidated Statement of Net Assets and Condensed Consolidated Balance Sheet as of September 30, 2020 and December 31, 2019, respectively, related to this guarantee.

Purchase Obligations

LENSAR entered into various supply agreements for the manufacture and supply of certain components. The supply agreements commit LENSAR to a minimum purchase obligation of approximately \$2.5 million, which is due over the next twelve months. The Company had previously guaranteed a portion of this commitment and was released from its guarantee in August 2020.

15. Stockholders' Equity

Stock Repurchase Program

On September 24, 2018, the Company announced that the Board authorized the repurchase of issued and outstanding shares of the Company's common stock having an aggregate value of up to \$100.0 million pursuant to a share repurchase program. The repurchases under the share repurchase program were made from time to time in the open market or in privately negotiated transactions and were funded from the Company's working capital. All shares of common stock repurchased under this share repurchase program were retired and restored to authorized but unissued shares of common stock. The Company repurchased 31.0 million shares of its common stock under the share repurchase program for an aggregate purchase price of \$100.0 million, or an average cost of \$3.22 per share, including trading commissions. This program was completed in July 2019.

On December 9, 2019, the Company announced that the Board authorized the repurchase of issued and outstanding shares of the Company's common stock and convertible notes up to an aggregate value of \$200 million. On December 16, 2019, the Company announced that the Board approved a \$75 million increase to the aforementioned \$200 million repurchase program to acquire outstanding PDL common stock and convertible notes. Repurchases under the Board authorized repurchase program can be made from time to time in the open market or in privately negotiated transactions and funded from the Company's working capital. The amount and timing of such repurchases will depend upon the price and availability of shares or convertible notes, general market conditions and the availability of cash. Repurchases may also be made under a trading plan under Rule 10b5-1, which would permit shares or convertible notes to be repurchased when the Company might otherwise be precluded from doing so because of self-imposed trading blackout periods or other regulatory restrictions. On December 17, 2019, the Company entered into a 10b5-1 plan. This plan was terminated on May 31, 2020. All shares of common stock repurchased under this share repurchase program are expected to be retired and restored to authorized but unissued shares of common stock. All convertible notes repurchased under the program will be retired. During the year ended December 31, 2019, the Company repurchased \$44.8 million in aggregate principal amount of 2021 Convertible Notes and \$74.6 million in aggregate principal amount of 2024 Convertible Notes for consideration consisting of a cash payment of \$97.9 million and the issuance of 13.4 million shares of the Company's common stock. During the eight months ended August 31, 2020, the Company repurchased \$5.4 million in aggregate principal amount of 2021 Convertible Notes and \$10.5 million in aggregate principal amount of 2024 Convertible Notes for cash payments totaling \$18.8 million. As of September 30, 2020 the Company repurchased 12.3 million shares of its common stock under the share repurchase program for an aggregate purchase price of \$39.4 million, or an average cost of \$3.20 per share, including trading commissions.

16. Stock-Based Compensation

The Company grants restricted stock awards and stock options pursuant to the stockholder approved Equity Plan. On February 7, 2020, the Board approved the Plan of Liquidation, which accelerated the vesting of a significant portion of the Company's outstanding equity awards pursuant to provisions in the Wind Down Retention Plan.

The Wind Down Retention Plan further provides for equitable adjustments to outstanding stock options held by participants to ensure such participants realize the same benefits provided to shareholders in the event one or more cash dividends or other distributions become payable to shareholders. Consistent with the existing terms of the Equity Plan, in the event one or more cash dividends or other distributions are paid to shareholders, the exercise price of outstanding stock options will be reduced on a dollar-for-dollar basis to reflect the per share value of such dividends or distribution; provided that such exercise price will not be reduced below the par value of the shares subject to the option. Furthermore, in the event that the Company declares a cash dividend or other distribution that exceeds the difference between the exercise price of an outstanding stock option and the par value of the underlying shares, the holder of such stock option will be entitled to receive from the Company, in lieu of such equitable adjustment, a cash payment in an amount equal to the number of shares subject to such stock option multiplied by the per share amount of the cash dividend that exceeds the difference between exercise price of the outstanding option and the par

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value of the underlying shares (a “true-up payment”). In May 2020, in accordance with this provision and in conjunction with the Evofem distribution, the exercise prices of the outstanding option awards was decreased by \$0.58 per share.

The following table summarizes the Company’s stock option and restricted stock award activity during the nine months ended September 30, 2020:

<i>(in thousands, except per share amounts)</i>	Stock Options		Restricted Stock Awards	
	Number of Shares Outstanding	Weighted Average Exercise Price	Number of Shares Outstanding	Weighted Average Grant- date Fair Value Per Share
Balance at December 31, 2019	12,613	\$ 2.55	1,013	\$ 3.53
Granted	630	\$ 3.56	3,045	\$ 3.10
Exercised / vested	(600)	\$ 2.46	(2,746)	\$ 3.12
Forfeited / canceled	(728)	\$ 3.08	(1,089)	\$ 3.39
Balance at September 30, 2020	11,915	\$ 2.62	223	\$ 3.43

17. Revenue from Contracts with Customers

Revenue

Nature of Goods and Services

The following is a description of principal activities - separated by reportable segments - from which the Company generated its revenue. As noted in Note 3, *Discontinued Operations Classified as Assets and Liabilities Held for Sale under Going Concern Basis*, the Company sold its Pharmaceutical segment in September 2020. On October 1, 2020, the Company spun off its Medical device segment. See Note 21, *Subsequent Events*, for additional information. For more detailed information about reportable segments, see Note 18, *Segment Information*.

Medical Devices

Product and Service Revenue Recognition

Product and Service revenue are recognized from our Medical Device segment. Revenue is recognized from the sale of products and services when the company transfers control of such promised products and services. The amount of revenue recognized reflects the consideration we expect to be entitled to receive in exchange for these products and services. A five-step model is utilized to achieve the core principle and includes the following steps: (1) identify the customer contract; (2) identify the contract’s performance obligations; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations; and (5) recognize revenue when the distinct performance obligations are satisfied.

LENSAR principally derives its revenue from the sale and lease of the LENSAR Laser System and the sale of other related products and services, including PIDs, procedure licenses, and extended warranty service agreements. A procedure license represents a one-time right to utilize the LENSAR Laser System surgical application in connection with a surgery procedure. Without separately procuring procedure licenses granted by LENSAR, either together with the purchase of the LENSAR Laser System or under separate subsequent contracts, the customer does not have the right to use the surgical software application to perform surgical procedures. Typically, returns are not allowed.

LENSAR’s contracts with customers often include promises to transfer multiple products and services to a customer. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. Judgement is required to determine the level of interdependency between the LENSAR Laser System and the sale of other related products and services. LENSAR evaluates each product or service promised in a contract to determine whether it represents a distinct performance obligation. A performance obligation is distinct if (1) the customer can benefit from the product or service on its own or with other resources that are readily available to the customer and (2) the products or service is separately identifiable from other promises in the contract.

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For contracts involving the sale or lease of the LENSAR Laser System, LENSAR's performance obligations generally include the LENSAR Laser System, PID, procedure license, and extended warranty service agreements. In addition, customer contracts contain provisions for installation and training services, which are not assessed as performance obligations as they are determined to be immaterial promises in the context of the contract and are required for a customer to use the LENSAR Laser System.

LENSAR has determined that the LENSAR Laser System, PID and procedure license are each capable of being distinct because they are each sold separately and the customer can benefit from these products with the other readily available resources that are sold by the Company. In addition, LENSAR has determined each are separately identifiable because the LENSAR Laser System, PID and procedure license (1) are not highly interdependent or interrelated; (2) do not modify or customize one another; and (3) LENSAR does not provide a significant service of integrating the promised goods into a bundled output. This is because LENSAR is able to fulfill each promise in the contract independently of the others. That is, LENSAR would be able to fulfill its promise to transfer the LENSAR Laser System even if the customer did not purchase a PID or procedure license and LENSAR would be able to fulfill its promise to provide the PID or the procedure license even if the customer acquired the LENSAR Laser System separately.

The extended warranty, unlike LENSAR's standard product warranty, is a performance obligation because it provides an incremental service that is beyond ensuring the product delivered will be consistent with stated contractual specifications.

When a contract contains multiple performance obligations, revenue is allocated to each performance obligation based on its relative standalone selling price.

LENSAR recognizes revenue as the performance obligations are satisfied by transferring control of the product or service to a customer as described below. LENSAR records a contract liability, or deferred revenue, when it has an obligation to provide a product or service to the customer and payment is received or due in advance of LENSAR's performance.

Product revenue. LENSAR recognizes revenue for the sale of the products at a point in time when control is transferred to customers.

Equipment. LENSAR Laser System sales are recognized as Product revenue when LENSAR transfers control of the system. This usually occurs after the customer signs a contract, LENSAR installs the system, and LENSAR performs the requisite training for use of the system for direct customers. LENSAR Laser System sales to distributors are recognized as revenue upon shipment.

PID and procedure licenses. The LENSAR Laser System requires both a PID and a procedure license to perform each procedure. We recognize Product revenue for PIDs when the company transfers control of the PID. LENSAR recognizes Product revenue for procedure licenses, which represents a one-time right to utilize the LENSAR Laser System surgical software application, at the point in time when control of the procedure is transferred to the customer. Control transfers at the time a customer receives the license key. For the sale of PIDs and procedure licenses, LENSAR may offer volume discounts to certain customers. To determine the amount of revenue that should be recognized at the time control over these products transfers to the customer, LENSAR estimates the average per unit price, net of discounts.

Service revenue. LENSAR offers an extended warranty that provides additional maintenance services beyond the standard limited warranty and recognizes Service revenue from the sale of extended warranties over the warranty period on a ratable basis. Customers have the option of renewing the warranty period, which is considered a new and separate contract.

Lease Revenue

Lease revenue is recognized from our Medical Device segment. For LENSAR Laser System operating leases, LENSAR recognizes Lease revenue over the length of the lease. For additional information regarding accounting for leases, see Note 1, *Summary of Significant Accounting Policies—Revenue Recognition* and Note 9, *Leases* to our financial statements included herein.

LENSAR leases equipment to customers under operating lease arrangements. At contract inception LENSAR performs an evaluation to determine if a lease arrangement conveys the right to control the use of an identified asset. To the extent such

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rights of control are conveyed, LENSAR further makes an assessment as to the applicable lease classification. The identification of specified assets and determination of appropriate lease classification may require the use of management judgement.

Some of LENSAR's operating leases include a purchase option for the customer to purchase the leased asset at the end of the lease arrangement, subject to a new contract. LENSAR does not believe the purchase price qualifies as a bargain purchase option.

For lease arrangements with lease and non-lease components where LENSAR is the lessor, it allocates the contract's transaction price (including discounts) to the lease and non-lease components on a relative standalone selling price which requires judgments. For those leases with variable lease payments, the variable lease payment is typically based upon use of the leased equipment or the purchase of procedure licenses and PIDs used with the leased equipment.

For operating leases, rental income is recognized on a straight-line basis over the lease term as lease revenue. Depreciation expense associated with the leased equipment under operating lease arrangements is reflected in cost of lease in the statements of operations.

Pharmaceutical

The Company's Pharmaceutical segment consisted of revenue derived from the Noden Products. Noden's revenue is included in Income (loss) from discontinued operations.

The Pharmaceutical segment principally generated revenue from products sold to wholesalers and distributors. Customer orders were generally fulfilled within a few days of receipt resulting in minimal order backlog. Contractual performance obligations were usually limited to transfer of the product to the customer. The transfer occurred either upon shipment or upon receipt of the product in certain countries outside the United States after considering when the customer obtained control of the product. In addition, in some countries outside of the United States, the Company sold product on a consignment basis where control was not transferred until the customer resold the product to an end user. At these points, customers were able to direct the use of and obtain substantially all of the remaining benefits of the product.

Sales to customers were initially invoiced at contractual list prices. Payment terms were typically 30 to 90 days based on customary practice in each country. Revenue was reduced from the list price at the time of recognition for expected chargebacks, discounts, rebates, sales allowances and product returns, which were collectively referred to as gross-to-net adjustments. These reductions were attributed to various commercial agreements, managed healthcare organizations and government programs such as Medicare, Medicaid, and the 340B Drug Pricing Program containing various pricing implications such as mandatory discounts, pricing protection below wholesaler list price and other discounts when Medicare Part D beneficiaries were in the coverage gap. These various reductions in the transaction price were estimated using either a most likely amount, in the case of prompt pay discounts, or expected value method for all other variable consideration and were reflected as liabilities and was settled through cash payments, typically within time periods ranging from a few months to one year. Significant judgment is required in estimating gross-to-net adjustments considering legal interpretations of applicable laws and regulations, historical experience, payer channel mix, current contract prices under applicable programs, unbilled claims, processing time lags and inventory levels in the distribution channel.

For licenses that were bundled with other promises, the Company utilized judgment to assess the nature of the combined performance obligation to determine whether the combined performance obligation was satisfied over time or at a point in time and, if over time, the appropriate method of measuring progress for purposes of recognizing revenue from non-refundable, up-front license fees. The Company evaluated the measure of progress each reporting period and, if necessary, adjusted the measure of performance and related revenue recognition.

Disaggregation of Revenue

The Company disaggregates its revenue from contracts with customers by segment and geographic location as the Company believes it best depicts how the nature, amount, timing and uncertainty of its revenue and cash flows are affected by economic

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factors. In the following tables, revenue is disaggregated by segment and primary geographical market for the two and eight months ended August 31, 2020 and three and nine months ended September 30, 2019 under the Going Concern Basis:

<i>(in thousands)</i>	Two Months Ended August 31, 2020		Three Months Ended September 30, 2019	
	Medical Devices	Pharmaceutical ⁽¹⁾	Medical Devices	Pharmaceutical ⁽¹⁾
Primary geographical markets:				
North America	\$ 2,172	\$ 1,709	\$ 2,779	\$ 6,119
Europe	522	3,144	699	5,496
Asia	618	1,428	3,178	654
Other	63	—	68	—
Total revenue from contracts with customers ⁽²⁾	\$ 3,375	\$ 6,281	\$ 6,724	\$ 12,269

<i>(in thousands)</i>	Eight Months Ended August 31, 2020		Nine Months Ended September 30, 2019	
	Medical Devices	Pharmaceutical ⁽¹⁾	Medical Devices	Pharmaceutical ⁽¹⁾
Primary geographical markets:				
North America	\$ 6,656	\$ 10,093	\$ 7,066	\$ 21,295
Europe	2,078	13,008	2,421	16,532
Asia	4,137	6,378	8,540	4,817
Other	200	—	253	—
Total revenue from contracts with customers ⁽²⁾	\$ 13,071	\$ 29,479	\$ 18,280	\$ 42,644

⁽¹⁾ The revenue from the Company's Pharmaceutical segment for the two and eight months ended August 31, 2020 and the three and nine months ended September 30, 2019 is included in Income (loss) from discontinued operations. For additional information, see Note 3, *Discontinued Operations Classified as Assets held for sale under Going Concern Basis*.

⁽²⁾ The tables above do not include lease revenue from the Company's Medical Devices segment for the two months ended August 31, 2020 and three months ended September 30, 2019, of \$0.7 million and \$1.4 million, respectively, for the eight month period ended August 31, 2020 and nine month period ended September 30, 2019, of \$2.1 million and \$3.9 million, respectively. For additional information, see Note 9, *Leases*.

Contract Balances

The following table provides information about receivables, contract assets and contract liabilities from contracts with customers:

<i>(in thousands)</i>	December 31, 2019
Receivables, net	\$ 10,377
Contract assets	\$ 3,512
Contract liabilities	\$ 4,024

The table above includes LENSAR which was spun-off on October 1, 2020. See Note 21, *Subsequent Events*, for additional information.

Receivables, Net—Receivables, net include amounts billed and due from customers. The amounts due are stated at their net estimated realizable value based on the timing of when the Company expects to receive payment. The Company maintains an allowance for credit losses to provide for the estimated amount of receivables that will not be collected. The allowance is based

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upon an assessment of customer creditworthiness, historical payment experience, the age of outstanding receivables, collateral to the extent applicable and reflects the possible impact of current conditions and reasonable forecasts not already reflected in historical loss information. The Company classifies Receivables, net as current or noncurrent on the Company's Condensed Consolidated Balance Sheet as of December 31, 2019. Receivables, net for the Company's Pharmaceutical segment are classified as a current asset and included in Assets held for sale as of December 31, 2019. See Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, for additional information.

Contract Assets—The Company's contract assets represent revenue recognized for performance obligations completed before an unconditional right to payment exists, and therefore invoicing or associated reporting from the customer regarding the computation of the net product sales has not yet occurred. The Company's contract assets are only attributable to the Pharmaceutical segment, and, as such, are classified as current in Assets held for sale in the Company's Condensed Consolidated Balance Sheet as of December 31, 2019.

<i>(in thousands)</i>	Medical Devices	Pharmaceutical	Total
Contract assets at December 31, 2019	\$ —	\$ 3,512	\$ 3,512
Contract assets recognized	—	(6,730)	(6,730)
Payments received	—	8,562	8,562
Contract assets sold with the Noden subsidiaries	—	(5,344)	(5,344)
Contract assets at September 30, 2020	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

Contract Liabilities—The Company's contract liabilities consist of deferred revenue for products sold to customers for which the performance obligation has not been completed by the Company. The Company classifies Medical Devices deferred revenue as a liability and is included in Other liabilities on the Company's Condensed Consolidated Statement of Net Assets as of September 30, 2020. The Company classified Medical Devices deferred revenue as current or noncurrent based on the timing of when it expected to recognize revenue. The current portion of deferred revenue is included in Accrued liabilities and the noncurrent portion of deferred revenue is included in Other long-term liabilities in the Company's Condensed Consolidated Balance Sheet as of December 31, 2019. The Pharmaceutical deferred revenue is classified as a current liability and included in Liabilities held for sale on the Company's Condensed Consolidated Balance Sheet as of December 31, 2019.

<i>(in thousands)</i>	Medical Devices	Pharmaceutical	Total
Contract liabilities at December 31, 2019	\$ 1,075	\$ 2,949	\$ 4,024
Contract liabilities recognized	658	1,659	2,317
Amounts recognized into revenue	(851)	(888)	(1,739)
Contract liabilities sold with the Noden subsidiaries	—	(3,720)	(3,720)
Contract liabilities at September 30, 2020	<u>\$ 882</u>	<u>\$ —</u>	<u>\$ 882</u>

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18. Segment Information

Information regarding the Company's segments for the two and eight months ended August 31, 2020 and three and nine months ended September 30, 2019 is as follows:

<i>Revenues by segment</i>	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019
<i>(in thousands)</i>				
Medical Devices	\$ 4,078	\$ 8,076	\$ 15,211	\$ 22,224
Strategic Positions	—	—	—	—
Pharmaceutical	—	—	—	—
Income Generating Assets	37	(45)	110	(39)
Total revenues	\$ 4,115	\$ 8,031	\$ 15,321	\$ 22,185

The table above excludes revenues related to discontinued operations. See Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, for additional information.

<i>Income (loss) by segment</i>	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019
<i>(in thousands)</i>				
Medical Devices	\$ 216	\$ (3,323)	\$ (4,454)	\$ (6,216)
Strategic Positions ⁽¹⁾	—	(4,738)	(15,723)	14,306
Pharmaceutical ⁽¹⁾	687	(2,123)	(15,855)	3,177
Income Generating Assets ⁽¹⁾	2,201	(7,600)	(37,217)	(26,790)
Total	3,104	(17,784)	(73,249)	(15,523)
Change in fair value of warrants not allocated to segments ⁽²⁾	1,294	—	(4,047)	—
Net income (loss) attributable to PDL's shareholders	\$ 4,398	\$ (17,784)	\$ (77,296)	\$ (15,523)

⁽¹⁾ The Income (loss) by segment presented above includes amounts related to both continuing and discontinued operations. See Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, for additional information.

⁽²⁾ The change in fair value of warrants not allocated to segments presented above includes the amounts related to the change in fair value of the Evofem warrants after the distribution of the Evofem common stock to PDL stockholders on May 21, 2020. The Strategic Positions segment ceased to be a reporting segment as of this date.

Information regarding the Company's segments as of December 31, 2019 is as follows:

Long-lived assets by segment

<i>(in thousands)</i>	December 31, 2019
Medical Devices	\$ 2,435
Strategic Positions	—
Pharmaceutical ⁽¹⁾	2,960
Income Generating Assets	125
Total long-lived assets ⁽¹⁾	\$ 5,520

⁽¹⁾ The amounts above include Property and Equipment in the Pharmaceutical segment classified as Assets held for sale. See Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, for additional information.

The operations for the Medical Devices segment are primarily located in the United States and the operations for the Pharmaceutical segment were primarily located in Italy, Ireland and the United States.

19. Income Taxes

On March 27, 2020 the CARES Act was enacted in response to the COVID-19 pandemic. The CARES Act, among other provisions, permits Net Operating Loss (“NOL”) carryovers and carrybacks to offset 100% of taxable income for taxable years beginning before 2021. In addition, the CARES Act allows NOLs incurred in 2018, 2019, and 2020 to be carried back to each of the five preceding taxable years to generate a refund of previously paid income taxes. The Company was a significant taxpayer in the earlier eligible carryback years and expects that the NOL carryback provision of the CARES Act will result in a material cash benefit as a result of the 2020 ordinary tax losses being generated and, to a lesser degree, for the 2019 tax year.

Historically, we calculated our provision for income taxes during interim reporting periods by applying the estimated annual effective tax rate for the full fiscal year to pre-tax income or loss. Upon the Company’s adoption of the liquidation basis of accounting, we employ the discrete method of determining our tax provision based on the pre-tax results for the eight month period ending August 31, 2020 and the one month period ending September 30, 2020.

Income tax benefit from continuing operations for the two months ended August 31, 2020 and three months ended September 30, 2019, was \$3.6 million and \$3.1 million, respectively, and for the eight months ended August 31, 2020 and nine months ended September 30, 2019, was \$17.8 million and \$6.6 million, respectively, which in the current period resulted primarily from anticipated use of NOL carrybacks as allowed by the CARES Act. The Company’s effective tax rate for the current year periods differs from the U.S. federal statutory rate of 21% due primarily to the effect of state income taxes, non-deductible executive compensation and the tax provisions of the CARES Act.

The CARES Act receivable included in Income tax receivable on the Condensed, Consolidated Statement of Net Assets as of September 30, 2020 is \$80.5 million and includes, in addition to the losses from operations, the ordinary losses incurred on the Noden transaction and the sale of the royalty assets. See Note 21, *Subsequent Events*, for additional information on the LENSAR spin-off. The Income tax receivable as of September 30, 2020 also includes a refund of \$7.9 million for a prior year overpayment that was requested after the 2016 Internal Revenue Service (the “IRS”) audit was settled.

The uncertain tax positions decreased by \$4.4 million in September 2020 upon settlement of the IRS audit for the tax year 2016. The Company recorded \$1.0 million and \$1.1 million of interest related to uncertain tax positions during the eight months ended August 31, 2020 and the nine months ended September 30, 2019, respectively.

The Company’s income tax returns are subject to examination by U.S. federal, foreign, state and local tax authorities for tax years 2000 forward. In September 2020, the Company settled the IRS audit for the tax year 2016. The Company is currently under audit by the California Franchise Tax Board (the “CFTB”) for the tax years 2009 through 2015. The timing of the resolutions to the CFTB audit and the amount to be ultimately paid, if any, is uncertain. Final resolution of this complex matter could have a material impact on our Condensed Consolidated Financial Statements. The Company believes its accrual for income tax liabilities is appropriate based on past experience, interpretations of tax law and judgments; however, the outcome of these audits could result in the payment of tax amounts that substantially differ from the amounts the Company has reserved resulting in incremental expense or a reversal of the Company’s reserves in a future period. At this time, the Company does not anticipate a material change in the unrecognized tax benefits related to the CFTB audit that would affect the effective tax rate or deferred tax assets over the next 12 months.

See Note 21, *Subsequent Events*, for additional information on the CFTB.

PDL BIOPHARMA, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
(Unaudited)

20. Net Income (loss) per Share

	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019
Net Income (loss) per Basic and Diluted Share				
<i>(in thousands, except per share amounts)</i>				
Numerator				
Net loss from continuing operations	\$ (10,852)	\$ (11,811)	\$ (43,040)	\$ (28,277)
Income (loss) from discontinued operations	\$ 15,236	\$ (6,155)	\$ (34,915)	\$ 12,414
Less: Net loss attributable to noncontrolling interests	\$ (14)	\$ (182)	\$ (659)	\$ (340)
Net income (loss) attributable to PDL's stockholders used to compute net income (loss) per basic and diluted share	\$ 4,398	\$ (17,784)	\$ (77,296)	\$ (15,523)
Denominator				
Total weighted-average shares used to compute net income (loss) attributable to PDL's stockholders, per basic share	113,889	112,986	118,001	119,966
Shares used to compute net income (loss) attributable to PDL's stockholders, per diluted share	113,889	112,986	118,001	119,966
Net income (loss) per share - basic:				
Continuing operations	\$ (0.10)	\$ (0.10)	\$ (0.36)	\$ (0.23)
Discontinued operations	0.14	(0.06)	(0.30)	0.10
Net income (loss) attributable to PDL's stockholders per basic share	<u>\$ 0.04</u>	<u>\$ (0.16)</u>	<u>\$ (0.66)</u>	<u>\$ (0.13)</u>
Net income (loss) per share - diluted:				
Continuing operations	\$ (0.10)	\$ (0.10)	\$ (0.36)	\$ (0.23)
Discontinued operations	0.14	(0.06)	(0.30)	0.10
Net income (loss) attributable to PDL's stockholders per diluted share	<u>\$ 0.04</u>	<u>\$ (0.16)</u>	<u>\$ (0.66)</u>	<u>\$ (0.13)</u>

The Company computes net income (loss) per diluted share using the sum of the weighted-average number of common and common equivalent shares outstanding. Common equivalent shares used in the computation of net income (loss) per diluted share include shares that may be issued pursuant to outstanding stock options and restricted stock awards in each case, on a weighted-average basis for the period they were outstanding, including, if applicable, the underlying shares using the treasury stock method.

The December 2021 Notes and the December 2024 Notes allow for the settlement entirely or partially in cash, and are accounted for under the treasury stock method. Under the treasury stock method, the shares issuable upon conversion of the notes are not included in the calculation of diluted earnings per share except to the extent that the conversion value of the notes exceeds their principal amount. The effect of which, for diluted earnings per share purposes, is that only the number of shares of common stock that would be necessary to settle such excess, if the Company elected to settle such excess in shares, are included in the computation.

December 2021 Notes and December 2024 Notes Capped Call Potential Dilution

In November 2016, the Company issued \$150.0 million in aggregate principal of the December 2021 Notes. The Company entered into an Exchange Transaction in September 2019 through which it exchanged a portion of the December 2021 Notes for the December 2024 Notes with a later maturity of December 2024. Both the notes that mature in December 2021 and those that mature in December 2024 provide in certain situations for the conversion of the outstanding principal amount into shares of the Company's common stock at a predefined conversion rate. In conjunction with the issuance of the December 2021 Notes and the issuance of the December 2024 Notes pursuant to the Exchange Transaction, the Company entered into capped call

transactions with a hedge counterparty. The capped call transactions are expected generally to reduce the potential dilution, and/or offset, to an extent, the cash payments the Company may choose to make in excess of the principal amount, upon conversion of the December 2021 Notes or the December 2024 Notes. The Company has excluded the capped call transaction from the net income (loss) per diluted share computation as such securities would have an anti-dilutive effect and those securities should be considered separately rather than in the aggregate in determining whether their effect on net income (loss) per diluted share would be dilutive or anti-dilutive. For additional information regarding the conversion rates and the capped call transaction related to the Company's December 2021 Notes and December 2024 Notes, see Note 12, *Convertible Senior Notes*.

Anti-Dilutive Effect of Restricted Stock Awards and Stock Options

For the two months ended August 31, 2020 and three months ended September 30, 2019, the Company excluded approximately 0.2 million and 1.0 million shares underlying restricted stock awards, respectively, and for the eight and nine months ended August 31, 2020 and 2019, the Company excluded approximately 0.2 million and 0.8 million shares underlying restricted stock awards, respectively, in each case calculated on a weighted-average basis, from its net income (loss) per diluted share calculations because their effect was anti-dilutive.

For the two months ended August 31, 2020 and three months ended September 30, 2019, the Company excluded approximately 11.9 million and 12.6 million shares underlying outstanding stock options, respectively, and for the eight and nine months ended August 31, 2020 and 2019, the Company excluded approximately 11.9 million and 10.7 million shares underlying outstanding stock options, respectively, in each case calculated on a weighted-average basis, from its net income (loss) per diluted share calculations because their effect was anti-dilutive.

21. Subsequent Events

Spin-off of LENSAR and unaudited proforma information

On October 1, 2020, the Company completed the previously announced spin-off of LENSAR into a new, independent publicly traded company, through a distribution in the form of a dividend of all outstanding shares of LENSAR common stock owned by the Company to holders of the Company's common stock on a pro rata basis (the "Distribution"). The Distribution was made to the Company's stockholders of record as of the close of business on September 22, 2020 (the "Record Date") and such stockholders received 0.075879 shares of LENSAR common stock for every one share of the Company's common stock held as of close of business on the Record Date. Prior to the Distribution, the Company owned approximately 81.5% of LENSAR common stock. The Liquidation Basis net assets of LENSAR presented below have been adjusted to reflect the Company's ownership percentage. Following the completion of the distribution, PDL does not own any equity interest in LENSAR. LENSAR became an independent public company whose stock is listed and trading under the symbol "LNSR" on the Nasdaq Stock Market.

PDL BIOPHARMA, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
(Unaudited)

The September 30, 2020 Condensed Consolidated Statement of Net Assets includes the following assets and liabilities related to LENSAR:

<i>(in thousands)</i>	September 30, 2020
Assets	
Cash and cash equivalents	\$ 42,701
Accounts receivable	2,429
Notes receivable	989
Inventory	13,685
Property and equipment	783
Equipment under lease	3,033
Intangible assets	42,113
Other assets	4,863
Total assets	\$ 110,596
Liabilities	
Accounts payable	\$ 2,349
Other liabilities	7,678
Total liabilities	\$ 10,027
Net assets attributable to LENSAR	\$ 100,569

As a result of the spin-off of LENSAR, the Company expects to realize an estimated tax gain on disposal of \$11.8 million. This is expected to result in a decrease to the Company's Income tax receivable and is not an asset transferred in the spin-off of LENSAR.

The accompanying pro forma Condensed Consolidated Statement of Net Assets as of September 30, 2020 has been prepared to give effect to spin-off of LENSAR and the related tax impact to PDL as if the spin-off was completed as of September 30, 2020. The pro forma financial information is presented for informational purposes only and is not intended to present actual results that would have been attained had the transaction been completed as of September 30, 2020 or to project potential results as of any future date or for any future periods.

Board approval for filing for dissolution

At its November 5, 2020 meeting, the Board approved the filing of a certificate of dissolution with the state of Delaware on January 4, 2021. In connection with the Board approving the filing of a certificate of dissolution with the Secretary of State of Delaware on January 4, 2021, all of the outstanding and unvested stock options and restricted stock granted to the Board accelerated and vested.

Notice of California Franchise Tax Board planned audit

The Company recently received notice, dated November 3, 2020, that the CFTB plans to examine the Company's tax returns for 2016 through 2018.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Quarterly Report on Form 10-Q contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical facts are "forward-looking statements" for purposes of these provisions, including any projections of earnings, revenues or other financial items, any statements of the plans and objectives of management for future operations, including any statements concerning our monetization strategy, plan of liquidation, potential dissolution, any statements regarding future economic conditions or performance, and any statement of assumptions underlying any of the foregoing. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. In some cases, forward-looking statements can be identified by the use of terminology such as "may," "will," "intends," "plans," "believes," "anticipates," "expects," "estimates," "predicts," "potential," "continue" or "opportunity," or the negative thereof or other comparable terminology. The forward-looking statements in this quarterly report are only predictions. Although we believe that the expectations presented in the forward-looking statements contained herein are reasonable at the time they were made, there can be no assurance that such expectations or any of the forward-looking statements will prove to be correct. These forward-looking statements, including with regards to our future financial condition and results of operations, are subject to inherent risks and uncertainties, including but not limited to the risk factors set forth below or incorporated by reference herein, and for the reasons described elsewhere in this Quarterly Report on Form 10-Q. All forward-looking statements and reasons why results may differ included in this Quarterly Report on Form 10-Q are made as of the date hereof. New risk factors and uncertainties may emerge from time to time, and it is not possible for management to predict all risk factors and uncertainties. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise.

OVERVIEW

Throughout our history, our mission has been to improve the lives of patients by aiding in the successful development of innovative therapeutics and healthcare technologies. PDL BioPharma was founded in 1986 as Protein Design Labs, Inc. when it pioneered the humanization of monoclonal antibodies, enabling the discovery of a new generation of targeted treatments that have had a profound impact on patients living with different cancers as well as a variety of other debilitating diseases. In 2006, we changed our name to PDL BioPharma, Inc.

Historically, we generated a substantial portion of our revenues through the license agreements related to patents covering the humanization of antibodies, which we refer to as the Queen et al. patents. In 2012, and in anticipation of declining revenues from the Queen et al. patents, we began providing alternative sources of capital through royalty monetization and debt facilities, and, in 2016, we began acquiring commercial-stage products and launching specialized companies dedicated to the commercialization of these products first with our acquisition of branded prescription pharmaceutical drugs from Novartis AG, Novartis Pharma AG and Speedel Holding AG (collectively, "Novartis") in 2016 and, in 2017, with the acquisition of LENSAR, Inc. ("LENSAR"), a medical device ophthalmology equipment manufacturing company. In 2019, we entered into a securities purchase agreement with Evofem Biosciences, Inc. ("Evofem"), pursuant to which we invested \$60.0 million in a private placement of securities. These investments provided funding for Evofem's pre-commercial activities for Phexxi™, its investigational, non-hormonal, on-demand prescription contraceptive gel for women.

Based on the nature of our investments and as further discussed below, where applicable, our operations were structured in four segments designated as Pharmaceutical, Medical Devices, Income Generating Assets and Strategic Positions.

Our Pharmaceutical segment consisted of revenue derived from branded prescription medicine products acquired by our subsidiary, Noden Pharma DAC, Inc. ("Noden DAC") from Novartis and sold under the name Tekturna® and Tekturna HCT® in the United States, Rasilez® and Rasilez HCT® in the rest of the world, and from revenue generated from the sale of an authorized generic form of Tekturna launched by Noden Pharma USA Inc. ("Noden USA") in the United States (collectively, the "Noden Products").

Our Medical Devices segment consists of revenue derived from the sale and lease of the LENSAR® Laser System, which may include equipment, Patient Interface Devices ("PIDs"), procedure licenses, training, installation, warranty and maintenance agreements.

Our Income Generating Assets segment consists of revenue derived from (i) notes and other long-term receivables, (ii) royalty rights and hybrid notes/royalty receivables, (iii) equity investments and (iv) royalties from issued patents in the United States and elsewhere covering the humanization of antibodies, which we refer to as the Queen et al. patents.

Our Strategic Positions segment consisted of our investment in Evofem.

In September 2019, we engaged financial and legal advisors and initiated a review of our strategy. This review was completed in December 2019. At such time, we disclosed that we planned to halt the execution of our growth strategy, cease making additional strategic transactions and investments and instead pursue a formal process to unlock the value of our portfolio by monetizing our assets and ultimately distributing net proceeds to stockholders (the “monetization strategy”). Pursuant to our monetization strategy, we do not expect to enter into any additional strategic investments. We further announced in December 2019 that we would explore a variety of potential transactions in connection with the monetization strategy, including a whole Company sale, divestiture of our assets, spin-offs of operating entities, merger opportunities or a combination thereof. Over the subsequent months, our board of directors (the “Board”) and management analyzed, together with our outside financial and legal advisors, how to best capture value pursuant to our monetization strategy and best return the significant intrinsic value of the assets in our portfolio to the stockholders.

In February 2020, the Board approved a plan of complete liquidation (the “Plan of Liquidation”) of our assets and passed a resolution to seek stockholder approval to dissolve our company. At our Annual Meeting of Stockholders in August 2020, the proposal to liquidate and dissolve our company pursuant to a plan of dissolution was approved by our stockholders. On November 5, 2020, our Board approved filing a certificate of dissolution with the Secretary of State of Delaware on January 4, 2021 and proceeding to complete the dissolution process for our company in accordance with the Delaware General Corporate Law. As a consequence of the filing of the certificate of dissolution, we will close our stock transfer books as of the Final Record Date. After such time, we will not record any further transfers of our common stock, except pursuant to the provisions of a deceased stockholder’s will, intestate succession, or by operation of law and we will not issue any new stock certificates, other than replacement certificates. In addition, after the Final Record Date, we will not issue any shares of our common stock upon exercise of outstanding stock options. As a result of the closing of our transfer books, it is anticipated that distributions, if any, made in connection with the dissolution will be made pro rata to the same stockholders of record as the stockholders of record as of the Final Record Date, and it is anticipated that no further trading of our common stock will occur after the Final Record Date. In accordance with our dissolution plan, we intend to begin the voluntary delisting process from the Nasdaq Stock Market exchange so that such delisting will occur at market close on December 31, 2020 and we do not anticipate transferring into OTC trading.

Pursuant to our monetization strategy, we explored a variety of potential transactions, including a whole Company sale, divestiture of assets, spin-offs of operating entities, merger opportunities or a combination thereof. In addition, we analyzed, and continue to analyze, optimal mechanisms for returning value to stockholders in a tax-efficient manner, including share repurchases, cash dividends and other distributions of assets. Despite the challenges of COVID-19, we made significant progress in our monetization strategy during 2020, including monetizing most of our key assets and resolving a longstanding legal issue as follows:

- In May 2020, we distributed all of our common stock in Evofem to our stockholders
- In August 2020, we entered into a settlement agreement (the “Settlement Agreement”) with related entities of Defined Diagnostics, LLC (f/k/a Wellstat Diagnostics, LLC) (“Wellstat Diagnostics” and, together with such related entities, the “Wellstat Parties”) resolving previously reported litigation relating to loans made to Wellstat Diagnostics by us
- In August 2020, we sold three royalty interests related to third party sales of Kybella[®], Zalviso[®], and Coflex[®]
- In September 2020, we completed the previously announced sale of our interest in Noden DAC and Noden USA
- In October 2020, we completed the previously announced spin-off of LENSAR, our majority-owned medical device company, whereby we distributed in the form of a dividend all of our shares of LENSAR common stock to our stockholders as of September 22, 2020.

The Settlement Agreement with the Wellstat Parties provides for the payment of \$7.5 million upon the signing of the Settlement Agreement, which has been received, and either (1) \$5.0 million by February 10, 2021 and \$55.0 million by July 26, 2021; or (2) \$67.5 million by July 26, 2021. If the Wellstat Parties fail to make payment in full by July 26, 2021, we are authorized to record and confess judgment against the Wellstat Parties for an amount of \$92.5 million or such lesser amount as may be owed under the Settlement Agreement.

The proceeds from the sale of the three royalty interests total \$4.35 million, 90% of which was received at the closing of the transaction. The remaining 10% is currently held in escrow against certain potential contingencies and is to be released on the one-year anniversary of the closing, subject to the satisfaction of any such potential contingencies.

On July 30, 2020, we signed a definitive agreement for the sale of our interest in Noden DAC and Noden USA to CAT Capital Bidco Limited (“Stanley Capital”). In accordance with the terms of the agreement, we will receive consideration of up to \$52.8 million. Stanley Capital made an initial cash payment to us of \$12.2 million on the September 9, 2020 closing date. We are also entitled to recover \$0.5 million related to value-added tax (“VAT”) for inventory purchases from Novartis. The agreement provides for an additional \$33.3 million to be paid to us in twelve equal quarterly installments from January 2021 to October 2023. An additional \$3.9 million will be paid in four equal quarterly installments from January 2023 to October 2023. The agreement also provides for the potential for additional contingent payments to us. We are entitled to receive \$2.5 million upon Stanley Capital or any of its affiliates entering into a binding agreement for a specified transaction within one year of the closing date. We are also entitled to 50% of a license fee from a third party distributor within 10 days of receipt by Noden. Upon closing, we recorded a gain of \$0.2 million. In connection with the closing of the transaction, the guaranty agreement between Novartis and us which guaranteed certain payments owed to Novartis by Noden was terminated.

We intend to pursue monetization of our remaining assets in a disciplined and cost-effective manner to maximize returns to stockholders. At the same time, we recognize that accelerating the timeline to complete our monetization process, while continuing to optimize asset value, could increase returns to stockholders due to reduced general and administrative expenses as well as provide for faster returns to stockholders. While we are cognizant that an accelerated timeline may provide greater and faster returns to our stockholders, we also recognize that the duration and extent of the public health issues related to the COVID-19 pandemic make it possible, and perhaps probable, that the timing of the sale of all or substantially all of our remaining assets may require additional time to execute or for us to pursue alternatives to the sale of these assets. For example, if a suitable offer to purchase the remaining royalty assets is not received prior to or during the dissolution process, they could be retained by the dissolved entity and ultimately placed in a liquidating trust. The available proceeds from either the ongoing collection of royalty income or from the sale of the royalty assets would ultimately be distributed to our stockholders. We will continue to assess the market for our remaining assets to determine the appropriate time to sell them or to opt for alternative paths to return their value to our stockholders.

Following is a discussion of our current and historical segments.

Medical Devices

LENSAR

LENSAR is a commercial-stage medical device company focused on designing, developing and marketing an advanced femtosecond laser system for the treatment of cataracts and the management of pre-existing or surgically induced corneal astigmatism. LENSAR’s femtosecond laser uses proprietary advanced imaging and laser technology to customize planning and treatments, allowing faster visual recovery and improved outcomes, as compared to conventional cataract surgery, a more manual procedure combined with ultrasound, referred to as phacoemulsification. LENSAR has developed the LENSAR® Laser System, which is the only femtosecond cataract laser built specifically for refractive cataract surgery. LENSAR has over 95 granted patents in the United States and the rest of the world and over 55 pending patent applications in the United States and the rest of the world.

Cataract surgery is the highest volume surgical procedure performed worldwide; prior to the COVID-19 pandemic, 30 million surgeries were projected to be completed in 2020, the majority of which were expected to use conventional phacoemulsification techniques. LENSAR is currently focusing its research and development efforts on a next-generation, integrated workstation, ALLY™, which combines an enhanced femtosecond laser with a phacoemulsification system in a compact, mobile workstation that is designed to allow surgeons to perform a femtosecond laser assisted cataract procedure in a single operating room using a single device. LENSAR’s recent acquisitions of certain intellectual property uniquely position LENSAR to develop a system that can perform all cataract surgeries in a single platform. LENSAR expects this combination product would be a meaningful advancement and will provide significant administrative and financial benefit to a surgeon’s practice at a cost that is less than the cost of its current system.

The LENSAR® Laser System offers cataract surgeons automation and customization for their astigmatism treatment planning and other essential steps of the refractive cataract surgery procedure with the highest levels of precision, accuracy, and efficiency. These features assist surgeons in managing their astigmatism treatment plans for optimal overall visual outcomes.

The LENSAR[®] Laser System has been cleared by the Food and Drug Administration (“FDA”) for anterior capsulotomy, lens fragmentation, corneal and arcuate incisions. The LENSAR Laser with Augmented Reality[™] provides an accurate 3-D model of the relevant anatomical features of each patient’s anterior segment, allowing precise laser delivery and enhanced surgical confidence in performing accurate corneal incisions, precise size, shape and location of free-floating capsulotomies, and efficient lens fragmentation for all grades of cataracts. The LENSAR[®] Laser System - fs 3D (LLS-fs 3D) with Streamline[™] includes the integration with multiple pre-operative diagnostic devices, utilizing automated Iris Registration with automatic cyclorotation adjustment. IntelliAxis-C[™] (corneal) and IntelliAxis-L[™] (lens capsule) markers provide the surgeon tools for simple and precise alignment without errors associated with manually transposing the preoperative data, and marking the eye for incisions and implantation of Toric IOLs as well as treatment planning tools for precision guided laser treatments. The corneal incision-only mode, expanded remote diagnostics capabilities, additional pre-programmable preferences, thoughtful ergonomics, and up to 20 seconds faster laser treatment times with Streamline[™] allow for seamless integration and maximum surgical efficiency with patient comfort.

On October 1, 2020 of all outstanding shares of LENSAR common stock held by us were distributed to our holders of common stock as of September 22, 2020 (the “Record Date”). On October 1, each of our stockholders as of the Record Date received 0.075879 shares of LENSAR common stock for every one share of our common stock held by such holders. LENSAR continues to own and operate its femtosecond laser system business following completion of the distribution. As of October 1, 2020 LENSAR became an independent, publicly traded company listed on the Nasdaq Stock Market under the symbol “LNSR.”

Strategic Positions

Evofem

We invested \$60.0 million in Evofem in the second quarter of 2019, representing approximately a 27% ownership interest in the company as of March 31, 2020. The transaction was structured in two tranches. The first tranche comprised \$30.0 million, which was funded on April 11, 2019. We invested an additional \$30.0 million in a second tranche on June 10, 2019, alongside two existing Evofem stockholders, who each invested an additional \$10.0 million. On May 21, 2020 we announced that we had completed the distribution of all of our 13,333,334 shares of common stock of Evofem to our stockholders, which represented approximately 26.7% of the outstanding shares of Evofem common stock as of the close of business on May 15, 2020. Following the distribution, we continue to hold warrants to purchase up to 3,333,334 shares of Evofem common stock.

Evofem is a commercial-stage biopharmaceutical company committed to developing and commercializing innovative products to address unmet needs in women’s sexual and reproductive health. Evofem is leveraging its proprietary Multipurpose Vaginal pH Regulator (MVP-R[™]) platform for its first commercial product Phexxi[™] (L-lactic acid, citric acid and potassium bitartrate) for hormone-free birth control. On May 22, 2020 Phexxi[™] was approved by the U.S. Food and Drug Administration for the prevention of pregnancy in women who choose to use on demand methods for their contraceptive needs.

As of June 30, 2020, the Strategic Positions segment was classified as discontinued operations.

Pharmaceutical

Noden

On July 1, 2016, our subsidiary, Noden DAC, entered into an asset purchase agreement (“Noden Purchase Agreement”) whereby it purchased from Novartis the exclusive worldwide rights to manufacture, market, and sell the Noden Products and certain related assets and assumed certain related liabilities (the “Noden Transaction”). Noden DAC and Noden USA, together, and including their respective subsidiaries represented deployed capital of \$191.2 million.

Tekturna (or Rasilez outside of the United States) contains aliskiren, a direct renin inhibitor, for the treatment of hypertension. While indicated as a first line treatment, it is more commonly used as a third line treatment in those patients who are intolerant of angiotensin-receptor blockers (“ARBs”) or angiotensin converting enzyme inhibitors (“ACEIs”). Studies indicate that approximately 12% of hypertension patients are ARB/ACEI intolerant. Tekturna and Rasilez are not indicated for use with ARBs and ACEIs in patients with diabetes or renal impairment and are contraindicated for use by pregnant women. In March

2019, we launched an authorized generic (“AG”) form of Tekturna, aliskiren hemifumarate 150 mg and 300 mg tablets with the same drug formulation as Tekturna. The AG is distributed by Prasco, LLC d/b/a Prasco Laboratories.

Tekturna HCT is a combination of aliskiren and hydrochlorothiazide, a diuretic, for the treatment of hypertension in patients not adequately controlled by monotherapy and as an initial therapy in patients likely to need multiple drugs to achieve their blood pressure goals. It is not indicated for use with ACEIs and ARBs in patient with diabetes or renal impairment, or for use in patients with known anuria or hypersensitivity to sulfonamide derived drugs and is contraindicated for use by pregnant women.

The Noden Products are protected by multiple patents worldwide, which specifically cover the composition of matter, the pharmaceutical formulations and methods of production. In the United States, the FDA Orange Book for Tekturna lists U.S. Patent No. 8,617,595, which covers certain compositions comprising aliskiren, together with other formulation components, and will expire on February 19, 2026. The FDA Orange Book for Tekturna HCT lists U.S. patent Nos. 8,618,172, which expires on July 13, 2028 and 9,023,893, which expires March 3, 2022, which patents cover certain compositions comprising aliskiren and hydrochlorothiazide, together with other formulation components. In Europe, European patent No. 678 503B (the “503B Patent”) expired in 2015. However, numerous Supplementary Protection Certificates (“SPCs”) have been granted which are based on the ‘503B Patent and which provide for extended protection. These SPCs generally expired in April of 2020. European Patent Publication Number 2 305 232, which covers certain pharmaceutical compositions comprising aliskiren and HCT, will expire in December 2021.

On September 9, 2020, we sold 100% of our interests in our wholly owned subsidiaries Noden DAC and Noden USA to a third party.

Income Generating Assets

Our income generating assets segment is comprised of (i) notes and other long-term receivables, (ii) royalty rights and hybrid notes/royalty receivables, (iii) equity investments and (iv) royalties from the Queen et. al patents.. Following is a summary of our more significant investments included in the Income Generating Assets segment:

Investment	Investment Type	Deployed Capital (⁽²⁾ <i>(in millions)</i>)
Assertio ⁽¹⁾	Royalty	\$ 260.5
U-M	Royalty	\$ 65.6
CareView Communications, Inc. (“CareView”)	Debt	\$ 20.0

⁽¹⁾ Formerly Depomed, Inc.

⁽²⁾ Excludes transaction costs.

Additionally, we have several other investments in our Income Generating Assets segment included in our condensed consolidated balance sheet not reflected above and the rights to proceeds from additional contractual and other sources associated with previous investments which are not included in our condensed consolidated balance sheet as they are not considered probable of providing future economic benefit at this time. Additional assets included in our condensed consolidated balance sheet include:

- Warrants to purchase shares of common stock of Evofem, as discussed further below
- Warrants to purchase common stock of CareView
- Our equity investment in AEON and Alphaeon 1, LLC (formerly Alphaeon Corporation and currently and collectively referred to as “AEON”)

Following is further discussion of the assets included in the Income Generating Assets segment:

Royalty Rights - At Fair Value

We have entered into various royalty purchase agreements with counterparties, whereby the counterparties convey to us the right to receive royalties that are typically payable on sales revenue generated by the sale, distribution or other use of the counterparties' products.

Our royalty rights are classified as held for sale. We record the royalty rights at fair value using discounted cash flows related to the expected future cash flows to be received less estimated selling costs. We use significant judgment in determining our valuation inputs, including estimates as to the probability and timing of future sales of the licensed product. A third-party expert is generally engaged to assist us with our estimate of the expected future cash flows. The estimated fair value of the asset is subject to variation should those cash flows vary significantly from our estimates. At each reporting period, an evaluation is performed to assess those estimates, discount rates utilized and general market conditions affecting fair market value.

During the third quarter of 2020 we sold our royalty interests for Coflex[®], Zalviso[®], and Kybella[®] to SWK Funding, LLC, a wholly owned subsidiary of SWK Holdings Corporation. At September 30, 2020, we had two royalty rights transactions outstanding.

Notes and Other Long-Term Receivables

We have entered into credit agreements with borrowers across the healthcare industry, under which we made available cash loans to be used by the borrower. Obligations under these credit agreements are typically secured by a pledge of substantially all the assets of the borrower and any of its subsidiaries. At September 30, 2020, we had one note receivable transaction outstanding.

Equity Investments

In the past, we have received equity instruments, including shares of stock or warrants to acquire shares of stock, in connection with credit agreements we entered into with borrowers in the healthcare industry. Our investment objective with respect to these equity investments was to maximize our return through capital appreciation and, when appropriate, to capture the value through optimally timed exit strategies. At September 30, 2020, our equity investments consisted of shares of common stock in AEON Biopharma, Inc. and Alphaeon 1, LLC, received in connection with the loans made to LENSAR by us prior to our acquisition of LENSAR and warrants to acquire shares of common stock of CareView that were received in connection with our loan.

Royalties from Queen et al. patents and know-how

We have been issued patents in the United States and elsewhere, covering the humanization of antibodies, which we refer to as our Queen et al. patents. Our Queen et al. patents, for which final patent expiry was in December 2014, covered, among other things, humanized antibodies, methods for humanizing antibodies, polynucleotide encoding in humanized antibodies and methods of producing humanized antibodies.

We previously entered into licensing agreements under our Queen et al. patents with numerous entities that are independently developing or have developed humanized antibodies. Under our licensing agreements, we were typically entitled to receive a flat-rate royalty based upon our licensees' net sales of covered antibodies. The royalties under these agreements have substantially ended with the exception of solanezumab, a Lilly-licensed humanized monoclonal antibody being tested in a study of older individuals who may be at risk of memory loss and cognitive decline due to Alzheimer's disease. Lilly has characterized the study as an assessment of whether an anti-amyloid investigational drug (solanezumab) in older individuals who do not yet show symptoms of Alzheimer's disease cognitive impairment or dementia can slow memory loss and cognitive decline. The study will also test whether solanezumab treatment can delay the progression of Alzheimer's disease-related brain injury on imaging and other biomarkers. If solanezumab is approved and commercialized pursuant to this clinical trial or another, we would be entitled to receive a royalty based on a "know-how" license for technology provided in the design of this antibody. The 2% royalty on net sales is payable for 12.5 years after the product's first commercial sale. The above described study is currently in Phase 3 testing with an estimated study completion date of January, 2023.

Economic and Industry-wide Factors

Various economic and industry-wide factors are relevant to our business, including changes to laws and interpretation of those laws that protect our intellectual property rights, our licensees' ability to obtain or retain regulatory approval for products licensed under our patents, fluctuations in foreign currency exchange rates, the ability to attract, retain and integrate qualified personnel, as well as overall global economic conditions. We actively monitor economic, industry and market factors affecting our business; however, we cannot predict the impact such factors may have on our future results of operations, liquidity and cash flows.

On March 11, 2020, the World Health Organization declared a global pandemic, as the outbreak of a novel strain of coronavirus spread throughout the world. The outbreak of COVID-19 has disrupted our business operations and has adversely impacted LENSAR. Actions taken to mitigate coronavirus have had and are expected to continue to have an adverse impact on the geographical areas in which LENSAR operates. Cataract surgery is typically considered an elective surgery and as such the majority of LENSAR's customers are not utilizing the LENSAR Laser Systems as they normally would at this time. LENSAR has also experienced minor supply chain disruptions. The full extent to which the COVID-19 outbreak will impact our business, results of operations, financial condition and cash flows will depend on future developments that are highly uncertain and the estimates of the impact on our business may change based on new information that may emerge concerning COVID-19 and the actions to contain it or treat its impact and the economic impact on local, regional, national and international markets.

The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was signed into law at the end of March 2020 and contains numerous forms of economic stimulus, including SBA guaranteed loans and certain income tax provisions. The tax provisions of the CARES Act, among other things, allows for a five year carryback of net operating losses for tax years 2018-2020.

See also the risk factors included herein in "Item 1A. Risk Factors" and in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019 and in subsequent filings for additional factors that may impact our business and results of operations.

Critical Accounting Policies and Use of Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which we have prepared in accordance with U.S. generally accepted accounting principles. As discussed further below, the results of operations for the two and eight months ended August 31, 2020 and for the 2019 periods have been prepared under the going concern basis of accounting ("Going Concern Basis") whereas the financial statement information presented as of and for the one month period ended September 30, 2020 is prepared under the liquidation basis of accounting ("Liquidation Basis").

The preparation of these financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the amounts reported in our financial statements and accompanying notes. The accounting estimates that require management's most significant, difficult and subjective judgments include the estimated sales proceeds of our assets in liquidation and estimated settlement amounts of our liabilities as well as the estimated revenue and operating expenses during dissolution that are projected under the Liquidation Basis, the valuation of royalty rights, assets and liabilities held for sale, product revenue recognition and allowance for customer rebates and allowances, the valuation of notes receivable and inventory, the assessment of recoverability of intangible assets and their estimated useful lives, the valuation and recognition of stock-based compensation, the recognition and measurement of current and deferred income tax assets and liabilities, including amounts recoverable under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, and the valuation of warrants to acquire shares of common stock. Furthermore, the impact on accounting estimates and judgments on our financial condition and results of operations due to COVID-19 has introduced additional uncertainties. We base our estimates, where possible, on our historical experience, known trends and events and various other factors that we believe are reasonable under the circumstances, which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

During the quarter ended March 31, 2020, we reclassified our Pharmaceutical segment and the royalty right assets within the Income Generating Assets segment to assets held for sale. During the quarter ended June 30, 2020, we distributed the shares of Evofem common stock within the Strategic Positions segment and reclassified the financial results of that segment as discontinued operations and the remaining assets are reclassified as held for sale. Assets and liabilities are classified as held for

sale when all of the following criteria for a plan of sale have been met: (1) management, having the authority to approve the action, commits to a plan to sell the assets; (2) the assets are available for immediate sale, in their present condition, subject only to terms that are usual and customary for sales of such assets; (3) an active program to locate a buyer and other actions required to complete the plan to sell the assets have been initiated; (4) the sale of the assets is probable and is expected to be completed within one year; (5) the assets are being actively marketed for a price that is reasonable in relation to their current fair value; and (6) actions required to complete the plan indicate that it is unlikely that significant changes to the plan will be made or the plan will be withdrawn. When all of these criteria have been met, the assets (and liabilities) are classified as held for sale in the balance sheet for the current and comparative reporting periods. Assets classified as held for sale are reported at the lower of their carrying value or fair value less costs to sell. Depreciation and amortization of assets ceases upon designation as held for sale. The assets and liabilities held for sale are recorded on our Condensed Consolidated Balance Sheet as Assets held for sale and Liabilities held for sale, respectively, as of December 31, 2019. The profits and losses are presented on the Condensed Consolidated Statements of Operations as discontinued operations for the applicable current and prior periods.

In August 2020, as a result of the approval of our stockholders to pursue dissolution of our company and return capital to our stockholders, our basis of accounting in accordance with GAAP transitioned from the Going Concern Basis to the Liquidation Basis, effective September 1, 2020. Under the Liquidation Basis, all assets are stated at their estimated liquidation value. Contractual liabilities under the Liquidation Basis are measured in accordance with applicable GAAP and all other liabilities are stated at their estimated settlement amounts over the remaining estimated liquidation period.

Other than the adoption of the Liquidation Basis of Accounting on September 1, 2020, there have not been any other significant changes to our critical accounting policies and estimates during the nine months ended September 30, 2020, from those presented in Part II, Item 7 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, that are of significance, or potential significance, to us. Summarized below are the accounting pronouncements and policies adopted subsequent to December 31, 2019.

Adopted Accounting Pronouncements

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses: Measurement of Credit Losses on Financial Instruments*. The guidance amends the impairment model to utilize an expected loss methodology in place of the currently used incurred loss methodology, which will result in more timely recognition of losses. The Company adopted ASU No. 2016-13 on January 1, 2020 using a modified retrospective approach. The adoption of this standard did not have a material impact on the Company's consolidated financial statements. As a consequence of adopting ASU 2016-13, the Company's accounts receivable accounting policy has been updated, as follows:

Accounts and Notes Receivable

The Company makes estimates of the collectability of accounts receivable. In doing so, the Company analyzes historical bad debt trends, customer credit worthiness, current economic trends and changes in customer payment patterns when evaluating the adequacy of the allowance for credit losses. Amounts are charged off against the allowance for credit losses when the Company determines that recovery is unlikely and the Company ceases collection efforts. The Company applies the practical expedient for its collateral-dependent notes receivable. Estimated credit losses are based on the fair value of the collateral (less costs to sell, as applicable).

In April 2020, the FASB issued a staff question-and-answer document, "Topic 842 and Topic 840: Accounting for Lease Concessions Related to the Effects of the COVID-19 Pandemic" (the "COVID-19 Q&A"), to address certain frequently-asked questions pertaining to lease concessions arising from the effects of the COVID-19 pandemic. Existing lease guidance requires entities to determine if a lease concession was a result of a new arrangement reached with the lessee (which would be addressed under the lease modification accounting framework) or if a lease concession was under the enforceable rights and obligations within the existing lease agreement (which would not fall under the lease modification framework). The COVID-19 Q&A clarifies that entities may elect to not evaluate whether lease-related relief granted in light of the effects of COVID-19 is a lease or obligations of the lease. This election is available for concessions that result in the total payments required by the modified contract being substantially the same or less than the total payments required by the original contract.

As a result of the COVID-19 pandemic, LENSAR entered into agreements with 23 customers through which LENSAR agreed to waive monthly rental and minimum monthly license fees ranging from one to four months for an aggregate of \$0.9 million of revenue for the eight months ended August 31, 2020, consisting of \$0.5 million in Product revenue, \$0.3 million in Lease

revenue, and \$0.1 million in Service revenue. In return for these concessions the related contracts were extended by the same number of months waived. No amounts of accounts receivable or notes receivable were deemed uncollectible due to COVID-19 during the 2020 periods presented herein; however, the Company considered the effects of COVID-19 in estimating its credit losses for the period.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement*. The new guidance modifies disclosure requirements related to fair value measurement. The Company adopted ASU No. 2018-13 on January 1, 2020. The adoption did not have an effect on the Consolidated Financial Statements on the adoption date and no adjustment to prior year Consolidated Financial Statements was required.

In August 2018, the FASB issued ASU No. 2018-15, *Intangibles-Goodwill and Other-Internal-Use Software*. The new guidance reduces complexity for the accounting for costs of implementing a cloud computing service arrangement and aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal use software license). The Company adopted ASU No. 2018-15 on January 1, 2020 using the prospective transition option. The adoption did not have an effect on the Consolidated Financial Statements on the adoption date and no adjustment to prior year Consolidated Financial Statements was required.

Recently Issued Accounting Pronouncements

In December 2019, the FASB issued ASU 2019-12, which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. For public companies, the amendments in ASU No. 2019-12 are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. The Company is currently evaluating the impact of this guidance on its Consolidated Financial Statements.

Operating Results

As noted above, during the quarter ended March 31, 2020, we reclassified our Pharmaceutical segment and the royalty right assets within the Income Generating Assets segment to assets held for sale. When the held for sale criteria have been met, depreciation and amortization of those assets is suspended and the profits and losses are presented on the Condensed Consolidated Statements of Operations as discontinued operations. During the quarter ended June 30, 2020, we distributed the Evofem common stock and reclassified the investment as a discontinued operation. The operating results presented below are segregated between continuing operations and discontinued operations. Results from the prior year comparative period are classified consistently with the current year presentation. During the quarter ended September 30, 2020, we transitioned from the Going Concern Basis of accounting to the Liquidation Basis of accounting. Our results of operations presented below discuss the two and eight month periods ended August 31, 2020 and the three and nine month periods ended September 30, 2019 under the Going Concern Basis.

Two and eight months ended August 31, 2020, compared to three and nine months ended September 30, 2019

Revenues

<i>(dollars in thousands)</i>	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Change from Prior Year %	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019	Change from Prior Year %
Revenues						
Product revenue, net ⁽¹⁾	\$ 2,831	\$ 5,856	(52%)	\$ 10,946	\$ 15,860	(31%)
Lease revenue	703	1,322	(47%)	2,139	3,854	(44%)
Service revenue	544	898	(39%)	2,126	2,510	(15%)
Royalties from Queen et al. patents	—	—	N/M	—	9	N/M
License and other	37	(45)	(182%)	110	(48)	(329%)
Total revenues	\$ 4,115	\$ 8,031	(49%)	\$ 15,321	\$ 22,185	(31%)

N/M Not meaningful

⁽¹⁾ Our Product revenue, net, Lease revenue, and Service revenue consists entirely of revenue from our Medical Devices segment. We record Product revenue, net from our LENSAR product sales which include LENSAR[®] Laser Systems, disposable consumables, procedure licenses, training, and installation. We record Lease revenue from the lease of LENSAR[®] Laser Systems. We record Service revenue from warranty and maintenance services.

Product sales for our Pharmaceutical segment are included in Income (loss) from discontinued operations and are net of estimated product returns, pricing discounts, including rebates offered pursuant to mandatory federal and state government programs, chargebacks, prompt pay discounts, distribution fees and co-pay assistance for product sales each period. See Note 3, *Discontinued Operations Classified as Assets Held for Sale under Going Concern Basis*, for additional information on our Pharmaceutical product sales.

Two Months Ended August 31, 2020

Total revenues were \$4.1 million for the two months ended August 31, 2020, compared with \$8.0 million for the three months ended September 30, 2019. Our total revenues decreased by 49%, or \$3.9 million, for the two months ended August 31, 2020, when compared to the prior year three-month period. The decrease was driven by the impact of the COVID-19 pandemic on the Medical Devices segment and the associated decline in elective surgical procedures in North America and the rest of the world in addition to the shorter measurement period in the current year due to the transition to Liquidation Basis of accounting on September 1, 2020.

Eight Months Ended August 31, 2020

Total revenues were \$15.3 million for the eight months ended August 31, 2020, compared with \$22.2 million for the nine months ended September 30, 2019. Our total revenues decreased by 31%, or \$6.9 million, for the eight months ended August 31, 2020, when compared to the prior year nine-month period. The decrease was primarily driven by the impact of the COVID-19 pandemic on the Medical Devices segment and the associated decline in elective surgical procedures in addition to the shorter measurement period in the current year.

Operating Expenses

<i>(dollars in thousands)</i>	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Change from Prior Year %	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019	Change from Prior Year %
Cost of product revenue, (excluding intangible amortization)	\$ 1,127	\$ 4,765	(76)%	\$ 6,626	\$ 13,494	(51)%
Amortization of intangible assets	204	321	(36)%	841	983	(14)%
General and administrative	7,224	10,062	(28)%	29,695	27,067	10%
Severance and retention	2,400	—	N/M	24,713	—	N/M
Sales and marketing	835	1,545	(46)%	3,322	4,980	(33)%
Research and development	1,053	4,310	(76)%	4,374	6,106	(28)%
Total operating expenses	\$ 12,843	\$ 21,003	(39)%	\$ 69,571	\$ 52,630	32%
Percentage of total revenues	312 %	262 %		454 %	237 %	

N/M Not meaningful

Two Months Ended August 31, 2020

Total operating expenses were \$12.8 million for the two months ended August 31, 2020, compared with \$21.0 million for the three months ended September 30, 2019 reflecting a decrease of \$8.2 million or 39%. The decrease was primarily a result of:

- lower general and administrative expenses, primarily due to a shorter measurement period due to our transition to the Liquidation Basis of accounting,
- lower research and development in our Medical Devices segment as LENSAR expensed acquired intellectual property acquired in the prior period,
- lower cost of product revenue, due to decreased sales in our Medical Devices segment for the above-noted reasons, and
- lower sales and marketing expenses in our Medical Devices segment due to the impact of COVID-19, partially offset by
- severance and retention recorded in the current year period with no corresponding expense in the prior year period.

General and administrative expenses for the two months ended August 31, 2020 and three months ended September 30, 2019 are summarized in the table below:

(in thousands)	Two Months Ended August 31, 2020			Three Months Ended September 30, 2019		
	Medical Devices	Income Generating Assets	Total	Medical Devices	Income Generating Assets	Total
Compensation	\$ 463	\$ 1,319	\$ 1,782	\$ 855	\$ 4,867	\$ 5,722
Salaries and Wages (including taxes)	449	885	1,334	454	1,449	1,903
Bonuses (including accruals)	(192)	404	212	261	1,465	1,726
Equity	206	30	236	140	1,953	2,093
Asset management	—	1,499	1,499	—	418	418
Business development	—	123	123	—	614	614
Accounting and tax services	720	1,821	2,541	6	834	840
Other professional services	77	398	475	291	450	741
Other	256	548	804	462	1,265	1,727
Total general and administrative ⁽¹⁾	\$ 1,516	\$ 5,708	\$ 7,224	\$ 1,614	\$ 8,448	\$ 10,062

⁽¹⁾No general and administrative operating expenses were attributable to the Pharmaceutical or Strategic Positions segments for the two months ended August 31, 2020 or the three months ended September 30, 2019. See *Assets held for sale and discontinued operations* below, for additional information on our Pharmaceutical segment.

Eight Months Ended August 31, 2020

Total operating expenses were \$69.6 million for the eight months ended August 31, 2020, compared with \$52.6 million for the nine months ended September 30, 2019 reflecting an increase of \$16.9 million or 32%. The increase was primarily a result of:

- provisions under our Wind-Down Retention Plan, which, as a result of the adoption of the Plan of Liquidation, accelerated the vesting of outstanding stock awards for employees in the first quarter of 2020, and
- higher general and administrative expenses of \$2.6 million, or 10% from the prior period, primarily due to increased professional fees associated with our monetization plan, partially offset by
- lower research and development expenses in our Medical Devices segment,
- lower cost of product revenue, due to decreased sales in our Medical Devices segment, and
- lower sales and marketing expenses in our Medical Devices segment due to the impact of COVID-19.

After we announced our monetization strategy, we recognized that our ability to execute on our plan and optimize returns to our stockholders depended to a large extent on our ability to retain the necessary expertise to effectively transact with respect to our assets. On December 21, 2019, the Compensation Committee of the Board adopted the Wind Down Retention Plan in which our executive officers and other employees who are participants in our Severance Plan are eligible to participate. Under the Wind Down Retention Plan, participants are eligible to earn a retention benefit in consideration for their continued employment with us. The Wind Down Retention benefits are equivalent to previously disclosed compensation payments contemplated in connection with a change in control under our existing Severance Plan. Under the Wind Down Retention Plan, payment of the retention benefit to any participant will occur upon termination of the participant's employment with us either by us without cause or by the participant for good reason. The retention benefit, if paid, would be in lieu of (and not in addition to) any other severance compensation that could become payable to the participant under our Severance Plan. In connection with the adoption of the Wind Down Retention Plan, a severance liability was being recorded over the remaining service period for the participating employees under the Going Concern Basis. Upon the adoption of the Liquidation Basis on September 1, 2020, all remaining estimated severance and retention costs were accrued. As of September 30, 2020, we had an estimated severance liability of \$10.9 million. Expenses associated with severance payments and accruals are reflected in Severance and retention on our Condensed Consolidated Statements of Operations.

The Wind Down Retention Plan also provides that, consistent with the existing terms of the our Amended and Restated 2005 Equity Incentive Plan (the "Equity Plan"), the vesting of all outstanding equity awards held by participants as of the date the Wind Down Retention Plan was adopted will be accelerated upon the earlier of: (i) a termination of the participant's employment with us either by us without cause or by the participant for good reason or (ii) the consummation of a change in control (as defined in the Equity Plan) of our company. In addition, the post-termination exercise period for all outstanding stock options will be extended until their expiration date. In connection with the Board adopting the Plan of Liquidation in the

first quarter of 2020, all of the outstanding and unvested stock options and restricted stock granted to our employees, executive officers and directors, with the exception of certain outstanding awards under the 2016/20 Long-Term Incentive Plan, accelerated and vested under the change in control definition in the Equity Plan. The expense associated with the accelerated vesting, totaled \$15.7 million and is also reflected in Severance and retention on our Condensed Consolidated Statements of Operations.

General and administrative expenses for the eight months ended August 31, 2020 and nine months ended September 30, 2019 are summarized in the table below:

<i>(in thousands)</i>	Eight Months Ended August 31, 2020			Nine Months Ended September 30, 2019		
	Medical Device	Income Generating Assets	Total	Medical Device	Income Generating Assets	Total
Compensation	\$ 2,464	\$ 8,633	\$ 11,097	\$ 2,798	\$ 12,651	\$ 15,449
Salaries and Wages (including taxes)	1,666	4,468	6,134	1,426	4,639	6,065
Bonuses (including accruals)	410	1,890	2,300	831	2,894	3,725
Equity	388	2,275	2,663	541	5,118	5,659
Asset management	—	5,299	5,299	—	807	807
Business development	—	650	650	—	1,211	1,211
Accounting and tax services	2,221	4,156	6,377	46	2,482	2,528
Other professional services	369	2,365	2,734	993	1,253	2,246
Other	1,184	2,354	3,538	1,316	3,510	4,826
Total general and administrative ⁽¹⁾	\$ 6,238	\$ 23,457	\$ 29,695	\$ 5,153	\$ 21,914	\$ 27,067

⁽¹⁾ No general and administrative expenses were attributable to the Pharmaceutical or Strategic Positions segment for the eight months ended August 31, 2020 or the nine months ended September 30, 2019. See *Assets held for sale and discontinued Operations* below, for additional information on our Pharmaceutical segment.

Non-operating Expense, Net

<i>(dollars in thousands)</i>	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Change from Prior Year %	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019	Change from Prior Year %
Interest and other income, net	\$ 26	\$ 1,460	(98%)	\$ 608	\$ 4,984	(88%)
Interest expense	(210)	(3,011)	(93%)	(996)	(8,950)	(89%)
Loss on investment	(5,576)	—	N/M	(5,576)	—	N/M
Gain on sale of intangible assets	—	3,476	N/M	—	3,476	N/M
Loss on extinguishment of convertible notes	—	(3,900)	N/M	(606)	(3,900)	(84%)
Total non-operating expense, net	\$ (5,760)	\$ (1,975)	192%	\$ (6,570)	\$ (4,390)	50%

N/M Not meaningful

Two Months Ended August 31, 2020

Net non-operating expense increased for the two months ended August 31, 2020, as compared to the three months ended September 30, 2019, primarily due to:

- a shorter measurement period due to the transition to Liquidation Basis of accounting on September 1, 2020,
- lower interest expense in conjunction with the extinguishment of a substantial portion of our convertible notes,
- the loss on extinguishment of convertible notes in the prior period with not charge in the current period, and
- a decrease in the value of our investment in AEON, partially offset by
- a decrease in interest and other income due to lower cash balances in the current period.

Eight Months Ended August 31, 2020

Net non-operating expense increased for the eight months ended August 31, 2020, as compared to the nine months ended September 30, 2019, primarily due to:

- a shorter measurement period due to the transition to Liquidation Basis of accounting on September 1, 2020,
- lower interest expense in conjunction with the extinguishment of a substantial portion of our convertible notes,
- a smaller loss on extinguishment of convertible notes recorded in the eight months ended August 31, 2020 compared to the prior year period, and
- a decrease in the value of our investment in AEON, partially offset by
- lower interest and other income due to lower cash balances in the current period.

Income Taxes

On March 27, 2020 the CARES Act was enacted in response to the COVID-19 pandemic. The CARES Act, among other provisions, permits Net Operating Loss (“NOL”) carryovers and carrybacks to offset 100% of taxable income for taxable years beginning before 2021. In addition, the CARES Act allows NOLs incurred in 2018, 2019, and 2020 to be carried back to each of the five preceding taxable years to generate a refund of previously paid income taxes. We were a significant taxpayer in the earlier eligible carryback years and expects that the NOL carryback provision of the CARES Act to result in a material cash benefit as a result of the 2020 ordinary tax losses being generated and, to a lesser degree, for the 2019 tax year.

Historically, we calculated our provision for income taxes during interim reporting periods by applying the estimated annual effective tax rate for the full fiscal year to pre-tax income or loss. Upon the Company’s adoption of the liquidation basis of accounting, we employ the discrete method of determining our tax provision based on the pre-tax results for the eight month period ending August 31, 2020 and the one month period ending September 30, 2020.

Income tax benefit from continuing operations for the two months ended August 31, 2020 and three months ended September 30, 2019, was \$3.6 million and \$3.1 million, respectively, and for the eight months ended August 31, 2020 and nine months ended September 30, 2019, was \$17.8 million and \$6.6 million, respectively, which in the current period resulted primarily from anticipated use of NOL carrybacks as allowed by the CARES Act. Our effective tax rate for the current year periods differs from the U.S. federal statutory rate of 21% due primarily to the effect of state income taxes, non-deductible executive compensation and the tax provisions of the CARES Act.

The CARES Act receivable included in Income tax receivable on the Condensed, Consolidated Statement of Net Assets as of September 30, 2020 is \$80.5 million and includes, in addition to the losses from operations, the ordinary losses incurred on the Noden transaction and the sale of the royalty assets. See Note 21, *Subsequent Events*, for additional information on the LENSAR spin-off. The Income tax receivable as of September 30, 2020 also includes a refund of \$7.9 million for a prior year overpayment that was requested after the 2016 Internal Revenue Service (the “IRS”) audit was settled.

The uncertain tax positions decreased by \$4.4 million in September 2020 upon settlement of the IRS audit for the tax year 2016. We recorded \$1.9 million and \$2.0 million of interest related to uncertain tax positions during the eight months ended August 31, 2020 and the nine months ended September 30, 2019, respectively.

Our income tax returns are subject to examination by U.S. federal, foreign, state and local tax authorities for tax years 2000 forward. In September 2020, the Company settled the IRS audit for the tax year 2016. We are currently under audit by the California Franchise Tax Board (the “CFTB”) for the tax years 2009 through 2015. The timing of the resolutions to the CFTB audit and the amount to be ultimately paid, if any, is uncertain. Final resolution of this complex matter could have a material impact on our Condensed Consolidated Financial Statements. We believe our accrual for income tax liabilities is appropriate based on past experience, interpretations of tax law and judgments; however, the outcome of these audits could result in the payment of tax amounts that substantially differ from the amounts we have reserved resulting in incremental expense or a reversal of our reserves in a future period. At this time, we do not anticipate a material change in the unrecognized tax benefits related to the CFTB audit that would affect the effective tax rate or deferred tax assets over the next 12 months.

Assets held for sale and discontinued operations

The Pharmaceutical segment, the royalty right assets in the Income Generating Assets segment and the Evofem investment in the Strategic Positions segment have been classified as held for sale and reported as discontinued operations. The operating results from discontinued operations are presented separately in our Condensed Consolidated statements of Operations as discontinued operations. Components of amounts reflected in Income (Loss) from discontinued operations are as follows (in thousands):

	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019
Revenues				
Product revenue, net	\$ 6,281	\$ 12,269	\$ 29,479	\$ 42,644
Royalty rights - change in fair value	(1,893)	23,865	(8,804)	(4,277)
Total revenues	4,388	36,134	20,675	38,367
Operating expenses				
Cost of product revenue (excluding intangible asset amortization)	3,894	10,268	17,576	26,697
Amortization of intangible assets	—	1,253	389	3,760
General and administrative	1,540	2,029	6,105	5,969
Sales and marketing	59	168	257	1,536
Research and development	—	—	—	(41)
Total operating expenses	5,493	13,718	24,327	37,921
Operating (loss) income from discontinued operations	(1,105)	22,416	(3,652)	446
Non-operating income (expense), net				
Equity affiliate - change in fair value	1,296	(27,378)	(25,365)	18,109
Loss on classification as held for sale	—	—	(28,904)	—
Total non-operating income (expense), net	1,296	(27,378)	(54,269)	18,109
Income (loss) from discontinued operations before income taxes	191	(4,962)	(57,921)	18,555
Income tax (benefit) expense from discontinued operations	(15,045)	1,193	(23,006)	6,141
Income (loss) from discontinued operations	\$ 15,236	\$ (6,155)	\$ (34,915)	\$ 12,414

Two Months Ended August 31, 2020

Income from discontinued operations for the two months ended August 31, 2020 was \$15.2 million, a \$21.4 million increase from the \$6.2 million loss recognized for the three months ended September 30, 2019. The favorable change was primarily a result of:

- An unrecognized loss of \$27.4 million in the three months ended September 30, 2019 as compared to a \$1.3 million unrecognized gain in the two months ended August 31, 2020.

These amounts were partially offset by:

- A \$6.0 million, or 49%, decline in revenue from our Pharmaceutical segment for the two months ended August 31, 2020 as compared to the same period in the prior year. The decrease in revenue from our Pharmaceutical segment is primarily due to lower net revenues in the United States and the shorter measurement period. The decrease in revenue from our Pharmaceutical segment in the United States for the two months ended August 31, 2020 is due to the increased sales of our authorized generic and lower sales of our branded drug as compared to the third quarter of 2019.
- Revenue from our royalty right assets of negative \$1.9 million for the two months ended August 31, 2020 as compared with revenue of \$23.9 million for the three months ended September 30, 2019. The difference was primarily due to an increase in fair value in the third quarter of 2019 primarily resulting from the Assertio asset.

- The royalty right assets in our Income Generating Assets segment generated cash flows of \$10.1 million and a loss from the decrease in fair value of \$12.0 million in the two months ended August 31, 2020 compared with cash flows of \$25.6 million and a decrease in fair value of \$1.7 million in the three month period ended September 30, 2019.

The following tables provides a summary of activity with respect to our royalty rights - change in fair value for the two months ended August 31, 2020 and three months ended September 30, 2019:

<i>(in thousands)</i>	Two Months Ended August 31, 2020		
	Cash Royalties	Change in Fair Value	Royalty Rights - Change in Fair Value
Assertio	\$ 9,910	\$ (11,771)	\$ (1,861)
VB	137	(208)	(71)
U-M	—	—	—
AcelRx	37	—	37
KYBELLA	—	—	—
Total	<u>\$ 10,084</u>	<u>\$ (11,979)</u>	<u>\$ (1,895)</u>

<i>(in thousands)</i>	Three Months Ended September 30, 2019		
	Cash Royalties	Change in Fair Value	Royalty Rights - Change in Fair Value
Assertio	\$ 23,597	\$ 1,058	\$ 24,655
VB	254	89	343
U-M	1,574	(3,063)	(1,489)
AcelRx	80	236	316
KYBELLA	59	(19)	40
Total	<u>\$ 25,564</u>	<u>\$ (1,699)</u>	<u>\$ 23,865</u>

Eight Months Ended August 31, 2020

Loss from discontinued operations for the eight months ended August 31, 2020 was \$34.9 million, a \$47.3 million decrease from the \$12.4 million of income recognized for the nine months ended September 30, 2019. The unfavorable change was primarily a result of:

- A \$43.5 million change in the fair value of our equity affiliate from an unrecognized gain of \$18.1 million in the nine months ended September 30, 2019 as compared to a \$25.4 million unrecognized loss in the eight months ended August 31, 2020.
- A \$23.5 million write down of our Pharmaceutical segment in the current year due to a decrease in the value of Noden prior to its sale.
- A \$13.2 million, or 31%, decline in revenue from our Pharmaceutical segment for the eight months ended August 31, 2020, as compared to the nine months period ended September 30, 2019. The decrease in revenue from our Pharmaceutical segment reflects lower net revenues in the United States and the rest of the world. The decrease in revenue from our Pharmaceutical segment in the United States for the eight months ended August 31, 2020 reflects the introduction of our authorized generic of Tekturma and a third-party generic of aliskiren late in the first quarter of 2019. The decrease in revenue for the rest of the world is due to lower sales volume of Rasilez in certain territories.
- Revenue from the royalty right assets in our Income Generating Assets segment for the eight months ended August 31, 2020 of negative \$8.8 million as compared with negative revenue of \$4.3 million for the nine month period of the prior year. The difference was primarily due to a larger decrease in fair value in the nine months ended September 30, 2019 resulting from the \$60.0 million AcelRx write-down as compared to the current year period, which includes the fair value adjustments as informed by bids received during our monetization process.

- The royalty right assets generated cash flows of \$35.1 million in the eight months ended August 31, 2020 compared to \$58.3 million in the nine months ended September 30, 2019.

The following tables provides a summary of activity with respect to our royalty rights - change in fair value for the eight months ended August 31, 2020 and nine months ended September 30, 2019:

<i>(in thousands)</i>	Eight Months Ended August 31, 2020		
	Cash Royalties	Change in Fair Value	Royalty Rights - Change in Fair Value
Assertio	\$ 29,927	\$ (18,209)	\$ 11,718
VB	612	(9,408)	(8,796)
U-M	4,355	(2,948)	1,407
AcelRx	194	(12,952)	(12,758)
KYBELLA	42	(416)	(374)
Total	<u>\$ 35,130</u>	<u>\$ (43,933)</u>	<u>\$ (8,803)</u>

<i>(in thousands)</i>	Nine Months Ended September 30, 2019		
	Cash Royalties	Change in Fair Value	Royalty Rights - Change in Fair Value
Assertio	\$ 52,980	\$ 599	\$ 53,579
VB	748	354	1,102
U-M	4,212	(4,379)	(167)
AcelRx	241	(57,650)	(57,409)
KYBELLA	109	(1,491)	(1,382)
Total	<u>\$ 58,290</u>	<u>\$ (62,567)</u>	<u>\$ (4,277)</u>

Net Income (Loss) Per Share

Net income (loss) per share for the two and eight months ended August 31, 2020 and three and nine months ended September 30, 2019, is presented below:

	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019
Net income (loss) per share - basic:				
Continuing operations	\$ (0.10)	\$ (0.10)	\$ (0.36)	\$ (0.23)
Discontinued operations	0.14	(0.06)	(0.30)	0.10
Net income (loss) attributable to PDL's stockholders per basic share	<u>\$ 0.04</u>	<u>\$ (0.16)</u>	<u>\$ (0.66)</u>	<u>\$ (0.13)</u>
Net income (loss) per share - diluted:				
Continuing operations	\$ (0.10)	\$ (0.10)	\$ (0.36)	\$ (0.23)
Discontinued operations	0.14	(0.06)	(0.30)	0.10
Net income (loss) attributable to PDL's stockholders per diluted share	<u>\$ 0.04</u>	<u>\$ (0.16)</u>	<u>\$ (0.66)</u>	<u>\$ (0.13)</u>

Weighted-average basic and diluted shares used in the computation of Net income (loss) per share are as follows (in thousands):

	Two Months Ended August 31, 2020	Three Months Ended September 30, 2019	Eight Months Ended August 31, 2020	Nine Months Ended September 30, 2019
Basic	113,889	112,986	118,001	119,966
Diluted	113,889	112,986	118,001	119,966

Liquidity and Capital Resources

We have previously financed our operations primarily through royalty and other license-related revenues, public and private placements of debt and equity securities, interest income on invested capital and cash generated from pharmaceutical and medical device product sales. We plan to continue to finance our operations in the near term primarily through existing cash and cash proceeds from our monetization efforts and our royalty rights assets until such assets are disposed.

In September 2019, we engaged financial and legal advisors and initiated a review of our strategy. In December 2019, we disclosed that we planned to halt the execution of our growth strategy, cease making additional strategic transactions and investments and pursue a formal process to unlock the value of our portfolio by monetizing our assets and ultimately returning net proceeds to our stockholders. Over the subsequent months, our Board and management analyzed, together with its outside financial and legal advisors, how to best capture value pursuant to its monetization strategy and best return the significant intrinsic value of the assets in its portfolio to the stockholders. In February 2020, our Board approved a plan of complete liquidation of our assets. In August 2020 we received stockholder approval to dissolve our Company under Delaware law. We plan to file a certificate of dissolution in Delaware in January 2021 and proceed to wind-down and dissolve our Company in accordance with Delaware General Corporate Law.

Pursuant to our monetization strategy, we are exploring a variety of potential transactions, including a whole Company sale, divestiture of assets, spin-offs of operating entities, merger opportunities or a combination thereof. In addition, we have analyzed, and continue to analyze, the optimal mechanisms for returning value to stockholders in a tax-efficient manner, including via share repurchases, cash dividends and other distributions of assets. We intend to pursue monetization in a disciplined and cost-effective manner to maximize returns to stockholders. We recognize, however, that accelerating the timeline, while continuing to optimize asset value, could increase returns to stockholders due to reduced general and administrative expenses as well as provide faster returns to stockholders.

As a result of this monetization strategy, we expect to generate additional cash from the sale of one or more of the assets in our portfolio, including from the recovery of previous taxes paid under the CARES Act, with the intention of managing the successful wind down of our business and distributing the remaining net proceeds to our stockholders.

Our future capital requirements are difficult to forecast and will depend upon many factors, including the type of distributions we make, the amount of net cash proceeds we receive, after transaction costs, and the time it takes to monetize our assets. Our future capital requirements will also depend on the amount of common stock and convertible notes we repurchase under our repurchase program.

The general cash needs of our Medical Devices, Strategic Positions, Pharmaceutical and Income Generating Assets segments can vary significantly.

- On October 1, 2020, we distributed in the form of a dividend all outstanding shares of LENSAR common stock held by us to our stockholders of record as of September 22, 2020. As a result, LENSAR became an independent, publicly traded company and we do not anticipate any additional cash needs for this entity to be provided by PDL.
- Our Pharmaceutical segment was sold in the three months ended September 30, 2020 and we do not anticipate any additional cash funding to be provided by PDL for this segment.
- The cash needs of our Income Generating Assets segment tend to be driven by employee compensation, legal and professional service fees required for operating a publicly traded company, as well as the funding of potential repurchases of our common stock and convertible notes.

On December 9, 2019, we announced that our Board authorized the repurchase of issued and outstanding shares of our common stock and convertible notes up to an aggregate value of \$200.0 million pursuant to a share repurchase program. On December 16, 2019, we announced that our Board approved a \$75.0 million increase to this repurchase program. Repurchases under this repurchase program can be made from time to time in the open market or in privately negotiated transactions and funded from our working capital. The amount and timing of such repurchases will depend upon the price and availability of shares or convertible notes, general market conditions and the availability of cash. Common stock and convertible note repurchases were also eligible to be made under a trading plan under Rule 10b5-1, which would permit shares and convertible notes to be repurchased when we might otherwise be precluded from doing so because of self-imposed trading blackout periods or other regulatory restrictions. In consideration of the impact and uncertainty introduced by the COVID-19 pandemic on our monetization process, the 10b5-1 plan was terminated on May 31, 2020 and no common stock was repurchased after this date. All shares of common stock repurchased under our repurchase program were retired and restored to authorized but unissued shares of common stock. All convertible notes repurchased under the program will be retired.

As of September 30, 2020, we had repurchased \$50.2 million in aggregate principal amount of December 2021 Notes and \$85.0 million in aggregate principal amount of December 2024 Notes under the Board authorized repurchase program. As of September 30, 2020 approximately \$14.8 million in aggregate principal amount of the convertible notes remain outstanding. Pursuant to the convertible note repurchase transactions and the unwinding of a portion of the capped call transaction entered into for the notes, we also repurchased 3.2 million shares of our common stock under this program directly from our capped call counterparty. We repurchased 12.3 million shares of our common stock under this repurchase program during the eight months ended August 31, 2020, for an aggregate purchase price of \$39.4 million, or an average cost of \$3.20 per share, including trading commissions. This repurchase program may be suspended at any time without notice.

Our debt service obligations consist of interest payments and repayment of the remaining amount of our December 2021 Notes and December 2024 Notes. We may continue our efforts to repurchase the remaining outstanding convertible notes. We expect to finance such repurchases with cash on hand.

We had cash and cash equivalents in the aggregate of \$125.7 million and \$169.0 million as of September 30, 2020 and December 31, 2019, respectively, representing a decrease of \$43.3 million. The decrease was primarily attributable to:

- the repurchase of our common stock for \$39.4 million,
- the net cash used for the repurchase of our convertible notes of \$18.0 million, and
- cash that transferred with the Noden business in connection with the sale of our interest in Noden DAC and Noden USA, partially offset by
- proceeds from royalty right payments of \$42.6 million.

We believe that cash on hand and cash generated from future revenues and from asset sales, net of operating expenses, debt service and income taxes, will be sufficient to fund our operations until all net proceeds are distributed to our stockholders. Our continued success is dependent on our ability to execute on our planned strategy to monetize our assets, in order to return capital to our stockholders and service our remaining debt.

As noted above, in September 2020, we sold our interests in Noden DAC and Noden USA which comprised our Pharmaceutical segment. Upon closing, we were released of our guarantee to Novartis under Noden's supply agreement. Under the terms of the sale of our interests in Noden DAC and Noden USA, we received proceeds of \$12.2 million at the closing of the transaction and are due an additional \$33.0 million to be paid in 12 equal quarterly installments from January 2021 to October 2023 and two contingent payments totaling \$3.78 million. There is an additional \$3.86 million to be paid to us in four equal quarterly installments from January 2023 to October 2023.

Off-Balance Sheet Arrangements

As of September 30, 2020, we did not have any off-balance sheet arrangements, as defined under SEC Regulation S-K Item 303(a)(4)(ii).

Contractual Obligations

Convertible Senior Notes

As of September 30, 2020, our outstanding notes consisted of notes due in December 2021 and December 2024, which in the aggregate totaled \$14.8 million in principal.

We have actively repurchased our convertible senior notes in privately negotiated transactions and in the open market using cash on hand. As of September 30, 2020, our outstanding notes consisted of notes due in December 2021 and in December 2024, which in the aggregate totaled \$14.8 million in principal, or less than 10% of the aggregate principal balance of the original issuance. In late September 2020, we received notices to convert \$11.2 million par value of our 2021 convertible notes which we intend to settle in cash. After settling the debt submitted for conversion and pending any further transactions before the end of the year, we will finish 2020 with an aggregate of \$3.6 million of convertible notes outstanding. We expect that our debt service obligations prior to our dissolution will consist of interest payments and the repurchase or repayment of our December 2021 Notes and December 2024 Notes.

Guarantees

Redwood City Lease Guarantee

In connection with the spin-off of Facet Biotech Corporation (“Facet”), we entered into amendments to the leases for our former facilities in Redwood City, California, under which Facet was added as a co-tenant, and a Co-Tenancy Agreement, under which Facet agreed to indemnify us for all matters related to the leases attributable to the period after the spin-off date. In April 2010, Abbott Laboratories acquired Facet and later renamed the entity AbbVie Biotherapeutics, Inc. (“AbbVie”). If AbbVie were to default under its lease obligations, we could be held liable by the landlord as a co-tenant and, thus, we have in substance guaranteed the payments under the lease agreements for the Redwood City facilities. As of September 30, 2020, the total lease payments for the duration of the guarantee, which runs through December 2021, are approximately \$14.1 million. For additional information regarding our lease guarantee, see Note 14, *Commitments and Contingencies*.

Purchase Obligation

Noden DAC and Novartis entered into a supply agreement pursuant to which Novartis will manufacture and supply to Noden DAC a bulk tableted form of the Noden Products and the active pharmaceutical ingredient. On July 30, 2020 we announced the signing of a definitive agreement for the sale of 100% of the outstanding stock in Noden DAC and Noden USA. The sale closed in September 2020, at which time we were released of our guarantee to Novartis in connection with Noden’s supply agreement.

LENSAR entered into various supply agreements for the manufacture and supply of certain components. The supply agreement commits LENSAR to a minimum purchase obligation of approximately \$2.5 million, which is due over the next twelve months. We had previously guaranteed a portion of this commitment and were released from our guarantee in August of 2020.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As of September 30, 2020, there have been no material changes in our market risk from that described in “Item 7A. Quantitative and Qualitative Disclosures About Market Risk” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

The Company's management has evaluated, with the participation of the chief executive officer and the chief financial officer, the effectiveness of the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based on this evaluation, the chief executive officer and the chief financial officer concluded that the Company's disclosure controls and procedures were effective as of September 30, 2020.

Changes in Internal Control over Financial Reporting

During the quarter ended September 30, 2020, there have been no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The information set forth in Note 14, *Commitments and Contingencies*, to our Notes to Condensed Consolidated Financial Statements included in Part I, Item 1, of this Quarterly Report on Form 10-Q is incorporated by reference herein.

Class Action Antitrust Lawsuit

On September 18, 2019, the City of Providence filed a civil antitrust suit on behalf of a putative class of payors in the Northern District of California against Bausch Health Companies, Inc., Salix Pharmaceuticals, Inc., Santarus, Inc., Assertio Therapeutics, Inc., Lupin Pharmaceuticals, Inc. and the Company, inter alia, alleging that a patent settlement agreement between Assertio and Lupin unlawfully restrained competition in an alleged market for Glumetza and its AB-rated generic equivalents sold in the United States. The plaintiffs claim that the settlement agreement violated the federal Sherman Act and various state antitrust laws. The Company was a named defendant by certain End Payor Plaintiffs (“EPPs”) due to its purchase from Assertio in 2013 of a royalty asset based on sales of Glumetza. On January 21, 2020, the EPPs voluntarily dismissed their claims against the Company, without prejudice. The Company has agreed to toll the running of statute of limitations for a limited period of time and to respond to certain discovery requests, subject to reasonable objections.

ITEM 1A. RISK FACTORS

Except for the additional risk factors set forth below, the risk factors set forth in Part II, Item 1A “Risk Factors” in our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2020 and June 30, 2020, and the risk factors set forth in our Definitive Proxy Statement on Schedule 14A for our 2020 Annual Meeting of Stockholders, filed with the SEC on July 7, 2020, which are incorporated by reference herein, there have been no material changes to the risk factors included in “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019.

Liquidation basis of accounting affects our reporting methodology, and may require us to adjust the net carrying value of our assets from time to time.

In August 2020, as a result of the approval of our stockholders to pursue dissolution of our company and return capital to our shareholders, we changed our basis of accounting in accordance with GAAP and transitioned from a Going Concern Basis to a Liquidation Basis, effective September 1, 2020. Under the Liquidation Basis, all of our assets are required to be stated at their estimated liquidation value, and all of our liabilities are required to be stated at their estimated settlement amounts over the remaining estimated liquidation period. There is a risk that the Liquidation Basis may entail write-downs of certain of our assets to values substantially less than their respective carrying amounts, and may require that certain of our liabilities be increased or certain other liabilities be recorded to reflect the anticipated effects of an orderly liquidation. Write-downs in our assets could reduce the price that a third party would be willing to pay to acquire your shares or our assets, and could have a negative impact on the market price of our common stock causing it to decline.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

There were no unregistered sales of equity securities during the period covered by this report.

Issuer Purchases of Equity Securities

The following table contains information relating to the repurchases of our common stock made by us in the three months ended September 30, 2020 (in thousands, except per share amounts):

Fiscal Period	Total Number of Shares Repurchased	Average Price Paid Per Share	Total Number of Shares Purchased As Part of a Publicly Announced Program	Approximate Dollar Amount of Shares That May Yet be Purchased Under the Program ⁽¹⁾
July 1, 2020 to July 31, 2020	—	\$ —	—	\$ 61,987
August 1, 2020 to August 31, 2020	—	\$ —	—	61,987
September 1, 2020 to September 30, 2020	—	\$ —	—	61,987
Total for the three months ended September 30, 2020	—	\$ —	—	\$ 61,987

⁽¹⁾ The approximate dollar amount of shares that may yet be purchased under the share repurchase program was reduced by the cash and PDL common stock issued as consideration to repurchase the convertible notes in December 2019 and the cash used to repurchase the convertible notes in the first quarter of 2020.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

None.

ITEM 5. OTHER INFORMATION

On November 5, 2020, the Company entered into a lease agreement with RDH Investments, LLC, with respect to the leasing of its headquarters located in Reno, Nevada (the "Lease"). The Lease commences on November 15, 2020, and expires on December 31, 2022, and is for approximately 1,750 square feet of office space. The fixed monthly rent, which does not commence until January 1, 2021, is \$3,062.50 through December 31, 2021 and \$3,154.38 from January 1, 2022 through expiration. The Company may, at its option, extend the term of the Lease for an additional six months at a monthly rent equal to then fair market value.

ITEM 6. EXHIBITS

Exhibit Number	Exhibit Title
2.1	Separation and Distribution Agreement between the Company and LENSAR, Inc. (incorporated by reference to Exhibit 2.1 to Current Report on Form 8-K filed October 2, 2020)
3.1	Restated Certificate of Incorporation effective March 23, 1993 (incorporated by reference to Exhibit 3.1 to Annual Report on Form 10-K filed March 31, 1993)
3.2	Certificate of Amendment of Certificate of Incorporation effective August 21, 2001 (incorporated by reference to Exhibit 3.3 to Annual Report on Form 10-K filed March 14, 2002)
3.3	Certificate of Amendment of Certificate of Incorporation effective January 9, 2006 (incorporated by reference to Exhibit 99.1 to Current Report on Form 8-K filed January 10, 2006)

- 3.4 [Certificate of Designation, Preferences and Rights of the Terms effective August 25, 2006 \(incorporated by reference to Exhibit 3.4 to Registration Statement on Form 8-A filed September 6, 2006\)](#)
- 3.5 [Certificate of Amendment of Restated Certificate of Incorporation effective May 22, 2013 \(incorporated by reference to Exhibit 4.4 to Registration Statement on Form S-3 filed June 21, 2013\)](#)
- 3.6 [Certificate of Amendment of Restated Certificate of Incorporation effective August 26, 2020 \(incorporated by reference to Exhibit 3.1 to Current Report on Form 8-K filed September 1, 2020\)](#)
- 3.7 [Fourth Amended and Restated Bylaws effective August 26, 2020 \(incorporated by reference to Exhibit 3.2 to Current Report on Form 8-K filed September 1, 2020\)](#)
- 10.1#† [Settlement and Mutual Release Agreement among the Company, Samuel J. Wohlstadter, Nadine H. Wohlstadter, Hyperion Catalysis International, Wellstat Vaccines, LLC, Wellstat Immuno Therapeutics, LLC, Wellstat BioCatalysis, LLC, Wellstat AVT Investment, LLC, Wellstat Biologics Corporation, Wellstat Management Company, LLC, Wellstat Ophthalmics Corporation, Wellstat Therapeutics Corporation, Wellstat Therapeutics EU Limited, Duck Farm, Inc., Hebron Valley Farms, Inc., HVF, Inc., Hyperion Catalysis EU Limited, NHW, LLC, and SJW Properties, Inc., and Defined Diagnostics, LLC \(f/k/a Wellstat Diagnostics, LLC, effective as of August 11, 2020\)](#)
- 10.2# [Asset Transfer Agreement dated as of August 11, 2020 between Defined Diagnostics, LLC \(F/K/A Wellstat Diagnostics LLC\) and the Company](#)
- 10.3* [Confidential Severance Agreement and Release of All Claims between Jill Jene and the Company, effective as of August 15, 2020 \(incorporated by reference to Exhibit 10.1 to Current Report on Form 8-K filed August 20, 2020\)](#)
- 10.4* [Transition Services Agreement between the Company and LENSAR, Inc. \(incorporated by reference to Exhibit 10.1 to Current Report on Form 8-K filed October 2, 2020\)](#)
- 10.5 [Tax Matters Agreement between the Company and LENSAR, Inc. \(incorporated by reference to Exhibit 10.2 to Current Report on Form 8-K filed October 2, 2020\)](#)
- 10.6# [Commercial Sublease Agreement dated as of November 5, 2020 by and between RDH Investments LLC and the Company](#)
- 31.1# [Certification of Principal Executive Officer and Principal Financial Officer pursuant to Rule 13a-14\(a\) or Rule 15d-14\(a\) of the Securities Exchange Act of 1934, as amended](#)
- 31.2# [Certification of Principal Financial Officer pursuant to Rule 13a-14\(a\) or Rule 15d-14\(a\) of the Securities Exchange Act of 1934, as amended](#)
- 32.1#+ [Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002](#)
- 101.INS XBRL Instance Document
- 101.SCH XBRL Taxonomy Extension Schema
- 101.CAL XBRL Taxonomy Extension Calculation Linkbase
- 101.DEF XBRL Taxonomy Extension Definition Linkbase
- 101.LAB XBRL Taxonomy Extension Label Linkbase
- 101.PRE XBRL Taxonomy Extension Presentation Linkbase

Filed herewith.

* Management contract or compensatory plan or arrangement.

† Certain schedules and attachments to this exhibit have been omitted pursuant to Regulation S-K, Item 601(a)(6).

+ This certification accompanies the Quarterly Report on Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the registrant under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Quarterly Report on Form 10-Q), irrespective of any general incorporation language contained in such filing.

SIGNATURES

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

Dated: November 12, 2020
PDL BIOPHARMA, INC. (REGISTRANT)

/s/ DOMINIQUE MONNET

Dominique Monnet
President and Chief Executive Officer
(Principal Executive Officer)

/s/ EDWARD A. IMBROGNO

Edward A. Imbrogno
Vice President, Chief Financial Officer and Chief
Accounting Officer (Principal Financial Officer and
Principal Accounting Officer)

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement (hereinafter referred to as this “**Agreement**”) is entered into as of August 11, 2020, by and among PDL BioPharma, Inc. (together with its successors and assigns, hereinafter referred to as “**PDL**”), Samuel J. Wohlstadter, Nadine H. Wohlstadter, Hyperion Catalysis International, Wellstat Vaccines, LLC, Wellstat ImmunoTherapeutics, LLC, Wellstat BioCatalysis, LLC, Wellstat AVT Investment, LLC, Wellstat Biologics Corporation, Wellstat Management Company, LLC, Wellstat Ophthalmics Corporation, Wellstat Therapeutics Corporation, Wellstat Therapeutics EU Limited, Duck Farm, Inc., Hebron Valley Farms, Inc., HVF, Inc., Hyperion Catalysis EU Limited, NHW, LLC, and SJW Properties, Inc., together with their respective successors and assigns, (hereinafter collectively referred to as the “**Wellstat Parties**”), and Defined Diagnostics, LLC (f/k/a Wellstat Diagnostics, LLC) (together with its successors and assigns hereinafter referred to as “**Diagnostics**”). PDL, Diagnostics, and the Wellstat Parties are referred to as the “**Parties**.”

RECITALS

A. On September 4, 2015, PDL commenced an action in the Supreme Court of the State of New York, County of New York entitled *PDL BioPharma, Inc. v. Wohlstadter et al.*, Index No. 653028/2015 concerning a loan dispute (hereinafter referred to as the “**September 2015 Action**”).¹

¹ PDL’s suit named as defendants Wellstat Management LLC, Wellstat Biologics LLC, Wellstat Therapeutics LLC, and Wellstat Ophthalmics LLC. The correct names of those entities are Wellstat Management Company, LLC, Wellstat Biologics Corporation, Wellstat Therapeutics Corporation and Wellstat Ophthalmics Corporation.

B. On October 22, 2015, Diagnostics and the Wellstat Parties brought a separate suit in New York Supreme Court, County of New York, entitled *Wohlstadter et al. v. PDL BioPharma, Inc.*, Index No. 653512/2015 concerning the validity of a certain letter dated September 9, 2014 (the “**September 9, 2014 Letter**,” and the action is hereinafter referred to as the “**September 9 Letter Action**”).

C. On September 11, 2019, the New York Supreme Court entered an order in the September 2015 Action and in the September 9 Letter Action granting PDL’s motion for summary judgment (the “**Liability Orders**”), and referred the calculation of the exact amount owing by the Wellstat Parties to PDL to a special master.

D. The Wellstat Parties filed notices of appeal from the Liability Orders, which appeals are currently pending.

E. The Parties now enter this Agreement to permanently settle, compromise and resolve all claims and or causes of action, known or unknown, including, without limitation all claims and causes of action that were or could have been asserted by any party in the September 2015 Action, the September 9 Letter Action, or in any other litigation, action or proceeding that could have been brought prior to the date of this settlement pertaining in any way whatsoever to the Documents or any of the Parties or the course of dealing between PDL and any of the Wellstat Parties or Diagnostics prior to the date of this Agreement.

F. PDL’s board of directors approved the terms for PDL’s entry into this Agreement on July 23, 2020. The governing bodies of each of the Wellstat Companies approved entry into this Agreement on August 11, 2020.

In consideration of the mutual covenants, promises and releases herein contained, the Parties hereby agree and promise as follows:

1. **Defined Terms.** Capitalized terms used in this Agreement have the meanings set forth on Schedule A attached hereto.

2. **Effectiveness.** This Agreement shall be effective on the date that all of the events set forth in subparagraphs (i)-(iv) have occurred (the “**Effective Date**”), which the Parties shall perform in the following order:
 - i. this Agreement and the Escrow Agreement are executed and delivered by all of the Parties to one another and delivered to, acknowledged by, and, in the case of the Escrow Agreement, signed by the Escrow Agent;
 - ii. PDL and Diagnostics have executed and delivered the Asset Transfer Agreement to each other;
 - iii. PDL has executed and delivered the PDL Instruments and the Transaction Documents (as defined in the Asset Transfer Agreement) to the Escrow Agent in escrow; and
 - iv. the Wellstat Parties have deposited or caused to be deposited with the Escrow Agent the Initial Settlement Payment of \$7,500,000 by wire transfer of immediately available funds in accordance with the wiring instructions attached hereto as Exhibit B-1 and PDL has received the Initial Settlement Payment from the Escrow Agent by wire transfer of immediately available funds in accordance with the wiring instructions attached hereto as Exhibit B-2.

This Agreement may be executed in multiple counterparts, by fax or other electronic means, each of which when executed shall be deemed an original and all of which together shall constitute one and the same instrument. Should this Agreement not become effective for any reason, no statements made by any of the Parties herein may be introduced or used by any of the Parties in any court proceeding nor shall any statements made by any of the Parties be deemed to be an admission of any liability.

3. **Settlement of Disputes Under Documents.** Each of the Parties hereto, individually and in each capacity in which they are party to any Document, hereby agrees that, effective as of the Effective Date, this Agreement shall constitute a settlement of all of the disputes among the Parties under all of the Documents and shall amend, restate, supersede and replace the Documents and the Parties' continuing obligations thereunder, except to the extent that any obligations under the Documents are contained in or expressly reaffirmed in this Agreement. Any rights and obligations of any Party under any Document not otherwise contained in or expressly reaffirmed by this Agreement shall be amended and replaced in full by their respective rights and obligations specified under this Agreement and otherwise available under the NYUCC and other Applicable Law, and the amount owing to PDL by the Wellstat Parties under the Documents, which is currently disputed, shall be and is hereby irrevocably settled for all purposes for the sum of the Initial Settlement Payment plus the Total Settlement Amount Balance as set forth herein. None of the Wellstat Parties shall transfer any assets to Diagnostics other than the Diagnostics Assets and funds reasonably necessary to prosecute, maintain, or license the Diagnostics Assets, such transfers of funds not to exceed \$50,000 without prior consent of PDL, which consent shall not be unreasonably withheld, delayed or conditioned until and unless the Total Settlement Amount Balance is paid in full. For the avoidance of doubt, the limitation on the transfer of funds in the preceding sentence does not include any of the payments contemplated by Section 5.a, 5.b or 5.c. Notwithstanding anything else contained in this Agreement, each of the Wellstat Parties reaffirms and acknowledges the

prior grant and continuing validity of the security interest and lien in its Collateral granted to PDL under the Documents to secure the Obligations, the grant of which is expressly ratified and reaffirmed by this Agreement. Each Wellstat Party agrees that the Collateral secures all obligations under this Agreement, including the obligation to pay the Total Settlement Amount Balance, which amounts constitute a settlement of the disputes over the obligations due under the Documents. For the avoidance of doubt, and without limiting the provisions of this Section, this Agreement shall be the “Security Agreement” referred to in each of the Trademark Security Agreements and Patent Security Agreements, and the “Guarantee” referred to in the Deed of Trust. Each Wellstat Party further agrees to waive any defense to the enforcement of the Deed of Trust based on a failure to present the original of any Note delivered to the Escrow Agent in accordance with Section 7 for any reason whatsoever. In the event of any inconsistency or conflict between any provision of this Agreement and any provision of any Document reaffirmed by this Agreement, the provision of this Agreement shall control.

4. **Total Settlement Amount Balance.** Subject to this Agreement becoming effective, the Parties agree that the remaining amount due and owing under the Documents (exclusive of the \$7,500,000 Initial Settlement Payment) shall be settled and fixed for all purposes in the amount of:

- a. \$60,000,000 (reduced by the Advance \$5,000,000 Payment) if the Wellstat Parties make or cause to be made the Advance \$5,000,000 Payment by the Diagnostics Payment Date and the Scheduled Final Payment by the Final Payment Date;
- b. \$67,500,000 (reduced by the Advance \$5,000,000 Payment, if made) if the Wellstat Parties fail to make or cause to be made the Advance \$5,000,000 Payment by the Diagnostics Payment Date, but do make or cause to be made the Scheduled Final Payment by the Final Payment Date; or

- c. \$92,500,000 (reduced by the Advance \$5,000,000 Payment, if made) if the Wellstat Parties fail to make or cause to be made the Scheduled Final Payment by the Final Payment Date.

For the avoidance of doubt, but without duplication of any amounts payable hereunder, in the event the Total Settlement Amount Balance is \$60,000,000, the Scheduled Final Payment shall be \$55,000,000. In the event the Total Settlement Amount Balance is \$67,500,000, the Scheduled Final Payment shall be \$67,500,000 (reduced by the Advance \$5,000,000 Payment, if made). If the Wellstat Parties fail to make or cause to be made the Scheduled Final Payment, then the Total Settlement Amount Balance of \$92,500,000 (reduced by the Advance \$5,000,000 Payment, if made) shall be due and owing to PDL for all purposes. In each case above, the Total Settlement Amount Balance shall be subject only to (i) any offsets and deductions for any payments made in respect of the Total Settlement Amount Balance received by PDL and any other payments received after the Effective Date by PDL from any other source in payment or partial satisfaction of the Obligations (including, without limitation, proceeds from the sale of the BioVeris license referred to in Section 5.g or proceeds of any collection, sale, foreclosure or other realization (net of reasonable and documented costs and expenses in connection therewith, if any) upon any initial disposition of the Collateral under the NYUCC or other Applicable Law, without duplication of such amounts so realized or otherwise received by PDL), which shall, in each case, be applied to reduce the Total Settlement Amount Balance on a dollar-for-dollar basis; and (ii) those defenses, counterclaims or offsets accruing after the Effective Date of this Agreement that could be asserted in an action to vacate a confession of judgment under Maryland law. For the avoidance of doubt, any payment PDL may receive as compensation for any transfer or sale of its rights under this Agreement shall not reduce the Total Settlement Amount Balance.

5. **Transfer of Diagnostics Assets.** On the date hereof, PDL and Diagnostics shall execute the Asset Transfer Agreement.

a. If the Wellstat Parties make or cause to be made payments in an amount in the aggregate of \$12,500,000 (inclusive of the \$7,500,000 Initial Settlement Payment) to Escrow Agent for the benefit of PDL, by wire transfer of immediately available funds by the Diagnostics Payment Date, then, upon confirmation by the Escrow Agent that it has received payments in an amount in the aggregate (and without duplication) of \$12,500,000 made by or on behalf of the Wellstat Parties, Escrow Agent shall release all such funds to PDL immediately by wire transfer and, upon confirmation by Escrow Agent to the Parties that it has received a Federal Reference Number on its wire transfer of such funds to PDL and unless the Parties have jointly notified the Escrow Agent of an Inspection Failure (as defined in the Asset Transfer Agreement), Escrow Agent shall within two calendar days release all Trademark Security Agreement Releases relating solely to Diagnostics and all Patent Security Agreement Releases relating solely to Diagnostics to Diagnostics and the Wellstat Parties, and the closing of the transfer of the Diagnostics Assets to Diagnostics shall occur in accordance with the terms and conditions set forth in the Asset Transfer Agreement, as is where is, without any representation or warranty relating to the Diagnostic Assets, other than as specifically set forth in the Asset Transfer Agreement.

b. If the Wellstat Parties fail to make or cause to be made payments in an amount in the aggregate of \$12,500,000 (inclusive of the \$7,500,000 Initial Settlement Payment) to Escrow Agent for the benefit of PDL, by wire transfer of immediately available funds by the Diagnostics Payment Date, but the Wellstat Parties make or cause to be made payments in an amount in the aggregate of \$12,500,000 (inclusive of the \$7,500,000 Initial Settlement Payment) to Escrow Agent for the benefit of PDL, by

wire transfer of immediately available funds by the Diagnostics Outside Payment Date, then, upon confirmation by Escrow Agent that it has received payments in an amount in the aggregate (and without duplication) of \$12,500,000 made by or on behalf of the Wellstat Parties, Escrow Agent shall release all such funds to PDL immediately by wire transfer and, upon confirmation by Escrow Agent to the Parties that it has received a Federal Reference Number on its wire transfer of such funds to PDL and unless the Parties have jointly notified the Escrow Agent of an Inspection Failure, Escrow Agent shall within two calendar days release all Trademark Security Agreement Releases relating solely to Diagnostics and all Patent Security Agreement Releases relating solely to Diagnostics to Diagnostics and the Wellstat Parties, and the closing of the transfer of the Diagnostics Assets to Diagnostics shall occur in accordance with the terms and conditions set forth in the Asset Transfer Agreement, as is where is, without any representation or warranty relating to the Diagnostic Assets, other than as specifically set forth in the Asset Transfer Agreement.

c. If the Wellstat Parties fail to make or cause to be made payments in an amount in the aggregate of \$12,500,000 (inclusive of the \$7,500,000 Initial Settlement Payment) to Escrow Agent for the benefit of PDL, by wire transfer of immediately available funds by the Diagnostics Payment Date, but the Wellstat Parties make or cause to be made payments in an amount in the aggregate of \$75,000,000 (inclusive of the \$7,500,000 Initial Settlement Payment) to Escrow Agent for the benefit of PDL, by wire transfer of immediately available funds by the Final Payment Date, then, upon confirmation by the Escrow Agent that it has received, payments in an amount in the aggregate (and without duplication), of

\$75,000,000 made by or on behalf of the Wellstat Parties, Escrow Agent shall release all such funds to PDL immediately by wire transfer and, upon confirmation by Escrow Agent to the Parties that it has received a Federal Reference Number on its wire transfer of such funds to PDL and unless the Parties have jointly notified the Escrow Agent of an Inspection Failure, Escrow Agent shall within two calendar days release all Trademark Security Agreement Releases relating solely to Diagnostics and all Patent Security Agreement Releases relating solely to Diagnostics to Diagnostics and the Wellstat Parties, and the closing of the transfer of the Diagnostics Assets to Diagnostics shall occur in accordance with the terms and conditions set forth in the Asset Transfer Agreement, as is where is, without any representation or warranty relating to the Diagnostic Assets, other than as specifically set forth in the Asset Transfer Agreement.

d. If the Parties have jointly notified the Escrow Agent of Inspection Failure, the release by the Escrow Agent of all Trademark Security Agreement Releases relating solely to Diagnostics and all Patent Security Agreement Releases relating solely to Diagnostics to Diagnostics and the Wellstat Parties, and the closing of the transfer of the Diagnostics Assets to Diagnostics, shall occur on the date calculated in accordance with the terms of the Asset Transfer Agreement.

e. Immediately upon the closing of the transfer of the Diagnostics Assets to Diagnostics in accordance with the terms and conditions set forth in the Asset Transfer Agreement, (i) all liens, pledges, security interests, and other charges of whatever nature granted to or in favor of PDL by Diagnostics in the Diagnostics Assets and by any Grantor against the Diagnostics Pledged Stock shall automatically terminate and be released, discharged and satisfied in full, (ii) Diagnostics and the Wellstat Parties

and any of their respective designees shall be, and hereby are, authorized by PDL to file and/or deliver all lien release or reassignment documents or notices as may be necessary to terminate of record all lien recordations previously filed by PDL against Diagnostics and to reflect the removal of the Diagnostics Pledged Stock from the Collateral in connection with the transactions evidenced by this Agreement and/or any of the Documents and (iii) PDL shall be deemed to have automatically authorized the release of all Trademark Security Agreement Releases relating solely to Diagnostics and all Patent Security Agreement Releases relating solely to Diagnostics from escrow, and, to the extent applicable with respect to each such PDL Instrument, such PDL Instruments may at such time be dated the date of such release and filed and recorded by Diagnostics or its designees. If the Wellstat Parties ask to record any additional releases of liens or security interests held by PDL in the Diagnostics Assets or the Diagnostics Pledged Stock or otherwise solely against Diagnostics, PDL shall promptly take all steps reasonably appropriate to release any such liens solely on the Diagnostics Assets, the Diagnostics Pledged Stock and otherwise against Diagnostics, without prejudice to PDL's retention of its security interest in the Collateral (other than the Diagnostics Pledged Stock).

f. From the date of this Agreement until (i) the date the Diagnostics Assets are transferred to Diagnostics in accordance with the Asset Transfer Agreement or (ii) the Wellstat Parties fail to make or cause to be made payment of the Total Settlement Amount Balance by the Final Payment Date, PDL (A) will at its own expense take reasonable steps to protect and maintain as they exist as of the Effective Date the tangible Diagnostics Assets against loss, theft, destruction, breakage or falling into

disrepair (normal wear and tear excepted), it being understood and agreed by PDL, the Wellstat Parties and Diagnostics that tangible Diagnostics Assets are held and maintained at third-party facilities pursuant to storage facility agreements and that PDL's obligations under this Section 5.f.A. as they relate to such tangible assets shall be satisfied (x) if PDL complies with those terms and conditions of such agreements, including the continued payment of such facilities' fees, which, if breached, would reasonably be expected to have a material adverse effect on any Diagnostics Asset and (y) if, upon notice to PDL of the occurrence of an event (other than a breach of the storage facility agreements) that has resulted in, or which could reasonably be expected to result in, the loss, theft, destruction or breakage of assets, PDL takes all actions reasonably necessary to mitigate any such loss, theft, destruction or breakage; provided that, PDL shall not be obligated to continue mitigation if it has incurred costs in connection therewith in excess of \$5,000 if PDL informs Diagnostics of the event and expected cost of mitigation and allows Diagnostics to continue mitigation efforts at Diagnostic's sole cost and expense, (B) will in the case of intellectual property assets, provide prompt written notice to the Wellstat Parties of any communications it receives relating to required filings, or renewal or maintenance fees to be paid for such assets, (C) will in the case of intellectual property assets, allow the Wellstat Parties to make any filings they deem necessary or appropriate to protect against expiration or abandonment for failure to pay renewal or maintenance fees or to prosecute, at the Wellstat Parties' sole expense and, in connection with any such filings, PDL will cooperate, to the extent reasonably necessary to permit the Wellstat Parties to make any such filings, (D) will grant authorization to permit Diagnostics one-time access

to each storage facility to inspect the Diagnostics Assets in accordance with the terms and conditions of the Asset Transfer Agreement, and (E) PDL will not grant any interest in or license to use any of the Diagnostics Assets to any party prior to the day after the Final Payment Date, other than ATA Permitted Liens (as such term is defined in the Asset Transfer Agreement) and the interest, if any, that PDL may be required to grant to BioVeris under the BioVeris License Agreement if BioVeris exercises its Purchase Right (as such term is defined in the BioVeris License Agreement), provided however that nothing herein shall serve to prevent PDL from transferring its interests under the Agreement.

g. Within five (5) Business Days after the Effective Date of this Agreement, PDL will provide BioVeris the Negotiation Notice (as such term is defined in the BioVeris License Agreement). Such notice will also request that BioVeris waive its rights set forth in Section 12.2(b) of the BioVeris License Agreement. PDL shall not be required to pay anything to BioVeris to obtain such waiver. If PDL fails to obtain such waiver within thirty (30) days following receipt of the Negotiation Notice by BioVeris, and PDL and BioVeris negotiate, but are unable to agree on price and all other relevant transaction terms for BioVeris to acquire the BioVeris license from PDL, PDL shall deliver to BioVeris a Purchase Notice (as such term is defined in the BioVeris License Agreement). The purchase price for the BioVeris license to be included in the Purchase Notice shall be \$1,000,000. A draft of the Purchase Notice shall be provided to Diagnostics for review prior to delivery to BioVeris. Through and including the Final Payment Date, PDL agrees not to assign, sell, or transfer to BioVeris rights to any Diagnostics Assets, other than as may be required by the BioVeris License Agreement if BioVeris exercises its

Purchase Right (as such term is defined in the BioVeris License Agreement). If BioVeris acquires the BioVeris License Agreement from PDL, then the Total Settlement Amount Balance owed by the Wellstat Parties under this Agreement, shall be reduced by any amount paid by BioVeris to PDL and any such payment shall be applied, without duplication, to partially satisfy the Total Settlement Amount Balance or any judgment obtained based on a confession of judgment pursuant to paragraph 8 of this Agreement.

6. Schedule of Settlement Payments.

a. If the Wellstat Parties make or cause to be made the Advance \$5,000,000 Payment to Escrow Agent by the Diagnostics Payment Date, the Wellstat Parties shall fully satisfy the Total Settlement Amount Balance by making or causing to be made, by wire transfer of immediately available funds to the Escrow Agent by the Final Payment Date, the sum of \$55,000,000 (in addition to the Initial Settlement Payment made on the Effective Date and the Advance \$5,000,000 Payment) or the Total Settlement Amount Balance as agreed by the Parties, if less. For purposes of this section, payments received by the Escrow Agent by the Final Payment Date shall be deemed timely made.

b. If the Wellstat Parties do not make or cause to be made the Advance \$5,000,000 Payment to Escrow Agent by the Diagnostics Payment Date, the Wellstat Parties shall satisfy the Total Settlement Amount Balance by paying, for the benefit of PDL, by wire transfer of immediately available funds to Escrow Agent, by the Final Payment Date, the sum of \$67,500,000 (in addition to the Initial Settlement Payment made on the Effective Date) or the Total Settlement Amount Balance as

agreed by the Parties, if less. For purposes of this section, payments received by the Escrow Agent by the Final Payment Date shall be deemed timely made.

c. In addition to the foregoing, the Wellstat Parties may make or cause to be made any optional payments on the Total Settlement Amount Balance to Escrow Agent at any time, and from time to time, without premium or penalty.

d. Notwithstanding anything to the contrary contained herein, any payments made or caused to be made by the Wellstat Parties after the Effective Date and received by PDL in respect of the Total Settlement Amount Balance, and any other payments received by PDL from any other source in payment or partial satisfaction of the Obligations (including, without limitation, proceeds from the sale of the BioVeris license referred to in Section 5.g or proceeds of any collection, sale, foreclosure or other realization (net of reasonable and documented costs and expenses in connection therewith, if any) upon any initial disposition of the Collateral under the NYUCC or other Applicable Law, without duplication of such amounts so realized or otherwise received by PDL), shall, in each case, be fully credited by PDL on a dollar-for-dollar basis against the Total Settlement Amount Balance. For the avoidance of doubt, any payment that may be received by PDL as compensation for the transfer or sale of its rights under this Agreement shall not reduce the Total Settlement Amount Balance. If the aggregate amount of all payments received after the Effective Date by PDL from or on behalf of the Wellstat Parties in respect of the Total Settlement Amount Balance or otherwise from any other source in payment or partial satisfaction of the Obligations (including, without limitation, proceeds from the sale of the BioVeris license referred

to in Section 5.g or proceeds of any collection, sale, foreclosure or other realization (net of reasonable and documented costs and expenses in connection therewith, if any) upon any initial disposition of the Collateral under the NYUCC or other Applicable Law, without duplication of such amounts so realized or otherwise received by PDL), if any, is in excess of the Total Settlement Amount Balance or on any judgment thereon, all such amounts received shall be promptly disbursed by PDL as reasonably directed by the Wellstat Parties. If at any time after the Effective Date, but prior to the Final Payment Date, PDL receives payments from any source other than the Wellstat Parties in payment or partial satisfaction of the Obligations, PDL shall promptly, and in any event within five (5) Business Days, provide written notice of the receipt of such payment (including the amount thereof) to the Wellstat Parties.

7. **Delivery of PDL Instruments to Escrow Agent.** Contemporaneous with the execution of this Agreement, PDL shall execute and deliver the following PDL Instruments and Transaction Documents (as defined in the Asset Transfer Agreement) to be held in escrow until such time as the Wellstat Parties have paid the Total Settlement Amount Balance or have failed to do so according to the terms of this Agreement by the Final Payment Date (or, in the case of any such PDL Instruments relating solely to the Diagnostics Assets, to be held in escrow until such time as specified in Section 6 above): (i) the Lien Release, (ii) the Deed of Trust Release, (iii) the Trademark Security Agreement Releases, (iv) the Patent Security Agreement Releases (including, for the avoidance of doubt, the Patent Security Agreement Release relating to that certain Patent Security Agreement, dated August 15, 2013, executed by Diagnostics in favor of PDL), (v) the Term Note dated as of November 2, 2012 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender, (vi) the Term Note dated as of August 15, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender, (vii)

the duly executed Limited Power of Attorney, (viii) a duly executed bill of sale and assignment in the form attached to the Asset Transfer Agreement as Exhibit A, (ix) a duly executed intellectual property assignment agreement for Intellectual Property other than Patents in the form attached to the Asset Transfer Agreement as Exhibit B, and (x) a duly executed patent assignment agreement in the form attached to the Asset Transfer Agreement as Exhibit C. Concurrently with the execution of this Agreement, all Possessory Collateral shall be delivered to the Escrow Agent, who for purposes of perfecting PDL's security interest in the Possessory Collateral, including for perfection through possession of the Possessory Collateral pursuant to Sections 8-301 and 9-313 of the UCC in the applicable governing state, shall hold possession of the Possessory Collateral for PDL's benefit as bailee until such time as the Total Settlement Amount Balance is paid in full or the Possessory Collateral is returned to PDL based on the failure of the Wellstat Parties to pay the Total Settlement Amount Balance in full by the Final Payment Date. For the avoidance of doubt, such Possessory Collateral is held as collateral security for the Obligations, and, notwithstanding any other provision in this Agreement, no Wellstat Party shall have the right to give any instructions (other than instructions delivered jointly with PDL) to the Escrow Agent in respect of such Possessory Collateral, other than to request electronic copies and/or a listing of the Possessory Collateral then held by the Escrow Agent and as otherwise expressly provided in the Escrow Agreement. For the avoidance of doubt, until and unless sold in accordance with the terms of this Agreement and as subject to the restrictions set forth herein, the Possessory Collateral remains the property of the applicable Wellstat Parties, and the Wellstat Parties shall have the right, from time to time, to vote and give consents with respect to the Possessory Collateral, or any part thereof for purposes not inconsistent with the provisions of this Agreement; provided, however, that subsequent to the occurrence of any failure by the Wellstat Parties to make or cause to be made payment of the Scheduled Final Payment under this Agreement, and upon the election of PDL with written notice to the Wellstat Parties, the right of the Wellstat Parties to vote or otherwise give consents with respect to the Possessory Collateral shall immediately cease. If, after the Effective Date

hereof, a Party identifies an executed Note that was in effect immediately prior to the Effective Date but was not put into Escrow in accordance herewith, PDL shall, within a reasonable time, deliver to the Escrow Agent (i) the original of such executed Note to the Escrow Agent if such Note is in PDL's possession custody or control, or (ii) if the original of such executed Note was previously delivered to PDL, has not otherwise been returned to the Wellstat Parties, Diagnostics and/or their agents, and cannot be located by PDL after a diligent search, a lost note affidavit in a form reasonably acceptable to the Parties.

8. **Confession of Judgment.** The Wellstat Parties hereby submit and waive all rights to object to personal jurisdiction in the State of Maryland and, upon a failure to timely pay or cause to be paid the Total Settlement Amount Balance to Escrow Agent or to PDL by the Final Payment Date, authorize the Clerk of the Circuit Court for Montgomery County, Maryland, or any attorney authorized to practice in any court of record in the United States and confess judgment in the State of Maryland against the Wellstat Parties, jointly and severally, without prior hearing, in favor of PDL for, and in the amount of \$92,500,000 or such lesser amount as may be due and owing under this Agreement. The authority and power to appear for and enter judgment against the Wellstat Parties shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdictions within the State of Maryland, as often as PDL shall deem necessary or advisable, for all of which this Agreement shall be sufficient warrant, until the Total Settlement Amount Balance has been paid in full. The confession of judgment shall be governed by Rule 2-611 of the Maryland Rules of Civil Procedure and applicable caselaw and the Wellstat Parties reserve and do not waive those defenses, counterclaims or offsets accruing after the Effective Date that could be asserted in any action to vacate a confession of judgment under Maryland law. Notwithstanding the foregoing, any judgment by confession shall be deemed satisfied when the Wellstat Parties pay all amounts owed under such judgment. For the avoidance of doubt, but subject to Section 12(b) of this Agreement, this Section shall not be

enforceable until and unless the Wellstat Parties have failed to make or cause to be made payment of the Total Settlement Amount Balance to Escrow Agent or to PDL by the Final Payment Date.

9. Collateral Security.

a. Until and unless released and terminated pursuant to Section 13 of this Agreement, each of the Wellstat Parties, each as a Grantor, hereby reaffirms that such Wellstat Party has previously granted a security interest to PDL in all of its Collateral and that such security interest secures the prompt and complete payment and performance, when due, of the Total Settlement Amount Balance, which is a compromise of all sums due under the Documents, which have at all times been secured by such security interest and liens, and in furtherance thereof, grants a continuing security interest in all Collateral to PDL to secure the Total Settlement Amount Balance.

b. Unless and until such time as they are released by PDL in accordance herewith, (i) each Patent Security Agreement, (ii) each Trademark Security Agreement and (iii) the Deed of Trust shall, in each case, continue to secure the Wellstat Parties' obligation to pay the Total Settlement Amount Balance, and this Agreement reaffirms the validity of such Patent Security Agreements, Trademark Security Agreements, and Deed of Trust and constitutes a compromise and reaffirmation of the debt that has at all relevant times been secured by the Deed of Trust and has been compromised by this Agreement in the amount of the Total Settlement Amount Balance.

c. From and after the date hereof (unless and until such time as the Wellstat Parties have failed to make or cause to be made payment of the Total Settlement Amount in accordance with the terms of this Agreement),

PDL shall not file nor authorize the filing of any additional UCC-1 financing statements or UCC-3 financing statement amendments evidencing such liens without the applicable Wellstat Party's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. In no event shall PDL exercise or enforce or seek to exercise or enforce any rights or remedies available to a secured party upon default under the NYUCC or any other applicable UCC or other Applicable Law or otherwise available to it as a secured party under any Applicable Law, including, without limitation foreclosing under the Deed of Trust, until at the earliest the day upon which it is entitled to enforce its rights in accordance with Section 12 hereof.

d. The Wellstat Companies shall not create, incur, assume or suffer to exist any debt, provided, that, notwithstanding the foregoing, each of the following shall be permitted hereunder without the prior written consent of PDL: (i) the Obligations hereunder; (ii) debt that is unsecured or secured by a Permitted Lien; (iii) debt to any other Wellstat Party, provided that all such debt shall be Collateral for the Obligations; (iv) debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; (v) second lien debt; (vi) debt arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions permitted under this Section; (vii) debt incurred in connection with the financing of insurance premiums in the ordinary course of business; and (viii) debt incurred under any guaranteed loan programs offered through the U.S. Small Business Administration, any other program authorized or created by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and/or any subsequent financial

assistance legislation approved by the U.S. Congress, so long as such debt does not purport to create any security interest equal to or superior to PDL's interests in the Collateral.

e. The Wellstat Parties shall not create or permit any lien on the Collateral other than a Permitted Lien.

f. The Wellstat Companies shall not (i) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any Stock or Stock Equivalent; or (ii) make any payment or prepayment of principal of, premium, if any, interest, fees, redemption, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to debt that is subordinated by its terms to the payment of the Obligations, except that (x) any Wellstat Company may declare and pay dividends to, repay intercompany debt owed to, and make internal profit-sharing payments to, any other Wellstat Company and (y) for any period in which any Wellstat Company is a partnership or disregarded entity for U.S. federal income tax purposes, such Wellstat Company may pay dividends or make distributions to its equity holders to whom the income earned by such Wellstat Company and its subsidiaries is allocable for such purposes (either directly or indirectly through intermediary entities, as the case may be) in an aggregate amount not greater than the amount necessary for such equity holders to pay their state and United States federal income tax liabilities.

g. The Wellstat Parties shall not sell, lease, transfer or otherwise dispose of the Collateral or any interest therein without the prior written consent of PDL (which may be given by email), such consent not to be unreasonably withheld, delayed or conditioned; provided, that, notwithstanding the foregoing, each of the following shall be permitted

hereunder without the prior written consent of PDL: (i) any transaction for which the consideration to be paid to or for the benefit of the Wellstat Parties is in an amount sufficient for the Wellstat Parties to pay or cause to be paid the Total Settlement Amount Balance and the Wellstat Parties make or cause to be made payment of the Total Settlement Amount Balance to PDL concurrently with the closing of such transaction, (ii) any disposition that would create or permit to exist a Permitted Lien, (iii) abandonment of Intellectual Property that is no longer useful or material to the conduct of the business of the Wellstat Parties in the ordinary course of business, (iv) any agreement in the ordinary course of business with any Person on an arms-length basis for the development, manufacturing, licensing, marketing, importation, offer for sale, sale or use, or commercialization of any of the products covered by the Intellectual Property (and/or any exclusive or non-exclusive licenses or sublicenses with respect to any of the Intellectual Property that relate to such agreement or any similar transaction), so long as such transaction would not reasonably be expected to impair the value of the Collateral and the proceeds of any such agreement constitute Collateral hereunder, (v) sales of inventory to unaffiliated third party purchasers in the ordinary course of business, (vi) sales or dispositions of worn-out or surplus equipment in the ordinary course of business, (vii) dispositions of cash and cash equivalents in the ordinary course of business, (viii) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding, (ix) any sale or transfer of assets or property from any Wellstat Company and/or Diagnostics to any Wellstat Company, (x) any sale or transfer of assets or property permitted under Section 3 hereof, (xi) any transaction permitted by

Section 9 hereof, and (xii) to the extent constituting a sale, lease, transfer or other disposition, any transactions in the ordinary course of business of the Wellstat Companies that are consistent with past practices or reasonably similar, ancillary, incidental, or related to, the businesses conducted by the Wellstat Parties on the date hereof; provided, however, that none of the Wellstat Parties shall (I) directly or indirectly, take any action that would reasonably be expected to materially impair the value of the Collateral (it being understood and agreed that any arms-length third-party sale, transfer or other disposition of any Collateral to a party other than a Wellstat Party, Diagnostics or any Affiliate of a Wellstat Party or Diagnostics permitted under this Section 9 shall be presumed to not significantly impair the value of the Collateral), or (II) sell, transfer, or otherwise dispose of any of its right, title, and interest in and to any Collateral constituting (x) real property or any direct or indirect interest therein, (y) Intellectual Property (other than as provided in Section 3 hereof or in this Section 9), and (z) equity interests issued by another Wellstat Party, in each case, to any Person other than a Wellstat Company, without the prior written consent of PDL (which may be given by email), such consent not to be unreasonably withheld, delayed or conditioned. Upon any sale, transfer, or other disposition of all right, title and interest in and to any Collateral to any third party that is not prohibited under this Section 9 (but not, for the avoidance of doubt, upon the grant of a lien, license, or other encumbrance), the lien granted pursuant hereto in such Collateral shall be released, and in connection with such release, PDL hereby agrees that it will execute and deliver to the Wellstat Parties such documents and instruments (including, without limitation, UCC-3 amendment statements) as any Wellstat Party shall reasonably request to

evidence the release of PDL's lien in such Collateral. For the avoidance of doubt, this Section 9 is not intended to prevent the Wellstat Parties from ordinary-course, arm's length transactions to develop their Intellectual Property rights, products and business, so long as such business is a business engaged in by the Wellstat Parties as of the Effective Date or a business directly related thereto and the proceeds of any such transaction (but not including the proceeds payable to the counterparty(ies) of such transaction, provided that the counterpart(ies) is/are not an affiliate of a Wellstat Party and the Wellstat Parties do not otherwise structure the transaction to evade the intent of this restriction) constitute Collateral hereunder.

10. **Cooperation.** PDL acknowledges that some or all of the Wellstat Parties intend to enter into one or more fundraising transactions to provide proceeds with which to pay all or a portion of the Total Settlement Amount. Such transactions may include, but are not limited to, the grant of licenses under or further encumbrances of the Collateral. PDL agrees to take reasonable efforts to comply with reasonable requests of the Wellstat Parties for information concerning the Obligations and/or the Collateral and to negotiate in good faith with any third party seeking to enter into a license or encumbrance the terms of which require PDL's acknowledgment or consent; provided, that PDL acknowledges and agrees that, in connection with such transactions, the Wellstat Parties may grant liens in their assets that are fully subordinated to the liens in such assets in favor of PDL evidenced by this Agreement.

11. **Release of PDL Instruments.**

a. If the Wellstat Parties pay or cause to be paid the Total Settlement Amount Balance to Escrow Agent, for the benefit of PDL by the Final Payment Date then upon confirmation by Escrow Agent to the Parties that it has Completed a Wire Transfer in an amount equal to such Total Settlement Amount Balance to PDL, Escrow Agent shall deliver all PDL

Instruments except for the Limited Power of Attorney to the Wellstat Parties. For the avoidance of doubt, such PDL Instruments shall be released from escrow by Escrow Agent and delivered to the Wellstat Parties in accordance with the foregoing sentence, and shall be effective immediately upon receipt by the Wellstat Parties following Escrow Agent's confirmation to the Parties that it has Completed a Wire Transfer in an amount equal to such Total Settlement Amount Balance to PDL. Notwithstanding anything to the contrary contained herein:

- i. if in connection with any financing, equity investment, or other transaction that will result in payment in full of the Total Settlement Amount Balance at the closing of such transaction, the Wellstat Parties or any of their lenders or investors (or any agent acting on behalf of such lenders or investors) party to such transaction deem it necessary or appropriate that the payment of the Total Settlement Amount Balance be made directly to PDL at such closing such that the satisfaction of the Total Settlement Amount Balance and the releases of PDL's liens on the Collateral (including the related release of the PDL Instruments) and of the Wellstat Parties, Diagnostics, and all other Obligors from all of their obligations hereunder and under the Documents occurs substantially simultaneously with the closing of such transaction, PDL agrees that it will take reasonable efforts to cooperate and participate with such closing (including, without limitation, to enter into any reasonable amendments hereto or any payoff letters as may be required in connection therewith) in order to effect such closing.

- ii. if, in accordance with the terms of the Escrow Agreement, the Wellstat Parties request an In-Person Closing (as such term is defined therein), the payment of the Total Settlement Amount Balance may be made directly to PDL at such closing through a cashier's check drawn on a bank reasonably acceptable to both PDL and the Wellstat Parties and immediately after the Wellstat Parties hand such check in the amount of the Total Settlement Amount Balance to PDL, the Escrow Agent shall hand to the Wellstat Parties the originals of the PDL Instruments (including the Limited Power of Attorney) and Possessory Collateral.
- b. Notwithstanding anything else contained in the Agreement, if the Wellstat Parties fail to pay or cause to be paid the Total Settlement Amount Balance to Escrow Agent, for the benefit of PDL, or fail to pay or cause to be paid the Total Settlement Amount Balance directly to PDL, by the Final Payment Date, then Escrow Agent shall as soon as possible, but not later than two calendar days after the Final Payment Date deliver the PDL Instruments to PDL.

12. Enforcement of Remedies.

- a. If the Wellstat Parties do not pay or cause to be paid the Total Settlement Amount Balance to Escrow Agent, for the benefit of PDL, or to PDL by the Final Payment Date, PDL shall have the immediate right to enforce all remedies available with respect to all of its Collateral, including without limitation, the Deed of Trust, and to confess judgment pursuant to paragraph 8 of this Agreement, and to do so in such order and at such times as PDL elects in its sole and absolute discretion, subject to Applicable Law; provided, however, that for the avoidance of doubt, upon PDL's receipt of amounts in the aggregate that are at least equal to the

Total Settlement Amount Balance, including legal interest on any judgment thereon, PDL shall not enforce any additional rights or remedies available with respect to the Collateral or seek to enforce any judgment, so long as no legal challenges to PDL's receipt of such funds have been asserted by or on behalf of Diagnostics, the Wellstat Parties, their Affiliates or any third party. The Wellstat Parties expressly waive any right that can be waived under Applicable Law to object to the sequence of enforcement elected by PDL. Upon entry of judgment, PDL may enforce it at any time, subject only to any offsets and deductions for any amounts paid or caused to be paid by the Wellstat Parties to PDL pursuant to the terms of this Agreement to the extent such payments are not already reflected in the amount of the judgment. For avoidance of any doubt, if, for example, the Wellstat Parties make or cause to be made the Initial Settlement Payment of \$7,500,000 and the Advance \$5,000,000 Payment, but make no further settlement payments, then in any action to enforce a judgment, the unpaid balance that would need to be paid to satisfy the judgment would be \$87,500,000, plus any legal interest thereon.

b. For the avoidance of doubt, but subject to the following sentence, this Section shall not be enforceable until and unless the Wellstat Parties have failed to make or cause to be made payment of the Total Settlement Amount Balance to Escrow Agent or to PDL by the Final Payment Date. If, by the Final Payment Date, (i) the Wellstat Parties release a wire, or cause a wire to be released, in an amount equal to the Total Settlement Amount Balance to the account specified in Exhibit B-2 or to the Escrow Agent for further payment into such account (the "**Final Payment Wire**"), (ii) the Wellstat Parties provide a Federal Reference Number for such release to PDL and take no action to impede the funds being credited to

such account and (iii) PDL alleges that the funds were not credited to such account, PDL shall provide certified copies of bank records demonstrating as such to the Wellstat Parties and shall cooperate with the Wellstat Parties to determine the disposition of the funds. If thirty-five (35) days have passed after the later of (x) the Final Payment Date and (y) the date PDL provides the certified copies of its bank records to the Wellstat Parties and, subject to compliance with the preceding sentence, the funds have still not been credited to the account specified in Exhibit B-2, or such other account as designated by PDL in accordance with the terms of this Agreement and the terms of the Escrow Agreement through no fault of PDL, this Section shall thereafter be enforceable for the Total Settlement Amount Balance that was due by the Wellstat Parties as of the date of the Final Payment Wire. For the avoidance of doubt, if payment of the Total Settlement Amount Balance is made directly to PDL at an In-Person Closing occurring on or prior to the Final Payment Date in accordance with Section 11(a)(ii), the procedures set forth in the preceding two sentences shall not apply and the payment of the Total Settlement Amount Balance shall be deemed made or caused to be made by the Wellstat Parties and received by PDL by the Final Payment Date.

13. **PDL's Release of Liens** on the Wellstat Parties' property and other obligations of the Wellstat Parties. If, by the Final Payment Date, the Wellstat Parties release a wire, or cause a wire to be released, in an amount equal to the Total Settlement Amount Balance to the account specified in Exhibit B-2 or to the Escrow Agent for further payment into such account:

a. (x) in the case of release by the Wellstat Parties to the Escrow Agent, immediately upon Escrow Agent's confirmation to the Parties that it has Completed a Wire Transfer in an amount equal to such Total Settlement Amount Balance to PDL's account set forth on Exhibit B-2, or such other account as designated by PDL in accordance with the terms of this Agreement and the terms of the Escrow Agreement and (y) in the case of release by the Wellstat Parties to the account specified in Exhibit B-2 or such other account as designated by PDL in accordance with the terms of this Agreement, upon joint written instructions by PDL and the Wellstat Parties, Escrow Agent shall simultaneously transmit electronic copies of the PDL Instruments (except the Limited Power of Attorney) and Possessory Collateral to the Wellstat Parties and promptly deliver the originals to the Wellstat Parties by express overnight delivery or such other method as the Wellstat Parties may designate:

i. Upon the Wellstat Parties' receipt of such PDL Instruments, all liens, pledges, security interests, encumbrances, mortgages and other charges of whatever nature granted to or in favor of PDL against the Collateral and/or any other assets of any Wellstat Parties, Diagnostics, and any other Obligors, shall automatically terminate and be released, discharged and satisfied in full;

ii. Upon the Wellstat Parties' receipt of the Lien Release, the Wellstat Parties and any of their respective designees shall automatically be authorized to file and/or deliver financing statement terminations under the UCC and all other lien release or reassignment documents or notices as may be necessary or advisable to terminate of record all financing statements under the

UCC and other lien recordations previously filed by PDL against any of the Wellstat Parties, Diagnostics, and/or any other Obligor in connection with the transactions evidenced by this Agreement and/or any of the Documents. Upon Escrow Agent's confirmation to the Parties that it has Completed a Wire Transfer in an amount equal to such Total Settlement Amount Balance to PDL, PDL shall be deemed to have automatically authorized the release of the PDL Instruments from escrow to the Wellstat Parties, and, to the extent applicable with respect to each such PDL Instrument, such PDL Instruments (and any documents contemplated thereby, including financing statement terminations) may at such time be dated the date of such release and filed and recorded by the Wellstat Parties and Diagnostics, or their respective designees as contemplated hereby; and

iii. PDL shall, at the Wellstat Parties' cost and expense, following any Wellstat Party's reasonable request, promptly take all other steps reasonably necessary to procure, execute and deliver any other appropriate documentation in form and substance reasonably satisfactory to the Wellstat Parties to terminate, release, or release of record all liens and security interests in the assets of each of the Wellstat Parties and Diagnostics granted in favor of PDL in connection with the transactions evidenced by this Agreement and/or any of the Documents. PDL shall, at the Wellstat Parties' cost and expense, following any Wellstat Party's reasonable request, promptly execute such other documents and take such other actions reasonably requested by the Wellstat Parties, or their respective designees, to effect, confirm, or

evidence the above-described termination of the liens and security interests of PDL in the assets of the Wellstat Parties and Diagnostics and other releases and discharges contemplated hereby; and

b. immediately upon the account set forth on Exhibit B-2 or such other account as designated by PDL in accordance with the terms of this Agreement receiving such funds (i) all indebtedness, liabilities and obligations (including, for the avoidance of doubt, any contingent obligations) of Diagnostics and the Wellstat Parties hereunder and under any other Document shall be deemed automatically discharged, terminated, paid and satisfied in full and the Wellstat Parties, Diagnostics, and all other Obligor shall be automatically released and discharged from all such indebtedness, liabilities and obligations and (ii) the Escrow Agent shall transmit an electronic copy of the Limited Power of Attorney to the Wellstat Parties and promptly deliver the original to the Wellstat Parties by express overnight delivery or such other method as the Wellstat Parties may designate. Upon such account receiving such funds, PDL shall provide immediate written confirmation of such to the Wellstat Parties and the Escrow Agent.

Notwithstanding the foregoing, if payment is made directly to PDL at an In-Person Closing in accordance with Section 11(a)(ii), the consequences of payment set forth in this Section 13, shall occur immediately upon the Wellstat Parties handing to PDL a cashier's check drawn on a bank reasonably acceptable to both PDL and the Wellstat Parties in the amount of the Total Settlement Amount Balance.

14. Withdrawal of Appeal and Discontinuance of the September 2015 and September 9 Letter Actions.

Promptly upon this Agreement becoming effective, the Wellstat

Parties shall cause their attorneys to withdraw their appeal in the Supreme Court of the State of New York, Appellate Division, First Department, of the motion court's September 11, 2019 order in the September 2015 Action and the September 12, 2019 order in the September 9 Letter Action and the Parties shall cause their respective attorneys to take such other actions as may be necessary in order to discontinue the September 2015 Action and the September 9 Letter Action with prejudice.

15. **Release by PDL.** Except for the Wellstat Parties' obligations under this Agreement, including the obligation to pay the Total Settlement Amount Balance and the continuing security interests in the Collateral described in this Agreement, which are reaffirmed and ratified by this Agreement and shall secure the Total Settlement Amount Balance, which is a settlement and compromise of the balance due under the Documents, PDL, for itself and on behalf of any and all:

- a. persons or entities which control, are controlled by or are under common control with PDL,
- b. present or former officers, directors, partners, members, shareholders, direct and indirect owners, affiliates, principals (disclosed or undisclosed), agents, representatives, employees, administrators and legal representatives of PDL and/or any of the persons or entities referred to in clause (a) above, and
- c. successors or assigns of PDL and/or any of the foregoing persons or entities (PDL, together with the persons and entities referred to in clauses (a) through (c), shall be collectively referred to herein as the "**PDL Releasers**")

do hereby irrevocably and unconditionally release and forever discharge:

- i. Diagnostics and the Wellstat Parties,

ii. any and all persons and entities which control, are controlled by or are under common control with the Wellstat Parties or Diagnostics,

iii. any and all present or former officers, directors, partners, members, shareholders, direct and indirect owners, affiliates, principals (disclosed or undisclosed), agents, representatives, employees, administrators and legal representatives of the Wellstat Parties or Diagnostics or any of the persons or entities referred to in clause (ii) above and

iv. any and all successors or assigns of the Wellstat Parties or Diagnostics and/or any of persons or entities referred to in clauses (ii) or (iii) above (the persons and entities referred to in clauses (i) through (iv) shall be collectively referred to herein as the “**Wellstat Releasees**”)

from any and all claims, accounts, actions, agreements, bonds, bills, causes of action, charges, controversies, complaints, contracts, covenants, damages, demands, dues, guaranties, judgments, liabilities, obligations, promises, specialties, sums of money or suits of any kind or nature whatsoever, whether in law, admiralty, equity, contract or otherwise based on any matter whatsoever, and whether known or unknown or foreseen or unforeseen or suspected or unsuspected, which the PDL Releasors may have had, now have, or may ever have against the Wellstat Releasees, singly or in any combination, on account of, arising out of, or in connection with any thing, cause, matter, transaction, act or omission of any nature whatsoever occurring before the Effective Date of this Agreement. For the avoidance of doubt, notwithstanding any waiver of rights contained herein, neither this section, nor any other provision of this Agreement shall be construed to waive or release any claims that the PDL Releasors otherwise may possess

against any third party or the Wellstat Releasees accruing after the Effective Date of this Agreement.

16. **Release by the Wellstat Parties and Diagnostics.** Except for PDL's obligations under this Agreement, including the obligation to accept the Total Settlement Amount Balance in full satisfaction of the larger balances that PDL contends are owed under the Loan Documents, the Wellstat Parties and Diagnostics, for themselves and on behalf of any and all:

- a. persons or entities which control, are controlled by or are under common control with the Wellstat Parties and Diagnostics,
- b. present or former officers, directors, partners, members, shareholders, direct and indirect owners, affiliates, principals (disclosed or undisclosed), agents, representatives, employees, administrators and legal representatives of the Wellstat Parties and Diagnostics and/or any of the persons or entities referred to in clause (a) above, and
- c. successors or assigns of the Wellstat Parties or Diagnostics and/or any of the foregoing persons or entities (the Wellstat Parties and Diagnostics, together with the persons and entities referred to in clauses (a) through (c), shall be collectively referred to herein as the "**Wellstat Releasers**")

do hereby irrevocably and unconditionally release and forever discharge:

- i. PDL,
- ii. any and all persons and entities which control, are controlled by or are under common control with PDL,
- iii. any and all present or former officers, directors, partners, members, shareholders, direct and indirect owners, affiliates, principals (disclosed or undisclosed), agents, representatives,

employees, administrators and legal representatives of PDL or any of the persons or entities referred to in clause (ii) above and

iv. any and all successors or assigns of PDL and/or any of persons or entities referred to in clauses (ii) or (iii) above (the persons and entities referred to in clauses (i) through (iv) shall be collectively referred to herein as the “**PDL Releasees**”)

from any and all claims, accounts, actions, agreements, bonds, bills, causes of action, charges, controversies, complaints, contracts, covenants, damages, demands, dues, guaranties, judgments, liabilities, obligations, promises, specialties, sums of money or suits of any kind or nature whatsoever, whether in law, admiralty, equity, contract or otherwise based on any matter whatsoever, and whether known or unknown or foreseen or unforeseen or suspected or unsuspected, which the Wellstat Releasors may have had, now have, or may ever have against the PDL Releasees, singly or in any combination, on account of, arising out of, or is in connection with any thing, cause, matter, transaction, act or omission of any nature whatsoever occurring before the Effective Date of this Agreement. For the avoidance of doubt, notwithstanding any waiver of rights contained herein, neither this release, nor any other provision of this Agreement shall be construed to waive or release any claims that the Wellstat Releasors otherwise may possess against any third party or the PDL Releasees accruing after the Effective Date of this Agreement.

17. **Settlement of Disputed Claims.** This Agreement is a final settlement of disputed contentions by the Parties. Neither this Agreement, nor any of the terms contained herein, nor any payment made pursuant to such terms, shall be construed as or deemed to be evidence of any admission of the truth of the specific allegations concerning the September 2015 Action or the September 9 Letter Action or the merits of the Parties’ defenses to such allegations, but this Agreement shall constitute a final irrevocable agreement that, as of the Effective Date, the Wellstat Parties presently shall and do owe the Total Settlement Amount Balance, without

any defense, counterclaim or offset, other than as expressly provided herein. Any payments made or caused to be made by the Wellstat Parties in respect of the Total Settlement Amount Balance received by PDL and any other payments received after the Effective Date by PDL from any other source in payment or partial satisfaction of the Obligations (including, without limitation, proceeds from the sale of the BioVeris license referred to in Section 5.g or proceeds of any collection, sale, foreclosure or other realization (net of reasonable and documented costs and expenses in connection therewith, if any) upon any initial disposition of the Collateral under the NYUCC or other Applicable Law, without duplication of such amounts so realized or otherwise received by PDL), shall, in each case, be applied to reduce the Total Settlement Amount Balance on a dollar-for-dollar basis. For the avoidance of doubt, any payment that may be received by PDL as compensation for the transfer or sale of its rights under this Agreement shall not reduce the Total Settlement Amount Balance. Nothing herein shall be construed to waive or release any defenses, claims, or offsets that any Party otherwise may possess against any third party or any other Party accruing after the Effective Date of this Agreement, which are expressly reserved.

18. **Advice of Counsel.** Each of the Parties has received advice of counsel of its own choosing in negotiation for and preparation of this Agreement. Each of the Parties has participated in the drafting of this Agreement. Therefore, any law, legal decision or rule of construction of contracts resolving ambiguities against the drafting party shall be inapplicable to the Agreement.

19. **Acknowledgement.** It is understood and agreed that the facts upon which this Agreement are based may hereafter turn out to be other or different than the facts now known by any of the Parties, or believed by any of them to be true. Each of the Parties expressly accepts and assumes the risk of the facts turning out to be different, and agrees that the present Agreement shall be in all respects effective and not subject to termination, rescission, or modification by reason of any such change in, or understanding of, the facts.

20. **Representations.** Each of the Parties represents and warrants to the other Parties as of the date hereof that (i) in the case of a Party that is not a natural person, the board of directors, managers or other similar governing body of such Party has approved this Agreement and the transactions contemplated hereby and such Party has the corporate or other organizational power and authority to execute, deliver and perform its obligations under this Agreement and to effect the transactions contemplated hereby (including, for the avoidance of doubt to amend the Documents as set forth herein), (ii) the execution, delivery and performance of this Agreement have been duly authorized by it, (iii) this Agreement constitutes its respective valid and binding obligation, enforceable in accordance with its terms (subject to the effects of bankruptcy and insolvency laws and principles of equity), and (iv) all consents, authorizations and approvals required for the execution and delivery by it of this Agreement, and the performance by it of its obligations hereunder have been obtained and remain in full force and effect.

a. PDL represents and warrants to Diagnostics and the Wellstat Parties that, as of the date hereof, (i) it remains the Agent and the sole Lender (as such terms are defined in the Prior Loan Agreement) under the Documents, (ii) it has not disposed of, assigned, transferred to any third party, or suffered, allowed, or permitted any lien to exist on, the Documents or any of the obligations contained therein and (iii) it has not disposed of, assigned, or transferred to any third party any of its interests, rights, and remedies under the Documents or otherwise with respect to any of the obligations contained therein.

b. PDL represents and warrants to Diagnostics and the Wellstat Parties that, as of the date hereof and through the Closing Date of the Asset Transfer Agreement, it has not assigned, encumbered (other than encumbrances which are ATA Permitted Liens, as such term is defined in the Asset Transfer Agreement), or transferred to any third party any

interests in the Diagnostics Assets acquired through the May 24, 2017, receivership sale.

21. **No other Representations or Warranties.** This Agreement constitutes the entire settlement agreement of the Parties hereto resolving the disputes over their rights and obligations under the Documents and supersedes any other agreements, representations or warranties, whether oral or written, between or among the Parties, including with respect to the balance due and owing by the Wellstat Parties under the Documents. It incorporates by reference, reaffirms and ratifies the grants of security interests in the Collateral to secure the Obligations (as amended and restated hereby) pursuant to the Documents as amended hereby, including the Deed of Trust, but no other rights or obligations of any of the Parties not expressly set forth or incorporated herein. Other than representations and warranties specifically expressed in this Agreement, no representation or warranty has been made by any of the Parties and each Party specifically disclaims any reliance on any representation or warranty other than what is set forth in this Agreement in executing this Agreement. To the extent that there is any conflict between the provisions of this Agreement and the provisions of any other agreement, including the Escrow Agreement or the Documents, the provisions of this Agreement shall govern.

22. **Mutual Non-Disparagement.** The Parties agree not to intentionally make, or intentionally cause any other Person to make, any public statement that is intended to criticize or disparage any of the other Parties, any of their affiliates, or any of their respective officers, managers or directors. The restrictions in this Section 22 do not apply to statements made in response to a subpoena, an inquiry by a government or government agency, to any statement in a court proceeding or filing, or to any statement otherwise required to be made by law.

23. **Further Acknowledgement.** The Parties acknowledge that this Agreement is intended to settle disputed allegations that were asserted in the September 2015 Action and the September 9 Letter Action, the merits of which will not be finally determined in

the courts. PDL hereby withdraws its allegations that Wellstat Diagnostics and its officers utilized funds in a manner that amounted to a breach of the Documents or that was otherwise improper. The Wellstat Parties and Diagnostics hereby withdraw their allegations that PDL improperly interfered in the operations or management of Diagnostics or any other Wellstat Company.

24. **Governing Law/Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the laws of the United States where applicable, except as to the paragraph 8 of this Agreement, which paragraph shall be governed by and construed in accordance with the laws of the State of Maryland and the laws of the United States where applicable. Any dispute or claim arising out of or relating to this Agreement shall be brought in the Supreme Court of the State of New York, County of New York and the Parties hereby submit to the personal jurisdiction of that court with respect to any such dispute or claim. Notwithstanding the forgoing, any action to confess judgment pursuant to paragraph 8 of this Agreement shall be brought in the Courts of the State of Maryland, and the Parties hereby submit to the personal jurisdiction of that court with respect to any such dispute or claim.

25. **Modification.** No modification, alteration, change or amendment of the terms of this Agreement, including the Exhibits hereto, shall be binding upon the Parties hereto unless reduced to writing and duly executed by each of them. If PDL desires to designate an account other than the account as set forth on Exhibit B-2 as its account to receive the wires set forth herein, it shall notify the Wellstat Parties in writing at least five (5) Business Days prior to any scheduled payment hereunder and the parties shall promptly execute an amendment to this Agreement and to affect this change and deliver a joint instruction to the Escrow Agent notifying it of such change.

26. **Counterparts.** This Agreement may be executed in one or more counterparts which, when taken together, shall be the same as if a single document shall have been executed on the day and year first written.

27. **Further Assurances.** The Parties agree to cooperate in all reasonable respects and to execute and deliver any and all supplementary documents, and to take all additional actions that may be reasonably necessary or appropriate to give full force and effect to the terms of this Agreement, the PDL Instruments and any other lien releases provided for or contemplated hereby.

28. **Confidentiality.** Each Party hereto shall keep confidential and not divulge to any person, without the prior written consent of PDL in the case of the Wellstat Parties and Diagnostics and of Wellstat Management Company, LLC in the case of PDL, the Total Settlement Amount Balance, any other term or provision of this Agreement or the agreements contemplated hereby (other than the PDL Instruments upon release thereof in accordance with the terms of this Agreement, but including, for the avoidance of doubt, the Asset Transfer Agreement) or a copy of all or any portion of this Agreement or any agreement contemplated hereby (other than the PDL Instruments upon release thereof in accordance with the terms of this Agreement, but including, for the avoidance of doubt, the Asset Transfer Agreement), except: (a) in connection with a proceeding to enforce such Party's rights under this Agreement, (b) to such Party's Affiliates, participants, agents, attorneys, accountants and consultants, to the extent necessary to enable such persons to perform their respective responsibilities and services concerning, for example, financial reporting and the preparation and filing of income tax returns (and each Party shall insure that each of such Party's recipients is made aware of the confidential nature of this Agreement and the terms and provisions hereof), (c) by the Wellstat Parties to prospective lenders and investors who agree to keep them confidential and not use them except in consideration of any transaction with one or more of the Wellstat Parties, (d) upon any release contemplated by Section 5 or Section 13 of this Agreement, disclosures as may be reasonably required to evidence such release in the public record or otherwise, or (e) to the extent required by law, including but limited to any disclosures required under U.S. securities laws. Notwithstanding the foregoing, the Parties may disclose any term or provision of this Agreement that is already a part of the public record. Further, nothing

in this provision is intended to prevent the public filing of any action pursuant to paragraph 8 of this Agreement.

29. **Fees.** Each Party is responsible for the payment of its own fees in connection with the negotiation, drafting and implementation of this Agreement.

30. **Assignment; Binding Effect.** Each of this Agreement and each of the other agreements contemplated hereby is binding upon and shall inure to the benefit of each Party hereto, and each of its successors and assigns. Any such successors and assigns of PDL shall execute and deliver to the Escrow Agent any and all replacements for the PDL Instruments as may be necessary to effectuate and/or consummate the transactions contemplated by this Agreement as promptly as possible after the effectiveness of any such succession or assignment; provided that if PDL becomes entitled to enforce its remedies pursuant to Section 12, such execution and delivery shall not be required after such time.

31. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties, and nothing herein expressed or implied shall give or be construed to give any other Person any legal or equitable rights hereunder.

32. **Notices.** All notices, requests, demands, document deliveries and other communications under this Agreement shall be in writing and shall be deemed to have been duly given, provided, made or received (a) when delivered personally, (b) when sent by electronic mail (“**e-mail**”) or facsimile mail (in each case, on electronic confirmation of delivery), (c) one (1) Business Day after deposit with an overnight courier service (providing proof of delivery) or (d) three (3) Business Days after mailed by certified or registered mail, return receipt requested, with postage prepaid to the parties at the following addresses or e-mail addresses (or at such other address, e-mail address or facsimile number for a Party as shall be specified by like notice):

If to PDL: PDL BioPharma, Inc. 932 Southwood Boulevard Incline Village,
Nevada 89451 Attention: General Counsel
Telephone (775) 832-8500
Facsimile: (775) 832-8501

and with a simultaneous copy (which shall not constitute notice)
to:

Gibson Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Attention: Robert Weigel
Facsimile: 212-351-4035
Email: rweigel@gibsondunn.com

If to Diagnostics: Defined Diagnostics, LLC
14200 Shady Grove Road
Suite 600 Rockville, Maryland 20850
Attn: Managing Member – FORMAL NOTICE
Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: nwohlstadter@wellstat.com

with a simultaneous copy to:

Defined Diagnostics, LLC
14200 Shady Grove Road
Suite 600
Rockville, Maryland 20850
Attn: Legal Department – FORMAL NOTICE
Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: fbragg@wellstat.com

and with a simultaneous copy (which shall not constitute notice)
to:

Arnold & Porter Kaye Scholer, LLP
250 West 55th Street
New York, NY 10019
Attention: James Catterson
Eric N. Whitney
Facsimile: (212) 836-8689
E-mail: james.catterson@arnoldporter.com;
eric.whitney@arnoldporter.com

If to Wellstat Parties: Wellstat Management Company, LLC

14200 Shady Grove Road
Suite 600
Rockville, Maryland 20850
Attn: Managing Member – FORMAL NOTICE
Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: nwohlstadter@wellstat.com

with a simultaneous copy to:

Wellstat Management Company, LLC
14200 Shady Grove Road
Suite 600
Rockville, Maryland 20850
Attn: Legal Department – FORMAL NOTICE
Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: fbragg@wellstat.com

and with a simultaneous copy (which shall not constitute notice) to:
Arnold & Porter Kaye Scholer, LLP
250 West 55th Street
New York, NY 10019
Attention: James Catterson
Eric N. Whitney
Facsimile: (212) 836-8689
E-mail: james.catterson@arnoldporter.com;
eric.whitney@arnoldporter.com

[SIGNATURES TO FOLLOW]

IN WITNESS THEREOF, the parties have entered into this Agreement as of the date first above written.

PDL BIOPHARMA, INC.

By: _____

Name:

Title:

DEFINED DIAGNOSTICS, LLC
(f/k/a WELLSTAT DIAGNOSTICS, LLC)

By: _____
Name: Nadine H. Wohlstadter
Title: Managing Member

WELLSTAT BIOCATALYSIS, LLC

By: _____
Name: Nadine H. Wohlstadter
Title: Managing Member

WELLSTAT BIOLOGICS CORPORATION

By: _____
Name: Nadine H. Wohlstadter
Title: President

WELLSTAT IMMUNOTHERAPEUTICS, LLC

By: _____
Name: Nadine H. Wohlstadter
Title: Managing Member

WELLSTAT MANAGEMENT COMPANY, LLC

By: _____
Name: Nadine H. Wohlstadter
Title: Managing Member

HYPERION CATALYSIS INTERNATIONAL

By: _____
Name: Nadine H. Wohlstadter
Title: President

WELLSTAT AVT INVESTMENT LLC

By: _____
Name: Nadine H. Wohlstadter
Title: Managing Member

WELLSTAT THERAPEUTICS CORPORATION

By: _____
Name: Nadine H. Wohlstadter
Title: President

WELLSTAT VACCINES, LLC

By: _____
Name: Nadine H. Wohlstadter
Title: Managing Member

HEBRON VALLEY FARMS, INC.

By: _____
Name: Nadine H. Wohlstadter
Title: Secretary

SJW PROPERTIES, INC.

By: _____
Name: Nadine H. Wohlstadter
Title: Secretary

HVF, INC.

By: _____
Name: Nadine H. Wohlstadter
Title: Secretary

NHW, LLC

By: _____
Name: Nadine H. Wohlstadter
Title: Managing Member

DUCK FARM, INC.

By: _____
Name: Nadine H. Wohlstadter
Title: Secretary

WELLSTAT OPHTHALMICS CORPORATION

By: _____
Name: Nadine H. Wohlstadter
Title: President

WELLSTAT THERAPEUTICS EU LIMITED

By: _____
Name: Nadine H. Wohlstadter
Title: President

HYPERION CATALYSIS EU LIMITED

By: _____
Name: Nadine H. Wohlstadter Title: President

Nadine H. Wohlstadter

Samuel J. Wohlstadter

ACKNOWLEDGED AND AGREED:

Fidelity National Title Insurance Company, as Escrow Agent

By: _____

Name:

Title:

SCHEDULE A
DEFINITIONS

As used in the Agreement, the following terms has the meaning given to them in the NYUCC: “Account”, “Chattel Paper”, “Commercial Tort Claims”, “Deposit Accounts”, “Electronic Chattel Paper”, “Equipment”, “Fixtures”, “Goods”, “Inventory”, “Letter-of-Credit Rights”, “Payment Intangibles”, “Proceeds”, and “Supporting Obligations”.

As used in the Agreement, the following terms shall have the following definitions:

“**Advance \$5,000,000 Payment**” means an optional payment of \$5,000,000 to be made or caused to be made by the Wellstat Parties to the Escrow Agent by the Diagnostics Payment Date or made or caused to be made by the Wellstat Parties to the Escrow Agent by the Diagnostics Outside Payment Date.

“**Affiliate**” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any Person means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise or (ii) the power, directly or indirectly, to vote ten percent (10%) or more of the capital stock having ordinary voting power for the election of directors (or similar Persons) of such Person.

“**Agreement**” has the meaning assigned to it in the preamble.

“**Applicable Law**” means all applicable provisions of all (i) constitutions, treaties, statutes, laws, rules, regulations and ordinances of any Governmental Authority, (ii) authorizations, consents, approvals, permits or licenses issued by, or a registration or filing with, any Governmental Authority and (iii) orders, decisions, judgments, awards and decrees of any Governmental Authority (including common law and principles of public policy).

“**Asset Transfer Agreement**” means that certain Asset Transfer Agreement, dated as of the date hereof, by and between Defined Diagnostics, LLC (f/k/a Wellstat Diagnostics LLC), as transferee, and PDL BioPharma, Inc., as transferor, together with all exhibits, schedules and other documents attached thereto, as may be amended, modified, supplemented or waived from time to time in accordance therewith, in the form attached hereto as Exhibit G.

“**BioVeris**” means BioVeris Corporation, a Delaware corporation.

“**BioVeris License Agreement**” means that certain License Agreement between BioVeris and 32 Mott Street Acquisition II, LLC (n/k/a Defined Diagnostics, LLC) dated June 26, 2007.

“**Business Day**” means any day other than a Saturday or Sunday, a legal holiday or a day on which commercial banks in New York, New York are authorized or required by law to be closed.

“**Collateral**” means, (a) with respect to Samuel J. Wohlstadter and Nadine H. Wohlstadter, all Pledged Stock in Diagnostics and any Wellstat Company now owned by such Grantor, including all dividends, distributions, cash and other property or proceeds received, receivable or otherwise distributed in respect of or in exchange for any of the foregoing, and (b) with respect to any Grantor (other than Samuel J. Wohlstadter or Nadine H. Wohlstadter), all of the following property now owned by such Grantor or in which such Grantor now has any right, title or interest, which has not been released by PDL or by applicable law, but excluding the Diagnostics Assets:

(i) the Virginia Real Property, and

(ii)

- a. all Accounts;
- b. all Chattel Paper, including tangible chattel paper and Electronic Chattel Paper;
- c. all Goods;
- d. all UCC Documents;
- e. all Equipment;
- f. all Fixtures;
- g. all General Intangibles, including all Payment Intangibles;
- h. all UCC PDL Instruments;
- i. all Intellectual Property;
- j. all Inventory;
- k. all Investment Property;
- l. all Leases;
- m. all Letter-of-Credit Rights;
- n. all money;
- o. all Supporting Obligations;
- p. all tort claims, including Commercial Tort Claims;
- q. all Deposit Accounts, all claims now therefrom, all funds now held therein, all amounts now credited thereto and all certificates and PDL Instruments, if any, from time to time representing or evidencing such bank accounts;
- r. all other property not otherwise described above;
- s. all books and records pertaining to the Collateral; and
- t. to the extent not otherwise included, all Proceeds and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

Notwithstanding anything herein to the contrary, in no event shall the Collateral include or the security interest granted under this Agreement attach to any lease, license, contract, property rights or agreement to which any Grantor is a party or any of its rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Grantor therein or (ii) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law (including the Bankruptcy Code) or principles of equity); provided however that the Collateral

shall include and such security interest shall attach immediately at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in clause (i) or (ii) above.

“**Completed a Wire Transfer**” means that a wire transfer is evidenced by Escrow Agent’s receipt of a Federal Reference Number on its wire transfer.

“**Copyrights**” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Applicable Law in copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordations thereof and all applications in connection therewith.

“**Deed of Trust**” means the Deed of Trust dated March 20, 2013 granted by Duck Farm, Inc., Hebron Valley Farms, Inc., HVF, Inc., NHW, LLC, and SJW Properties, Inc., a true and correct copy of which is attached hereto as Exhibit H.

“**Deed of Trust Release**” means a duly executed Certificate and Affidavit of Satisfaction in the form attached hereto as Exhibit D.

“**Diagnostics**” has the meaning assigned to it in the preamble.

“**Diagnostics Assets**” means Diagnostics’ assets acquired through the May 24, 2017 receivership sale to PDL and, to the extent they exist as of the Effective Date, the assets to be transferred pursuant to the terms and conditions of the Asset Transfer Agreement.

“**Diagnostics Outside Payment Date**” means on or before 11:59 AM EST on April 21, 2021.

“**Diagnostics Payment Date**” means on or before 11:59 AM EST on February 10, 2021.

“**Diagnostics Pledged Stock**” means all Stock and Stock Equivalents (including, for the avoidance of doubt, Pledged Stock) issued by Diagnostics to any Grantor.

“**Documents**” means, collectively, all documents and agreements by and among the Parties relating to any commercial transaction that was ever contemplated or consummated between PDL on the one hand and any of the Wellstat Parties or Diagnostics on the other hand before the date of this Agreement, including, but not limited to, the documents identified on attached Schedule B, in each case, as amended, amended and restated, supplemented or otherwise modified prior to the Effective Date.

“**Effective Date**” has the meaning assigned to it in Section 2 of this Agreement.

“**Escrow Agent**” means Fidelity National Title Insurance Company.

“**Escrow Agreement**” means that certain Escrow Agreement dated as of August 10, 2020, by and among PDL, Diagnostics, the Wellstat Parties and Escrow Agent, as may be amended, modified, supplemented or waived from time to time in accordance therewith.

“Final Payment Date” means on or before 11:59 AM EST on July 26, 2021.

“Final Payment Wire” has the meaning set forth in Section 12.

“General Intangibles” means all “general intangibles” as such term is defined in Section 9-102(42) of the NYUCC as in effect on the date hereof and, in any event, including, without limitation, with respect to any Grantor, all contracts, agreements, PDL Instruments and indentures and all licenses and permits issued by Governmental Authorities in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject, as the same may from time to time be amended, supplemented, replaced or otherwise modified, including, without limitation, (i) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith; (ii) all rights of such Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto; (iii) all rights of such Grantor to damages arising thereunder; (iv) all rights of such Grantor to receive any tax refunds; and (v) all rights of such Grantor to terminate and to perform, to compel performance and to exercise all remedies thereunder.

“Governmental Authority” means any nation or government, any state, province, municipality or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

“Grantors” means, collectively, the Wellstat Parties, and **“Grantor”** shall mean any one of them.

“Initial Settlement Payment” means an initial settlement payment of \$7,500,000 to be made by the Wellstat Parties to PDL.

“Intellectual Property” means all rights, title and interests in intellectual property arising under any Applicable Law and all IP Ancillary Rights relating thereto, including all Copyrights, Patents, Trademarks, Internet Domain Names, Trade Secrets, industrial designs, integrated circuit topographies, and rights under IP Licenses.

“Intellectual Property Security Agreements” means, collectively, (i) the Patent Security Agreement, dated November 2, 2012, made by Defined Diagnostics (f/k/a Wellstat Diagnostics LLC) in favor of PDL BioPharma, Inc., (ii) the Patent Security Agreement, dated August 20, 2013, made by Wellstat Therapeutics LLC in favor of PDL BioPharma, Inc., (iii) the Patent Security Agreement, dated August 20, 2013, made by Wellstat BioCatalysis LLC in favor of PDL BioPharma, Inc., (iv) the Patent Security Agreement, dated August 20, 2013, made by Wellstat Vaccines LLC in favor of PDL BioPharma, Inc., (v) the Patent Security Agreement, dated August 20, 2013, made by Wellstat Ophthalmics LLC in favor of PDL BioPharma, Inc., (vi) the Patent Security Agreement, dated August 20, 2013, made by Hyperion Catalysis International, (vii) the Patent Security Agreement, dated August 20, 2013, made by Wellstat

Biologics LLC, (viii) the Patent Security Agreement, dated August 20, 2013, made by Wellstat ImmunoTherapeutics, LLC in favor of PDL BioPharma, Inc., (ix) the Trademark Security Agreement, dated August 20, 2013, made by Wellstat Management Company, LLC in favor of PDL BioPharma, Inc., (x) the Trademark Security Agreement, dated August 20, 2013, made by Wellstat Therapeutics Corporation, (xi) the Trademark Security Agreement, dated August 20, 2013, made by Wellstat Biologics LLC in favor of PDL BioPharma, Inc., and (xii) the Patent Security Agreement, dated August 15, 2013, made by Defined Diagnostics (f/k/a Wellstat Diagnostics LLC) in favor of PDL BioPharma, Inc.

“**Internet Domain Name**” means all right, title and interest (and all related IP Ancillary Rights) arising under any Applicable Law in internet domain names.

“**Investment Property**” means the collective reference to (i) all “investment property” as such term is defined in Section 9-102(48) of the NYUCC on the date hereof including, without limitation, all certificated securities and uncertificated securities, all security entitlements, all securities accounts, all commodity contracts and all commodity accounts; (ii) security entitlements, in the case of any United States Treasury book-entry securities, as defined in 31 C.F.R. § 357.2, or, in the case of any United States federal agency book-entry securities, as defined in the corresponding United States federal regulations governing such book-entry securities; and (iii) whether or not constituting “investment property” as so defined, all Pledged Notes, all Pledged Stock, all Pledged Debt Securities and all Pledged Commodity Contracts.

“**IP Ancillary Rights**” means, with respect to an item of Intellectual Property all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.

“**IP License**” means all contractual obligations (and all related IP Ancillary Rights), whether written or oral, granting any right, title and interest in any Intellectual Property.

“**Lease**” means any lease of personal property under which any Grantor is the lessee.

“**Lien Release**” means a duly executed Release of Security Interests and Authorization to File UCC Financing Statements in the form attached hereto as Exhibit C.

“**Limited Power of Attorney**” means a duly executed Limited Power of Attorney in the form attached hereto as Exhibit I.

“**Notes**” means, collectively, each promissory note issued by any Obligor(s) to or for the benefit of PDL.

“**NYUCC**” means the Uniform Commercial Code as in effect in the State of New York from time to time.

“**Obligations**” means the Total Settlement Amount Balance.

“**Obligors**” shall mean, collectively, Diagnostics, the Wellstat Parties, and all other affiliates of Diagnostics or the Wellstat Parties that are party to any Documents, and “**Obligor**” shall mean any one of them.

“**Parties**” has the meaning assigned to it in the preamble.

“**Patent Security Agreement**” means, collectively, each patent security agreement delivered by any Obligor in connection with the Documents.

“**Patent Security Agreement Releases**” means, collectively, each duly executed Release of Patent Security Agreement in the forms attached as Exhibit E for each Intellectual Property Security Agreement that is a Patent Security Agreement.

“**Patents**” means all (i) all patents and certificates of invention, or similar property rights, and applications for any of the foregoing, of the United States, any other country or any political subdivision thereof, (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all rights corresponding thereto throughout the world, (iv) all inventions and improvements described therein, (v) all rights to sue for past, present and future infringements thereof, (vi) all licenses, claims, damages, and proceeds of suit arising therefrom, (vii) all proceeds of the foregoing, including, without limitation, licenses, royalties, and income, and (viii) without duplication, all IP Ancillary Rights in respect of the foregoing.

“**PDL**” has the meaning assigned to it in the preamble.

“**PDL Instruments**” means, collectively, the Lien Release, the Deed of Trust Release, the Trademark Security Agreement Releases, the Patent Security Agreement Releases, the Term Note dated as of November 2, 2012 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender, the Term Note dated as of August 15, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender, any additional Notes identified after the Effective Date that have been delivered to the Escrow Agent pursuant to Section 7 of this Agreement, all Possessory Collateral and the Limited Power of Attorney.

“**PDL Releasees**” has the meaning assigned to it in Section 16 of this Agreement.

“**PDL Releasors**” has the meaning assigned to it in Section 15 of this Agreement.

“**Permitted Lien**” means any mortgage, pledge, hypothecation, collateral assignment, lien (statutory or otherwise), preference, adverse claim, priority, charge, sale, transfer, license, lease or other disposition or encumbrance (i) that would have constituted a “Permitted Lien” as defined in the Documents prior to giving effect to this Settlement Agreement, (ii) is granted under this Agreement, (iii) securing debt permitted under Section 9 of this Agreement.

“**Person**” means any natural person, corporation, partnership, trust, limited liability company, association, Governmental Authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

“**Pledged Commodity Contracts**” means all commodity contracts to which any Grantor is party from time to time.

“**Pledged Debt Securities**” means any certificates, options, rights or security entitlements of any nature whatsoever in respect of the debt securities of any Person that may be issued or granted to, or held by, any Grantor.

“**Pledged Notes**” means all intercompany notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor.

“**Pledged Stock**” means the shares of capital stock, stock equivalents or other equity interests owned at any time or from time to time by any Grantor, together with any other shares, stock certificates, options, rights or security entitlements of any nature whatsoever in respect of the capital stock or other equity interests of any Person that may be issued or granted to, or held by, any Grantor.

“**Possessory Collateral**” means all physical collateral previously delivered by the Obligors to PDL under or in connection with the Documents.

“**PTO**” means the United States Patent and Trademark Office.

“**Scheduled Final Payment**” means the payment of (i) \$55,000,000 to be made or caused to be made by the Wellstat Parties to the Escrow Agent by the Final Payment Date if the Wellstat Parties make or cause to be made the Advance \$5,000,000 Payment by the Diagnostics Payment Date, (ii) \$62,500,000 if the Advance \$5,000,000 Payment is not paid by the Diagnostics Payment Date, but is made prior to the Final Payment Date, or (iii) \$67,500,000 if the Advance \$5,000,000 Payment is not paid, in each case as such Scheduled Final Payment shall be reduced on a dollar-for-dollar basis by payment of all or any portion of the Total Settlement Amount by or on behalf of the Wellstat Parties in excess of the Initial Settlement Payment and Advance \$5,000,000 Payment pursuant to the terms hereof or the receipt of any proceeds by PDL from the sale of the BioVeris license pursuant to the terms hereof.

“**September 2015 Action**” has the meaning assigned to it in Recital A.

“**September 9, 2014 Letter**” has the meaning assigned to it in Recital B.

“**September 9 Letter Action**” has the meaning assigned to it in Recital B.

“**Stock**” means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in, or equivalents (regardless of how designated) of, a Person (other than an individual), whether voting or non-voting.

“Stock Equivalent” means all securities convertible into or exchangeable for Stock or any other Stock Equivalent and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable.

“Total Settlement Amount Balance” means the amounts specified in Section 4 herein.

“Trademark Security Agreement” means, collectively, each trademark security agreement delivered by any Obligor in connection with the Documents.

“Trademark Security Agreement Releases” means, collectively, each duly executed Release of Trademark Security Agreement in the forms attached as Exhibit F for each Intellectual Property Security Agreement that is a Trademark Security Agreement.

“UCC” means the Uniform Commercial Code as in effect in any jurisdiction. References to particular sections of Article 9 of the UCC shall be, unless otherwise indicated, references to revised Article 9 of the UCC adopted and effective in certain jurisdictions on or after July 1, 2001.

“UCC Documents” shall have the meaning given to the term “Documents” in the NYUCC.

“UCC PDL Instruments” shall have the meaning given to the term “PDL Instruments” in the NYUCC.

“Virginia Real Property” means the real property described in the Deed of Trust that has not been previously voluntarily released by PDL.

“Wellstat Company” means each of the Wellstat Parties other than Samuel J. Wohlstadter and Nadine H. Wohlstadter.

“Wellstat Parties” has the meaning assigned to it in the preamble.

“Wellstat Releasees” has the meaning assigned to it in Section 15 of this Agreement.

“Wellstat Releasors” has the meaning assigned to it in Section 16 of this Agreement.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof and (b) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof.

SCHEDULE B

Documents

1. Loan Agreement dated as of March 21, 2012, among Samuel J. Wohlstadter and Nadine H. Wohlstadter, as borrowers, PDL BioPharma, Inc., as lender, and Wellstat Therapeutics Corporation and Wellstat Biologics Corporation.
2. Balloon Promissory Note dated as of March 21, 2012, among Samuel J. Wohlstadter and Nadine H. Wohlstadter, as borrowers, and PDL BioPharma, Inc. as lender.
3. Guaranty dated as of March 21, 2012, among Hebron Valley Farms, Inc. and SJW Properties, Inc. as guarantors, and PDL BioPharma, Inc. as lender.
4. Deed of Trust, dated as of March 21, 2012, among Hebron Valley Farms, Inc. and SJW Properties, Inc., as grantors, Walker Title, LLC, as trustee, and PDL BioPharma, Inc., as beneficiary.
5. Credit Agreement, dated as of November 2, 2012, among Wellstat Diagnostics, LLC, as Borrower, PDL BioPharma, Inc., as lender, and PDL BioPharma, Inc., as agent.
6. Guarantee and Pledge Agreement dated as of November 2, 2012 by Samuel J. Wohlstadter and Nadine H. Wohlstadter, as pledgors, in favor of PDL BioPharma, Inc. as collateral agent.
7. Borrower Security Agreement dated as of November 2, 2012 by Wellstat Diagnostics, LLC, as grantor, in favor PDL BioPharma, Inc., as collateral agent.
8. Patent Security Agreement dated as of November 2, 2012 among Wellstat Diagnostics, LLC, as grantor.
9. Term Note dated as of November 2, 2012 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender.
10. Subordination Agreement and Acknowledgement dated as of November 2, 2012 among Samuel J. Wohlstadter and Nadine H. Wohlstadter as junior lenders, and PDL BioPharma, Inc. as senior lender.
11. Side Letter dated as of October 31, 2012, among Wellstat Diagnostics, LLC and PDL BioPharma, Inc.
12. Tranche B-1 Term Note dated as of January 29, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender and PDL BioPharma Inc. as agent.
13. Reaffirmation and Grant of Security Interest dated as of January 29, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as collateral agent.

14. Tranche B-2 Term Note dated as of February 6, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender.
15. Tranche B-3 Term Note dated as of February 13, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender.
16. Pre-Negotiation Agreement dated as of February 6, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as agent.
17. Term Sheet dated as of February 15, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as agent.
18. Tranche B Term Note dated as of February 13, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender.
19. Tranche B-4 Term Note dated as of February 27, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender.
20. Any other Forbearance Notes executed in connection or contemporaneously with the below Forbearance Agreement
21. Forbearance Agreement dated as of February 28, 2013 among Wellstat Diagnostics, LLC as borrower, PDL BioPharma, Inc. as agent, Nadine Wohlstadter and Samuel J. Wohlstadter as holders, and Wellstat Management LLC, Wellstat Biologics LLC, Wellstat Therapeutics LLC, Wellstat Ophthalmics LLC, Wellstat Vaccines LLC, Wellstat ImmunoTherapeutics LLC, and Hyperion Catalysis International, Inc.
22. Amended and Restated Guarantee and Pledge Agreement dated as of February 28, 2013 among Samuel J. Wohlstadter and Nadine H. Wohlstadter as pledgors, PDL BioPharma, Inc. as collateral agent under the Credit Agreement dated as of November 2, 2012 between Wellstat Diagnostics, LLC as borrower and the agent as agent and lender.
23. Guarantee Agreement dated as of February 28, 2013 among Wellstat Management LLC, Wellstat Biologics LLC, Wellstat Therapeutics LLC, Wellstat Ophthalmics LLC, Wellstat Vaccines LLC, Wellstat ImmunoTherapeutics LLC, and Hyperion Catalysis International, Inc. as guarantors, in favor of PDL BioPharma, Inc. as collateral agent under the Credit Agreement dated as of November 2, 2012 between Wellstat Diagnostics, LLC as borrower and the agent as agent and lender.
24. Deed of Trust dated as of March 20, 2014, among Hebron Valley Farms, Inc., SJW Properties, Inc., HVF, Inc., and NHW, LLC, as grantors, Walker Title, LLC as trustee for the benefit of PDL BioPharma, Inc. as beneficiary.
25. [Unexecuted] Security Agreement dated as of March 2013 among Wellstat Management LLC, Wellstat Biologics LLC, Wellstat Therapeutics LLC, Wellstat Ophthalmics LLC, Wellstat Vaccines LLC, Wellstat ImmunoTherapeutics LLC, and Hyperion Catalysis International, Inc., as grantors, in favor of PDL BioPharma, Inc. as collateral agent under

the Credit Agreement, dated as of November 2, 2012, between Wellstat Diagnostics, LLC and the agent as lender and agent.

26. Amended and Restated Credit Agreement dated as of August 15, 2013, among Wellstat Diagnostics, LLC as borrower, PDL BioPharma, Inc. as lender, and PDL BioPharma, Inc. as agent.
27. Joinder Agreement dated as of August 15, 2013 among Wellstat BioCatalysis, LLC, SJW Properties, Inc., HVF, Inc., NHW, LLC, Wellstat AVT Investments LLC, Hebron Valley Farms, Inc., Duck Farm, Inc. as additional grantors in favor of PDL BioPharma Inc. as agent for the lender party to the Credit Agreement and other secured creditors.
28. Term Note dated as of August 15, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender.
29. Patent Security Agreement dated as of August 15, 2013 among Wellstat Diagnostics, LLC, as grantor.
30. Patent Security Agreement dated as of August 20, 2013 among Hyperion Catalysis International, as grantor.
31. Patent Security Agreement dated as of August 20, 2013 among Wellstat BioCatalysis, LLC, as grantor.
32. Patent Security Agreement dated as of August 20, 2013 by Wellstat Biologics Corporation, as grantor.
33. Patent Security Agreement dated as of August 20, 2013 by Wellstat ImmunoTherapeutics, LLC, as grantor.
34. Patent Security Agreement dated as of August 20, 2013 by Wellstat Ophthalmics Corporation, as grantor.
35. Patent Security Agreement dated as of August 20, 2013 by Wellstat Therapeutics Corporation, as grantor.
36. Patent Security Agreement dated as of August 20, 2013 by Wellstat Vaccines, LLC, as grantor.
37. Trademark Security Agreement dated as of August 20, 2013 by Wellstat Biologics Corporation, as grantor.
38. Trademark Security Agreement dated as of August 20, 2013 by Wellstat Management Company, LLC, as grantor.
39. Trademark Security Agreement dated as of August 20, 2013 among Wellstat Therapeutics Corporation, as grantor.

40. First Amendment to the Amended and Restated Credit Agreement dated as of June 24, 2014 among Wellstat Diagnostics, LLC as borrower, Wellstat BioCatalysis, LLC, Wellstat Biologics Corporation, Wellstat ImmunoTherapeutics, LLC, Wellstat Management Company, LLC, Hyperion Catalysis International, Wellstat AVT Investments LLC, Wellstat Therapeutics Corporation, Wellstat Vaccines, LLC, Hebron Farms, Inc., SJW Properties, Inc., HVF, Inc., NHW, LLC, Duck Farm, Inc., Wellstat Ophthalmics Corporation, Wellstat Therapeutics EU Limited, Hyperion Catalysis EU Limited, Nadine Wohlstadter, and Samuel J. Wohlstadter as loan parties, PDL BioPharma, Inc. as lender, and PDL BioPharma, Inc. as agent.
41. Second Amendment to the Amended and Restated Credit Agreement dated as of August 21, 2014 among Wellstat Diagnostics, LLC as borrower, Wellstat BioCatalysis, LLC, Wellstat Biologics Corporation, Wellstat ImmunoTherapeutics, LLC, Wellstat Management Company, LLC, Hyperion Catalysis International, Wellstat AVT Investments LLC, Wellstat Therapeutics Corporation, Wellstat Vaccines, LLC, Hebron Farms, Inc., SJW Properties, Inc., HVF, Inc., NHW, LLC, Duck Farm, Inc., Wellstat Ophthalmics Corporation, Wellstat Therapeutics EU Limited, Hyperion Catalysis EU Limited, Nadine Wohlstadter, and Samuel J. Wohlstadter as loan parties, PDL BioPharma, Inc. as lender, and PDL BioPharma, Inc. as agent.
42. Third Amendment to the Amended and Restated Credit Agreement dated as of November 4, 2014 among Wellstat Diagnostics, LLC as borrower, Wellstat BioCatalysis, LLC, Wellstat Biologics Corporation, Wellstat ImmunoTherapeutics, LLC, Wellstat Management Company, LLC, Hyperion Catalysis International, Wellstat AVT Investments LLC, Wellstat Therapeutics Corporation, Wellstat Vaccines, LLC, Hebron Farms, Inc., SJW Properties, Inc., HVF, Inc., NHW, LLC, Duck Farm, Inc., Wellstat Ophthalmics Corporation, Wellstat Therapeutics EU Limited, Hyperion Catalysis EU Limited, Nadine Wohlstadter, and Samuel J. Wohlstadter as loan parties, PDL BioPharma, Inc. as lender, and PDL BioPharma, Inc. as agent.
43. Letter Agreement dated as of September 9, 2014 among White Oak Global Advisors, LLC as White Oak agent, PDL BioPharma Inc. as PDL agent, and acknowledged and agreed to by Wellstat Catalysis International, Wellstat BioCatalysis, LLC, Wellstat Biologics Corporation, Wellstat ImmunoTherapeutics, LLC, Wellstat Management Company, LLC, Wellstat AVT Investment LLC, Wellstat Therapeutics Corporation, Wellstat Vaccines, LLC, Hebron Valley Farms, Inc., SJW Properties, Inc., HVF, Inc., NHW, LLC, Duck Farm, Inc., Nadine Wohlstadter, Samuel J. Wohlstadter, Wellstat Ophthalmics Corporation, Wellstat Diagnostics, Hyperion Catalysis EU Limited, and Wellstat Therapeutics EU Limited.
44. Asset Purchase Agreement dated as of December 21, 2015 between Wellstat Diagnostics, LLC as seller, Gray and Associates, LLC as Receiver for the assets of, and Attorney-in-Fact of, Wellstat Diagnostics, LLC and PDL BioPharma, Inc. as buyer

EXHIBIT A
(Form of Escrow Agreement)

[see attached]

EXHIBIT A
Form of Escrow Agreement

ESCROW AGREEMENT

This ESCROW AGREEMENT (this “*Agreement*”) is made and entered into this 11th day of August, 2020, by and among Fidelity National Title Insurance Company (“*Escrow Agent*”), PDL BioPharma, Inc., together with its successors and assigns (hereinafter referred to as “**PDL**”), Samuel J. Wohlstadter, Nadine H. Wohlstadter, Hyperion Catalysis International, Wellstat Vaccines, LLC, Wellstat ImmunoTherapeutics, LLC, Wellstat BioCatalysis, LLC, Wellstat AVT Investment, LLC, Wellstat Biologics Corporation, Wellstat Management Company, LLC, Wellstat Ophthalmics Corporation, Wellstat Therapeutics Corporation, Wellstat Therapeutics EU Limited, Duck Farm, Inc., Hebron Valley Farms, Inc., HVF, Inc., Hyperion Catalysis EU Limited, NHW, LLC, and SJW Properties, Inc., together with their respective successors and assigns (hereinafter collectively referred to as the “**Wellstat Parties**”), and Defined Diagnostics, LLC (f/k/a Wellstat Diagnostics, LLC) (together with its successors and assigns hereinafter referred to as “**Diagnostics**”). PDL, Diagnostics, and the Wellstat Parties are referred to as the “**Parties.**”

RECITALS

WHEREAS, PDL, Diagnostics and the Wellstat Parties are entering into that certain Settlement and Mutual Release Agreement dated as of August 11, 2020, (the “*Settlement Agreement*”), attached hereto as Exhibit A; all capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement; and

WHEREAS, as required by the Settlement Agreement and as a material inducement for the parties to execute the Settlement Agreement, PDL, Diagnostics, the Wellstat Parties and Escrow Agent have agreed to execute and deliver this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Establishment of Escrow and Instructions to Escrow Agent.**

a. Escrow Agent shall establish an account to which the PDL Instruments and Transaction Documents (as such terms are defined in the Settlement Agreement and Asset Transfer Agreement, respectively) are to be delivered and any settlement payments made or caused to be made by or on behalf of the Wellstat Parties pursuant to the terms of the Settlement Agreement are to be deposited and held and disbursed by Escrow Agent in accordance with the terms hereof. Escrow Agent is not responsible for levies by taxing authorities based upon the taxpayer identification number used to establish said account.

b. Escrow Agent’s duties and directions are solely as defined herein. Neither PDL, the Wellstat Parties nor Diagnostics shall have the right to give any instruction to Escrow Agent

concerning the delivery of the PDL Instruments, the Transaction Documents, the Possessory Collateral or the disbursement of funds, except in strict accordance with this Agreement or based on a joint instruction from the Parties.

2. **Delivery of PDL Instruments, Possessory Collateral and Transaction Documents by PDL to Escrow Agent.**

a. PDL shall execute and deliver the following PDL Instruments and Transaction Documents to Escrow Agent to be held in escrow:

- (i) the Lien Release,
- (ii) the Deed of Trust Release,
- (iii) the Trademark Security Agreement Releases,
- (iv) the Patent Security Agreement Releases (including, for the avoidance of doubt, the Patent Security Agreement Release relating to that certain Patent Security Agreement, dated August 15, 2013, executed by Diagnostics in favor of PDL),
- (v) the Term Note dated as of November 2, 2012 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender,
- (vi) the Term Note dated as of August 15, 2013 among Wellstat Diagnostics, LLC as borrower and PDL BioPharma, Inc. as lender,
- (vii) the duly executed Limited Power of Attorney;
- (viii) a duly executed bill of sale and assignment in the form attached to the Asset Transfer Agreement as Exhibit A,
- (ix) a duly executed intellectual property assignment agreement in the form attached to the Asset Transfer Agreement as Exhibit B, and
- (x) a duly executed patent assignment agreement in the form attached to the Asset Transfer Agreement as Exhibit C.

b. If, after the Effective Date, a Party identifies an executed Note that was in effect immediately prior to the Effective Date but was not put into Escrow in accordance herewith, PDL shall, within a reasonable time, deliver to the Escrow Agent (i) the original of such executed Note if such Note is in PDL's possession custody or control, or, (ii) if the original was previously delivered to PDL, has not otherwise been returned to the Wellstat Parties, Diagnostics and/or their agents, and cannot be located by PDL after a diligent search, a lost note affidavit in a form reasonably acceptable to the Parties.

c. Escrow Agent shall hold the PDL Instruments and the Transaction Documents in escrow until: (i) in the case of the PDL Instruments, the Final Payment Date or such time as the

Wellstat Parties have paid the Total Settlement Amount Balance, whichever is earlier (unless, in the case of the Trademark Security Agreement Releases and Patent Security Agreement Releases relating solely to the Diagnostics Assets, such agreements have been earlier released in accordance with subsection (ii) hereof) and (ii) in the case of the Transaction Documents, the date upon which the Escrow Agent receives the payments set forth in Sections 5(a), 5(b) or 5(c) of the Settlement Agreement or, if the Parties have jointly notified the Escrow Agent of an Inspection Failure (as such term is defined in the Asset Transfer Agreement), the date detailed in Section 8(c) hereof.

d. PDL shall deliver or cause to be delivered all Possessory Collateral to Escrow Agent. PDL hereby designates and appoints Escrow Agent as its bailee for purposes of possession of the Possessory Collateral on behalf of PDL, including for purposes of PDL's perfection of its security interest through possession pursuant to Section 8-301 and 9-313 of the UCC (until such time as the Total Settlement Amount Balance is paid in full or the Possessory Collateral is returned to PDL). Notwithstanding any other provision in this Agreement, in no event shall the duties otherwise imposed upon Escrow Agent pursuant to these Instructions abrogate, cancel, terminate or interfere with the bailee status of the Escrow Agent.

3. **Delivery of Initial Settlement Payment of \$7,500,000 by the Wellstat Parties to Escrow Agent and Escrow Agent's Release of the Initial Settlement Payment to PDL**

a. The Wellstat Parties shall pay or cause to be paid the Initial Settlement Payment of \$7,500,000 to Escrow Agent by wire transfer of immediately available funds in accordance with the wiring instructions attached hereto as Exhibit B-1. Upon Escrow Agent's receipt of the Initial Settlement Payment, Escrow Agent shall cause the Initial Settlement Payment to be sent to PDL by wire transfer of immediately available funds in accordance with the wiring instructions attached hereto as Exhibit B-2.

b. Upon the Parties' confirmation to Escrow Agent that:

(i) the PDL Instruments, the Possessory Collateral and the Transaction Documents have been delivered by PDL to Escrow Agent, and,

(ii) the Wellstat Parties have delivered the Initial Settlement Payment to Escrow Agent and PDL has received the Initial Settlement Payment,

the Settlement Agreement shall become effective. If the Settlement Agreement does not become effective for any reason, to the extent previously provided to the Escrow Agent, the Escrow Agent shall return the Initial Settlement Payment to the Wellstat Parties and shall return the PDL Instruments, Possessory Collateral and Transaction Documents to PDL.

4. **Total Settlement Amount Balance**. Subject to the Settlement Agreement becoming effective, the Parties agree that the remaining amount due and owing under the Documents (exclusive of the \$7,500,000 Initial Settlement Payment) shall be settled and fixed for all purposes in the amount of:

a. \$60,000,000 (reduced by the Advance \$5,000,000 Payment) if the Wellstat Parties make or cause to be made the Advance \$5,000,000 Payment by the Diagnostics Payment Date and the Scheduled Final Payment by the Final Payment Date;

b. \$67,500,000 (reduced by the Advance \$5,000,000 Payment, if made) if the Wellstat Parties fail to make or cause to be made the Advance \$5,000,000 Payment by the Diagnostics Payment Date, but do make or cause to be made the Scheduled Final Payment by the Final Payment Date; or

c. \$92,500,000 (reduced by the Advance \$5,000,000 Payment, if made) if the Wellstat Parties fail to make or cause to be made the Scheduled Final Payment by the Final Payment Date.

Pursuant to the terms of the Settlement Agreement, the Total Settlement Amount Balance shall be reduced on a dollar-for-dollar basis for any payment of all or any portion of such Total Settlement Amount Balance made by or on behalf of the Wellstat Parties or the receipt by PDL of any proceeds from the sale of the BioVeris license referred to in Section 5.e of the Settlement Agreement.

5. **Advance Payment of \$5,000,000.** At or before the Diagnostics Payment Date or the Diagnostics Outside Payment Date, the Wellstat Parties have the option to make or cause to be made an additional payment of \$5,000,000 to Escrow Agent (the “**Advance \$5,000,000 Payment**”) by depositing such Advance \$5,000,000 Payment with Escrow Agent in accordance with the wiring instructions attached hereto as Exhibit B-1. If the Wellstat Parties make or cause to be made the Advance \$5,000,000 Payment to Escrow Agent, Escrow Agent shall release such Advance \$5,000,000 Payment to PDL as soon as possible, but no later than two (2) business days in accordance with the wiring instructions attached hereto as Exhibit B-2.

6. **Remaining Settlement Payment.** Pursuant to the Settlement Agreement:

a. If the Wellstat Parties make or cause to be made the Advance \$5,000,000 Payment to Escrow Agent by the Diagnostics Payment Date, the Wellstat Parties shall make or cause to be made, by wire transfer of immediately available funds to Escrow Agent by the Final Payment Date, the sum of \$55,000,000 (in addition to the Initial Settlement Payment made on the Effective Date and the Advance \$5,000,000 Payment) or the Total Settlement Amount Balance (as calculated in accordance with Section 6(c)), if less. Upon receipt of such payments, the Escrow Agent shall (i) confirm the date and time of receipt of such payment to the Parties; (ii) release such funds to PDL in accordance with the wiring instructions attached hereto as Exhibit B-2, and (iii) confirm to the Parties receipt by Escrow Agent of a Federal Reference Number on its wire transfer.

b. If the Wellstat Parties do not make or cause to be made the Advance \$5,000,000 Payment to Escrow Agent by the Diagnostics Payment Date, the Wellstat Parties shall make or cause to be made, for the benefit of PDL, by wire transfer of immediately available funds to Escrow Agent, by the Final Payment Date, the sum of \$67,500,000 (in addition to the Initial Settlement Payment made on the Effective Date) or the Total Settlement Amount Balance (as calculated in accordance with Section 6(c)), if less. Upon receipt of such payments, the Escrow

Agent shall (i) confirm the date and time of receipt of such payment to the Parties; (ii) release such funds to PDL in accordance with the wiring instructions attached hereto as Exhibit B-2, and (iii) confirm to the Parties receipt by Escrow Agent of a Federal Reference Number on its wire transfer.

c. In addition to the foregoing, the Wellstat Parties may make or cause to be made any optional payments on the Total Settlement Amount Balance to Escrow Agent at any time, and from time to time, without premium or penalty and upon the Escrow Agent sending such amounts to PDL by wire transfer of immediately available funds in accordance with the wiring instructions attached hereto as Exhibit B-2 such payments shall reduce the Total Settlement Amount Balance on a dollar-for-dollar basis. On the occurrence of any other event which results in a reduction to the Total Settlement Amount Balance pursuant to the terms of the Settlement Agreement, the Parties shall jointly notify the Escrow Agent of such reduction and, upon receipt of such notice, for purposes of the Escrow Agreement the Total Settlement Amount Balance shall be reduced by the amount set forth in such joint notice.

d. If the Wellstat Parties sends notice to Escrow Agent and PDL, at least five (5) Business Days prior to the Final Payment Date, of its election to have an in-person closing then, on the Final Payment Date the Parties and the Escrow Agent shall meet at the offices of Arnold & Porter Kaye Scholer LLP, 250 West 55th Street, New York, New York 10019-9710, or such other location as is mutually agreeable to the Parties and the Escrow Agent, at 10:00 a.m. local time (the “**In-Person Closing**”). At the In-Person Closing, and notwithstanding the procedures set forth in Sections 6(a) and (b) and Section 7(a), in lieu of the Wellstat Parties wiring the amount set forth in Section 6(a) or (b) to Escrow Agent for release to PDL and Escrow Agent transmitting electronic copies of the PDL Instruments and Possessory Collateral to the Wellstat Parties, with originals to follow, the Wellstat Parties shall hand to PDL cashier’s check drawn on a bank reasonably acceptable to both PDL and the Wellstat Parties in such amount and the Escrow Agent shall then immediately hand to the Wellstat Parties the originals of the PDL Instruments and Possessory Collateral.

e. The Initial Settlement Payment, the Advance \$5,000,000 Payment and any remaining settlement payments made by or caused to be made by the Wellstat Parties to Escrow Agent shall be referred to as the “**Escrowed Funds.**”

7. **Release of Remaining Escrowed** Funds, PDL Instruments and Possessory Collateral. Pursuant to the Settlement Agreement:

a. If the Wellstat Parties pay or cause to be paid the Total Settlement Amount Balance to Escrow Agent at or before the Final Payment Date, then upon confirmation by Escrow Agent to the Parties that it has received a Federal Reference number on its wire transfer in an amount equal to such Total Settlement Amount Balance to PDL, Escrow Agent shall simultaneously transmit electronic copies of the PDL Instruments (other than the Limited Power of Attorney) and Possessory Collateral to the Wellstat Parties and promptly deliver the originals to the Wellstat Parties by express overnight delivery or such other method as the Wellstat Parties may designate. Upon written confirmation from PDL to Escrow Agent and PDL the account set forth on Exhibit B-2 has received such funds, Escrow Agent shall transmit an electronic copy of the Limited Power of Attorney to the Wellstat Parties and promptly deliver the original to the

Wellstat Parties by express overnight delivery or such other method as the Wellstat Parties may designate. Notwithstanding the foregoing, Section 6(d) sets forth the terms of release of the PDL Instruments and Possessory Collateral to the Wellstat Parties if the In-Person Closing occurs.

b. If an In-Person Closing has not occurred and the Wellstat Parties do not pay or cause to be paid the Total Settlement Amount Balance to Escrow Agent at or before the Final Payment Date, Escrow Agent shall (i) promptly, but no later than 2 p.m Eastern Time on the day following the Final Payment Date, release the remaining Escrowed Funds, if any, to PDL and (ii) promptly deliver the originals of the PDL Instruments and Possessory Collateral to PDL by express overnight delivery or such other method as PDL may designate.

8. **Diagnostic Assets and Release of Transaction Documents.** Pursuant to the Settlement Agreement,

a. If the Wellstat Parties make or cause to be made payments in an amount in the aggregate of \$12,500,000 (inclusive of the \$7,500,000 Initial Settlement Payment) to Escrow Agent for the benefit of PDL, by wire transfer of immediately available funds by the Diagnostics Payment Date or the Diagnostics Outside Payment Date, then, upon confirmation by the Escrow Agent to the Parties that it has received payments in an amount in the aggregate (and without duplication) of \$12,500,000 made by or on behalf of the Wellstat Parties, Escrow Agent shall release all such funds to PDL immediately by wire transfer and, upon confirmation by Escrow Agent to the Parties that it has received a Federal Reference Number on its wire transfer of such funds to PDL and unless the Parties have jointly notified the Escrow Agent of an Inspection Failure, Escrow Agent shall release the Transaction Documents to Diagnostics within two calendar days dated as of the date of their release.

b. If the Wellstat Parties fail to make or cause to be made payments in an amount in the aggregate of \$12,500,000 (inclusive of the \$7,500,000 Initial Settlement Payment) to Escrow Agent for the benefit of PDL, by wire transfer of immediately available funds by the Diagnostics Payment Date, but the Wellstat Parties make or cause to be made payments in an amount in the aggregate of \$75,000,000 (inclusive of the \$7,500,000 Initial Settlement Payment) to Escrow Agent for the benefit of PDL, by wire transfer of immediately available funds by the Final Payment Date, then, upon confirmation by the Escrow Agent that it has received, payments in an amount in the aggregate (and without duplication), of \$75,000,000 made by or on behalf of the Wellstat Parties, Escrow Agent shall release all such funds to PDL immediately by wire transfer and, upon confirmation by Escrow Agent to the Parties that it has received a Federal Reference Number on its wire transfer of such funds to PDL and unless the Parties have jointly notified the Escrow Agent of an Inspection Failure, Escrow Agent shall release the Transaction Documents to Diagnostics within two calendar days dated as of the date of their release.

c. If the Parties have jointly notified the Escrow Agent of an Inspection Failure, the Escrow Agent shall not release the Transaction Documents to Diagnostics until the earlier of the date that is (i) ten (10) Business Days following the date the Parties provide joint notification to the Escrow Agent that the Inspection Failure has been remedied and (ii) thirty (30) days after confirmation by Escrow Agent to the Wellstat Parties and PDL that it has received the Federal Reference Number for the payment specified in Section 8(a) or 8(b) above. The Escrow Agent shall date the Transaction Documents as of the date of their release.

d. The payment amounts set forth in this Section 8, shall be subject to a dollar-for-dollar credit for any proceeds that PDL receives from the sale of the BioVeris license pursuant to Section 5.e of the Settlement Agreement, which, in each case, shall be applied to reduce such amount on a dollar-for-dollar basis.

e. Should PDL receive proceeds from the sale of the BioVeris license or any other payments in payment or partial satisfaction of the Obligations that are subject to credit against the Total Settlement Balance, the Parties shall jointly instruct the Escrow Agent as to the revised payment amounts in respect of the foregoing provisions.

9. **Non-Interest-Bearing Account.** The Escrow Agent shall deposit the Escrowed Funds in a non-interest-bearing account for the entire term of this Escrow Agreement.

10. **Escrow Agent.**

A. **General.** Escrow Agent shall act as escrow agent and hold and disburse the Escrowed Funds, PDL Instruments and Transaction Documents pursuant to the terms and conditions of this Agreement.

B. **Limited Duties.** Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement. Escrow Agent shall incur no liability whatsoever to PDL, Diagnostics or the Wellstat Parties except for its own willful misconduct or gross negligence in its capacity as escrow agent; provided, however Escrow Agent shall not disburse any portion of the Escrowed Funds, the PDL Instruments, or the Transaction Documents, except in strict accordance with this Agreement or based on a joint instruction from the Parties.

C. **Resignation.** Upon consent of the Parties, Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving notice of such resignation to the parties specifying a date upon which such resignation shall take effect, provided, however, that such resignation shall not be effective until the appointment of a successor escrow agent as mutually agreed by the Parties. Escrow Agent shall deliver any Escrowed Funds, the PDL Instruments and the Transaction Documents in the escrow account to any successor escrow agent so appointed.

D. **Indemnification.** The parties hereby jointly and severally agree to indemnify Escrow Agent for, and to hold it harmless against, any loss, liability, damage or expense incurred without gross negligence or willful misconduct on the part of Escrow Agent arising out of or in connection with its entering into and/or performing under this Agreement.

E. **Interpleader.** In the event of conflicting instructions to Escrow Agent, or if Escrow Agent is named or joined in any lawsuit relating to this Agreement or the Escrowed Funds, the PDL Instruments or the Transaction Documents, Escrow Agent is hereby additionally authorized and empowered, at Escrow Agent's option, to deliver the Escrowed Funds, the PDL Instruments and the Transaction Documents in interpleader to a court of competent jurisdiction, whereupon Escrow Agent shall be released from any further obligations or liabilities under this Agreement. Notwithstanding the foregoing, Escrow Agent hereby irrevocably waives any right to seek to interplead PDL and the Wellstat Parties in any matter that would impair, impede,

delay, or interfere in any manner or to any extent with the immediate and timely performance of each and every duty imposed upon Escrow Agent in connection with the Possessory Collateral under Section 7 above. If the Escrow Agent is named or joined in any lawsuit relating to this Agreement or the Escrowed Funds, the PDL Instruments or the Transaction Documents, PDL and the Wellstat Parties shall each pay one-half of the Escrow Agent's reasonable attorneys' fees.

11. **Notices.** Any notices, communications or other deliveries required to be sent under this Agreement shall be in writing and shall be sent to the applicable party at its address provided for below or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. All notices shall be sent by either and/or facsimile. Notices sent by facsimile or email shall be deemed to have been given when sent.

If to PDL: PDL BioPharma, Inc.

932 Southwood Boulevard
Incline Village, Nevada 89451
Attention: General Counsel
Telephone (775) 832-8500
Facsimile: (775) 832-8501

and with a simultaneous copy (which shall not constitute notice)
to:

Gibson Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Attention: Robert Weigel
Facsimile:
Email: rweigel@gibsondunn.com

If to Diagnostics: Defined Diagnostics, LLC

14200 Shady Grove Road
Suite 600
Rockville, Maryland 20850
Attn: Managing Member – FORMAL NOTICE
Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: nwohlstadter@wellstat.com

with a simultaneous copy to:

Defined Diagnostics, LLC
14200 Shady Grove Road
Suite 600
Rockville, Maryland 20850
Attn: Legal Department – FORMAL NOTICE

Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: fbragg@wellstat.com

and with a simultaneous copy (which shall not constitute notice)
to:

Arnold & Porter Kaye Scholer, LLP
250 West 55th Street
New York, NY 10019
Attention: James Catterson
Eric N. Whitney
Facsimile: (212) 836-8689
E-mail: james.catterson@arnoldporter.com;
eric.whitney@arnoldporter.com

If to Wellstat Parties: Wellstat Management Company, LLC
14200 Shady Grove Road
Suite 600
Rockville, Maryland 20850
Attn: Managing Member – FORMAL NOTICE
Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: nwohlstadter@wellstat.com

with a simultaneous copy to:

Wellstat Management Company, LLC
14200 Shady Grove Road
Suite 600
Rockville, Maryland 20850
Attn: Legal Department – FORMAL NOTICE
Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: fbragg@wellstat.com

and with a simultaneous copy (which shall not constitute notice) to:

Arnold & Porter Kaye Scholer, LLP
250 West 55th Street
New York, NY 10019
Attention: James Catterson
Eric N. Whitney
Facsimile: (212) 836-8689
E-mail: james.catterson@arnoldporter.com;
eric.whitney@arnoldporter.com

If to Escrow Agent: Fidelity National Title Insurance Company
Attn: Nick DeMartini
485 Lexington Avenue, 18th Floor
New York, NY 10017
Facsimile: (212) 481-8747
E-mail: NDeMartini@fnf.com

12. **Governing Law.** The validity, construction, interpretation and performance of this Agreement shall in all ways be governed and determined in accordance with the laws of the State of New York (other than such laws that would result in the application of the laws of any other jurisdiction).

13. **Captions.** Captions are used in this Agreement solely for convenience of reference and shall neither be construed as a part of this Agreement nor affect the construction to be given any of its provisions.

14. **Counterparts.** This Agreement or its signature pages may be executed in any number of original counterparts, all of which evidence only one agreement and only one full and complete copy of which need be produced for any purpose. A facsimile or other electronic image of a signature will have the same legal effect for the purpose of establishing the execution of this Agreement as an originally drawn signature.

15. **Severability.** In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part of this Agreement.

16. **No Waiver.** The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by any party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver is expressed in a writing signed by the party to be bound.

17. **Venue; Prevailing Party.**

A. Each of PDL, Diagnostics, the Wellstat Parties and Escrow Agent hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of and agrees that venue shall be proper in any New York State or Federal Court sitting in New York County, New York, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment issued in any such proceeding on this Agreement. Each of PDL, Diagnostics, the Wellstat Parties and Escrow Agent hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such courts. Each of PDL, Diagnostics, the Wellstat Parties and Escrow Agent agrees that a final judgment in any such action or proceeding will be conclusive

and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST ANY PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE INSTITUTED IN ANY NEW YORK STATE OR FEDERAL COURT SITTING IN NEW YORK COUNTY, NEW YORK, AND EACH PARTY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO (1) THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING AND (2) THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING (INCLUDING ANY OBJECTION OF OR RELATING TO FORUM NON-CONVENIENS). For the avoidance of doubt, this provision is not intended to, and does not, apply to any action brought pursuant to Section 8 of the Settlement Agreement or any proceeding brought in connection with a judgment issued in any proceeding brought pursuant to Section 8 of the Settlement Agreement.

B. In the event that any litigation or any other action to enforce the provisions of this Agreement, the prevailing party in such litigation or such action shall be entitled to be reimbursed by the other party for the prevailing party's reasonable out-of-pocket costs and expenses (including reasonable counsel fees and court costs).

18. **Date for Performance.** If the time period by which any right, notice, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, expires on a Saturday, Sunday or legal or bank holiday, then such time period will be automatically extended through the close of business on the next following Business Day.

19. **Conflict with Settlement Agreement.** To the extent that there is any conflict between the provisions of this Agreement and the provisions of the Settlement Agreement, the provisions of the Settlement Agreement shall control.

20. **No Third Party Beneficiary.** The provisions of this Agreement are and will be for the benefit of the Parties and Escrow Agent only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date first written above.

PDL BIOPHARMA, INC.

By: _____
Name:
Title:

DEFINED DIAGNOSTICS, LLC

By: _____
Name: Nadine Wohlstadter
Title: Managing Member

WELLSTAT BIOCATALYSIS, LLC

By: _____
Name: Nadine Wohlstadter
Title: Managing Member

WELLSTAT BIOLOGICS CORPORATION

By: _____
Name: Nadine Wohlstadter
Title: Managing Director

WELLSTAT IMMUNOTHERAPEUTICS, LLC

By: _____
Name: Nadine Wohlstadter
Title: Managing Member

WELLSTAT MANAGEMENT COMPANY, LLC

By: _____
Name: Nadine Wohlstadter
Title: Managing Member

**HYPERION CATALYSIS INTERNATIONAL, a
California corporation**

By: _____
Name: Nadine Wohlstadter
Title: President

WELLSTAT AVT INVESTMENT LLC

By: _____
Name: Nadine Wohlstadter
Title:

WELLSTAT THERAPEUTICS CORPORATION

By: _____
Name: Nadine Wohlstadter
Title: Managing Director

WELLSTAT VACCINES, LLC

By: _____
Name: Nadine Wohlstadter
Title: Managing Member

HEBRON FARMS, INC

By: _____
Name: Nadine Wohlstadter
Title:

SJW PROPERTIES, INC.

By: _____
Name: Nadine Wohlstadter
Title:

HVF, INC.

By: _____
Name: Nadine Wohlstadter
Title: Secretary/Treas

NHW, INC.

By: _____
Name: Nadine Wohlstadter
Title: Secretary/Treas

DUCK FARM, INC.

By: _____
Name: Nadine Wohlstadter
Title: Secretary/Treas

WELLSTAT OPHTHALMICS CORPORATION

By: _____
Name: Nadine Wohlstadter
Title: Managing Director

WELLSTAT THERAPEUTICS EU LIMITED

By: _____
Name: Nadine Wohlstadter
Title:

HYPERION CATALYSIS EU LIMITED

By: _____
Name: Nadine Wohlstadter
Title:

Nadine Wohlstadter

Samuel Wohlstadter

ESCROW AGENT

By: _____
Name:
Title:

EXHIBIT B-1
(Escrow Agent Wire Instructions)

EXHIBIT B-2
(PDL Wire Instructions)

EXHIBIT C
(Form of Lien Release)

RELEASE OF SECURITY INTERESTS AND AUTHORIZATION TO FILE UCC FINANCING STATEMENTS

Re: Satisfaction of Loan and Release of All Security Interests

Agent and sole
Lender: PDL BioPharma, Inc.

Obligors: Defined Diagnostics LLC (f/k/a Wellstat Diagnostics LLC), Samuel J. Wohlstadter, Nadine H. Wohlstadter, Hyperion Catalysis International, Wellstat Vaccines, LLC, Wellstat ImmunoTherapeutics, LLC, Wellstat BioCatalysis, LLC, Wellstat AVT Investment, LLC, Wellstat Biologics Corporation, Wellstat Management Company, LLC, Wellstat Ophthalmics Corporation, Wellstat Therapeutics Corporation, Wellstat Therapeutics EU Limited, Duck Farm, Inc., Hebron Valley Farms, Inc., HVF, Inc., Hyperion Catalysis EU Limited, NHW, LLC, and SJW Properties, Inc. and each other party to any Loan Documents as a guarantor, grantor, pledgor or loan party (collectively, the "Obligors")

Reference is hereby made to that certain Amended and Restated Credit Agreement, dated as of August 15, 2013 (as amended, amended and restated, supplemented and/or otherwise modified from time to time (including pursuant to that certain Settlement and Mutual Release Agreement, dated as of August 11, 2020, by and among PDL and the Obligors party thereto), the "Credit Agreement"; capitalized terms used and not defined herein has the meanings set forth in the Credit Agreement), among Wellstat Diagnostics, LLC, as the Borrower, PDL BioPharma, Inc., as the Lender, and PDL BioPharma, Inc., as the Agent, and each of the other Documents delivered in connection therewith.

The undersigned, individually and in its capacities as Agent and as Lender, hereby releases, absolutely, unconditionally, irrevocably and forever, all security interests granted to the undersigned as Agent and/or as Lender under the Credit Agreement, any of the other Documents and any other agreements relating to any of them and any other lien granted to or held by the Agent and/or by the Lender upon any Collateral under the Credit Agreement, any of the other Documents and any other agreements relating to any of them (such security interests and liens, collectively, the "Security Interests") and agrees that all of the Security Interests will be, and hereby are, forever discharged.

The undersigned does hereby authorize each of the Obligors identified above and each of their respective agents and/or representatives and/or legal counsel to file Uniform Commercial Code termination statements in respect of any and all Uniform Commercial Code financing statements previously filed by or on behalf of the Agent and/or the Lender against any

of the Obligors identified above under the Credit Agreement, any of the other Documents and any other agreements relating to any of them.

[Signature Page Follows]

Dated: _____

PDL BIOPHARMA INC.,
as the Agent and as the Lender and individually

By: _____
[Name, Title]

EXHIBIT D
(Form of Deed of Trust Release)

Prepared Outside the Commonwealth of Virginia
by and Return to:

Arnold & Porter
250 West 55th Street
New York, NY 10019
Attention: Margaret Rogers, Esq.

TAX MAP NUMBERS:

Hebron Valley Farms, Inc., Parcels: Rev. 31-44; Rev. 31-45; Rev. 31-45A; Rev. 31-47; Rev. 31-48; Rev. 31-48A; Rev. 39-74B; Rev. 39-74D; Rev. 39-74G; Rev. 40-1; Rev. 40-2; Rev. 40-3; Rev. 40-4; 40-5; Rev. 40-6; 40-Revised 6A; Rev. 40-6A; Rev. 40-8; 40-88D; 31-51C; 31-57B; 31-62A; 31-63; 31-64; 31-65; 31-Revised 49; Rev. 31-49; 31-66; 31-67; 31-72; 31-72A; 31-72B; 31-71 & 71A; 31-36; Rev. 32-10; 32-13; 31-61; 31-68; 32-15; 32-16; 32-16A; 32-37A; 32-37B; 32-37M; 32-37N; 24-24B; 24-26; 24-26D; 24-26E; 31-53; 31-68C; 31-70; Rev. 31-43; 31-75; Rev. 31-42; Rev. 31-44A; 31-69; 31-73; 31-50; 31-62, and

SJW Properties, Inc., Parcels: Rev. 31-56; Rev. 32-17; Rev. 32-20; Rev. 32-21; Rev. 32-21A; Rev. 32-22; Rev. 40-82; Rev. 40-82A; Rev. 40-82B, Rev. 40-82C and
HVF, Inc., Parcels: 24-25; 24-25A; 24-25B; 24-25C 24-25D; 24-25E; 24-25F; 24-25G, and
NHW, LLC, Parcel: 31-68A

CERTIFICATE AND AFFIDAVIT
OF SATISFACTION

PLACE OF RECORD: CLERK'S OFFICE OF THE CIRCUIT COURT OF MADISON,
VIRGINIA

Date of Indebtedness/Deed of Trust: Dated as of March 20, 2013

Deed Book/Page:

And/or Instrument #: Instrument #130000518

Face Amount Secured: \$40,000,000

Name(s) of Grantor(s)/Maker(s): Hebron Valley Farms, Inc., a Virginia corporation, SJW Properties, Inc., a Virginia corporation, HVF, Inc., a Virginia corporation, and NHW, LLC, a Virginia limited liability company

Name(s) of Original Trustee(s): Walker Title, LLC, a Virginia corporation

Name of Substitute Trustee(s): Atlantic Trustee Services, L.L.C, a Virginia limited liability company pursuant to Substitution of Trustee recorded on March 15, 2017 at Instrument #170000348

Face Amount of Indebtedness: \$40,000,000

I/WE, holder(s) of the indebtedness (the "Indebtedness") secured by the deed of trust described above (the "Deed of Trust"), do hereby CERTIFY that the same has been PAID IN FULL, and the lien created and retained in the Deed of Trust is hereby released. The undersigned also makes oath that: (a) the undersigned was the creditor and beneficiary under the Deed of Trust; (b) all of the Indebtedness secured by the Deed of Trust has been satisfied and paid in full; and (c) the undersigned was, when the Indebtedness was satisfied, the creditor and beneficiary under the Deed of Trust and entitled and authorized to receive the same. The undersigned has subscribed its name in further testimony of the payment of the indebtedness.

GIVEN UNDER MY HAND THIS DAY OF _ 2020

PDL BIOPHARMA, INC, a Delaware corporation

By:
Name:
Title:

STATE OF _____

CITY/COUNTY OF _____; to-wit:

This Certificate and Affidavit of Satisfaction was acknowledged, subscribed and sworn to before me on (date) _____, 2020, by (name & title) _____, as _____ on behalf of (company name) PDL BioPharma, Inc., a Delaware corporation.

My commission expires:

Notary Public
SEAL

EXHIBIT E
(Forms of Patent Security Agreement Release)

RELEASE OF PATENT SECURITY AGREEMENT

This Release of Patent Security Agreement, dated as of _____, 202__ (the "Release") is made by PDL BioPharma, Inc., a Delaware corporation (individually and in its capacity as Agent for itself and the Lender pursuant to the Security Agreement (as defined below), together with its successors and assigns, the "Secured Party"), in favor of [NAME OF GRANTOR], a [STATE AND TYPE OF ORGANIZATION] (the "Grantor") and its successors, assigns and legal representatives.

WHEREAS, Grantor is a party to that certain Security Agreement, dated as of [_____] (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the "Security Agreement") in favor of Secured Party pursuant to which the Grantor was required to enter into and execute the Patent Security Agreement, dated as of [_____] (the "Patent Security Agreement"), which was recorded with the United States Patent and Trademark Office at Reel: [____], Frame: [____] on [_____];

WHEREAS, pursuant to the Security Agreement and the Patent Security Agreement, the Grantor granted to the Secured Party a security interest and continuing lien on all of such Grantor's right, title and interest in, to and under all of the Patent Collateral (as defined below) of Grantor; and

WHEREAS, the Grantor has requested that the Secured Party enter into this Release in order to effectuate, evidence and record the release and reassignment to the Grantor of any and all right, title and interest the Secured Party may have in the Patent Collateral.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Secured Party hereby agrees as follows:

SECTION 1. Definitions. Unless otherwise defined herein, capitalized terms used but not expressly defined herein shall have the meanings given to them in the Security Agreement.

SECTION 2. Release of Security Interest. Secured Party hereby releases and terminates the Patent Security Agreement and releases, terminates, and discharges its security interests under the Patent Security Agreement and under the Security Agreement in all of Grantor's right, title and interest in, to and under all United States and foreign patents and certificates of invention, or similar industrial property rights, including, but not limited to each patent referred to on Exhibit A hereto, and with respect to any and all of the foregoing: (a) all applications therefor including the patent applications referred to on Exhibit A hereto, (b) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (c) all rights corresponding thereto throughout the world, (d) all inventions and improvements described therein, (e) all rights to sue for past, present and future infringements thereof, (f) all licenses, claims, damages, and proceeds of suit arising therefrom, and (g) all proceeds, payments and rights to payments arising out of the sale, lease, license,

assignment, or other disposition thereof (collectively, the "Patent Collateral"), and hereby reassigns any and all interest that it may have therein to the Grantor.

SECTION 3. Filing of the Release. Secured Party hereby authorizes the filing of this Release in the United States Patent and Trademark Office by the Grantor or its designees, at Grantor's sole cost and expense.

SECTION 4. Electronic Transmission. This Release may be executed and delivered by facsimile or other means of electronic transmission (including .pdf) and such transmission shall constitute an original for all purposes.

SECTION 5. Governing Law. This Release and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Release and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the United States and the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction).

[Signature page follows]

IN WITNESS WHEREOF, Secured Party has caused this Release to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

PDL BioPharma, Inc., as Secured Party

By:

Name:

Title:

EXHIBIT F
(Forms of Trademark Security Agreement Release)

RELEASE OF TRADEMARK SECURITY AGREEMENT

This Release of Trademark Security Agreement, dated as of _____, 202__ (the “Release”) is made by PDL BioPharma, Inc., a Delaware corporation (individually and in its capacity as Agent for itself and the Lender pursuant to the Security Agreement (as defined below), together with its successors and assigns, the “Secured Party”), in favor of [NAME OF GRANTOR], a [STATE AND TYPE OF ORGANIZATION] (the “Grantor”) and its successors, assigns and legal representatives.

WHEREAS, Grantor is a party to that certain Security Agreement, dated as of [_____] (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of Secured Party pursuant to which the Grantor was required to enter into and execute the Trademark Security Agreement, dated as of [_____] (the “Trademark Security Agreement”), which was recorded with the United States Trademark and Trademark Office at Reel: [____], Frame: [____] on [_____];

WHEREAS, pursuant to the Security Agreement and the Trademark Security Agreement, the Grantor granted to the Secured Party a security interest and continuing lien on all of such Grantor’s right, title and interest in, to and under all of the Trademark Collateral (as defined below) of Grantor; and

WHEREAS, the Grantor has requested that the Secured Party enter into this Release in order to effectuate, evidence and record the release and reassignment to the Grantor of any and all right, title and interest the Secured Party may have in the Trademark Collateral.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Secured Party hereby agrees as follows:

SECTION 1. Definitions. Unless otherwise defined herein, capitalized terms used but not expressly defined herein shall have the meanings given to them in the Security Agreement.

SECTION 2. Release of Security Interest. Secured Party hereby releases and terminates the Trademark Security Agreement and releases, terminates, and discharges its security interests under the Trademark Security Agreement and under the Security Agreement in all of Grantor’s right, title and interest in, to and under all United States, State and foreign trademarks, service marks, collective marks, trade names, corporate names, d/b/as, business names, fictitious business names, Internet domain names, trade styles, logos, other source or business identifiers, designs and general intangibles of a like nature and, with respect to any of the foregoing: (i) all registrations and applications therefor including, but not limited to, the registrations and applications referred to on Exhibit A hereto, and with respect to any and all of the foregoing, (ii) the goodwill of the business symbolized thereby, (iii) all rights corresponding thereto throughout the world, (iv) all rights to sue for past, present, and future infringement or

dilution thereof or for any injury to goodwill, (v) all licenses, claims, damages, and proceeds of suit arising therefrom and (vi) all payments and rights to payments arising out of the sale, lease, license assignment or other disposition thereof (collectively, the “Trademark Collateral”), and hereby reassigns any and all interest that it may have therein to the Grantor.

SECTION 3. Filing of the Release. Secured Party hereby authorizes the filing of this Release in the United States Trademark and Trademark Office by the Grantor or its designees, at Grantor’s sole cost and expense.

SECTION 4. Electronic Transmission. This Release may be executed and delivered by facsimile or other means of electronic transmission (including .pdf) and such transmission shall constitute an original for all purposes.

SECTION 5. Governing Law. This Release and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Release and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the United States and the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction).

[Signature page follows]

IN WITNESS WHEREOF, Secured Party has caused this Release to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

PDL BioPharma, Inc., as Secured Party

By:

Name:

Title:

EXHIBIT G
(Form of Asset Transfer Agreement)

[See attached.]

ASSET TRANSFER AGREEMENT

This **ASSET TRANSFER AGREEMENT** (together with all exhibits, schedules and other documents attached hereto, this “Agreement”) dated as of August 11, 2020 is made by and between **DEFINED DIAGNOSTICS, LLC (F/K/A WELLSTAT DIAGNOSTICS LLC)**, a Delaware limited liability company (“Transferee”), and **PDL BIOPHARMA, INC.**, a Delaware corporation (“Transferor”).

RECITALS

A. Transferor and Transferee were parties to that certain Asset Purchase Agreement, dated as of December 22, 2015, as amended by that certain Amendment No. 1 to Asset Purchase Agreement, dated as of May 24, 2017, (as amended, the “Receivership APA”), pursuant to which Transferor acquired certain assets from Transferee (the “Receivership Assets”) and assumed certain liabilities of Transferee on May 24, 2017.

B. Transferor and Transferee are parties to that certain Settlement Agreement, dated as of the date hereof (the “Settlement Agreement”), pursuant to which the parties thereto agreed to permanently settle, compromise and resolve the claims and causes of action set forth therein.

C. The Settlement Agreement provides that, if certain payments are made by the Wellstat Parties (as defined in the Settlement Agreement) to Transferor in accordance with the terms of the Settlement Agreement, then Transferee’s assets acquired by Transferor through the Receivership APA, as they exist as of the date hereof, shall be transferred by Transferor to Transferee on an “AS IS” AND “WHERE IS” basis, except for the representations and warranties set forth in Section 3.7 hereof.

D. Simultaneously with the execution hereof, Transferor has delivered to the Escrow Agent (as defined in the Settlement Agreement) the following: (i) a duly executed bill of sale and assignment, substantially in the form attached hereto as Exhibit A; (ii) a duly executed intellectual property assignment agreement for Intellectual Property other than Patents, substantially in the form attached hereto as Exhibit B; (iii) a duly executed patent assignment agreement, substantially in the form attached hereto as Exhibit C; (iv) duly executed Patent Security Agreement Releases (as such term is defined in the Settlement Agreement) and (v) duly executed Trademark Security Agreement Releases (as such term is defined in the Settlement Agreement) (the document set forth in (i), (ii), (iii) and the Patent Security Agreement Releases and Trademark Security Agreement Releases relating solely to Diagnostics, the “Transaction Documents”).

E. Accordingly, subject to the terms and conditions of this Agreement, Transferor desires to transfer to Transferee, and Transferee desires to accept from Transferor, all of the Transferred Assets.

AGREEMENT

For and in consideration of the premises, mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and intending to be legally bound, the parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 As used in this Agreement, capitalized terms shall have the meanings set forth or referenced in Exhibit 1.1 or elsewhere herein.

ARTICLE II

ASSETS AND LIABILITIES

2.1 **Transfer of Assets.** Upon the terms and subject to the conditions of this Agreement, at the Closing, Transferor shall sell, assign, transfer, convey and deliver to Transferee, free and clear of all Liens, other than ATA Permitted Liens, and Transferee agrees to purchase and acquire all right, title and interest of Transferor in and to the following assets, properties and rights (the "Transferred Assets") on an "AS IS" AND "WHERE IS" basis without any express or implied warranty of any kind or nature, except for the representations and warranties set forth in Section 3.7 hereof:

(a) **Receivership Assets.** Receivership Assets (other than (i) those Intellectual Property assets described as having been abandoned by Transferor or that have expired prior to the date hereof in Schedule 2.1(a)(i) or Schedule 2.1(a)(ii), (ii) the Elected Excluded Assets (as defined below) and (iii) those tangible assets which, as of the date hereof, no longer physically exist), including, without limitation, all right, title and interest of Transferor in and to the following assets, properties and rights:

(i) **Assets.** All of the assets described on Schedule 2.1(a)(i); and

(ii) **Assumed Contracts.** All Intellectual Property and other rights (and all obligations) in, to and under the agreements relating to the Transferred Assets and listed on Schedule 2.1(a)(ii) (the "Assumed Contracts"), subject to the terms and conditions of such Assumed Contracts and this Article II, and provided that, as set forth in Section 2.8, no Assumed Contract shall be subject to transfer hereunder unless any and all Third Party consents required under such Assumed Contract have been obtained before Closing.

(b) **Records.** Assignable books, records, files, data, financial statements or other information directly related to title in and to the Transferred Assets which are in Transferee's possession or control.

2.2 **Excluded Assets.** The Transferred Assets shall include only those assets described in Section 2.1, but, notwithstanding the foregoing, shall exclude all of the following property (collectively, the "Excluded Assets"):

(a) **Benefit Plans.** All rights in connection with, and assets of, the employee benefit plans of Transferor;

- (b) Employees. All employees of Transferor;
- (c) Corporate Documents. All minute books, stock books and Tax Returns of Transferor;
- (d) Claims. Any claims, counterclaims and rights of offset solely against Liabilities not assumed by Transferee;
- (e) Rights under this Agreement. All rights of Transferor under this Agreement, the Transaction Documents and the Settlement Agreement;
- (f) Stock. The shares of capital stock of Transferor;
- (g) Insurance. All insurance policies, except for proceeds and returns of premiums received by Transferor relating to the Transferred Assets prior to Closing;
- (h) Excluded Contracts. All Contracts of Transferor, other than the Assumed Contracts (collectively, the “Excluded Contracts”). For the avoidance of doubt, the Settlement Agreement is an Excluded Contract;
- (i) Personnel Records. All personnel records and other records that Transferor is required by law to retain in its possession;
- (j) Phone Numbers and Email Addresses. All phone numbers and email addresses owned by a party other than Transferor, and all information assets or other property owned by a party other than Transferor;
- (k) Elected Excluded Assets. Any Receivership Assets identified by Transferee in writing to Transferor prior to the Closing (such assets, the “Elected Excluded Assets”); and
- (l) Nonexistent Assets. Any tangible Receivership Asset which, as of the date hereof, no longer physically exists.

2.3 **Assumed Liabilities**. In addition to any other amounts to be paid by Transferee as provided in Section 2.5 hereof, upon the terms and subject to the conditions of this Agreement, at Closing, Transferee shall assume and thereafter pay, perform, satisfy and fully discharge when due, and shall hold Transferor harmless from, any and all liabilities and obligations of Transferor arising after the Closing Date with respect to the Transferred Assets, including those arising under or out of the Assumed Contracts (collectively, the “Assumed Liabilities”).

2.4 **Excluded Liabilities**. The Excluded Liabilities shall remain the sole responsibility of Transferor and shall be retained, paid, performed and discharged solely by Transferor. Transferee will not assume or be liable for any Excluded Liability. “Excluded Liabilities” means all Liabilities of Transferor other than Assumed Liabilities, including, for the avoidance of doubt, (a) all Liabilities arising prior to the Closing out of, or relating to or with respect to, (i) the employment or performance of services, or termination of employment or services, of any individual by Transferor, (ii) workers’ compensation claims against Transferor or (iii) any

employee benefit plans of Transferor; (b) all Liabilities in respect of any pending or threatened Action or other claim, (c) fees and expenses payable by Transferor in accordance with Section 7.3, (d) all Transferor Taxes; and (e) all Liabilities under the Excluded Contracts.

2.5 **Consideration.** The Transferred Assets are being transferred for and in consideration of the premises, mutual covenants and agreements contained herein and in the Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed. The parties agree that the value of the consideration set forth in the foregoing sentence is \$4,500,000 (the "Allocated Consideration"), of which \$500,000 is the value given for all tangible Transferred Assets and \$4,000,000 is the value given for all intangible Transferred Assets; provided that, in the event that BioVeris exercises its right to acquire the License Agreement by and between Transferor (as successor in interest of Transferee) and BioVeris dated as of June 26, 2007 (the "ECL License") pursuant to Section 12.2(b), thereof, the Allocated Consideration shall be reduced by any amount paid by BioVeris to Transferor for such acquisition.

2.6 **"AS IS" and "WHERE IS" Basis.** Notwithstanding anything to the contrary in this Agreement other than the representations and warranties set forth in Section 3.7 hereof, Transferee acknowledges and agrees that the Transferred Assets are being transferred on an "AS IS" and "WHERE IS" basis and neither Transferor nor its agents or representatives makes, or has made, any representations or warranties whatsoever, express or implied, including any representations or warranties of merchantability, fitness for a particular purpose, non-infringement, system integration, or accuracy or completeness of informational content and, in the case of Intellectual Property, of subsistence, validity or enforceability.

2.7 **Closing.**

(a) **Place and Time.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place as soon as possible, but not later than within two (2) Business Days, following confirmation by Escrow Agent to the Wellstat Parties and Transferor that it has received a Federal Reference Number on its wire transfer of the payments that the Wellstat Parties made or caused to be made to the Escrow Agent in accordance with Sections 5(a) or 5(b) or 5(c) of the Settlement Agreement; provided that, if prior to such date, there has been an Inspection Failure (as defined in Section 5.9) and the Transferor, Transferee and the Wellstat Parties have jointly notified the Escrow Agent in writing of such failure, the Closing shall be delayed until the earlier of the date that is (i) ten (10) Business Days following the date Transferor, Transferee and the Wellstat Parties provide joint notification to the Escrow Agent that the Inspection Failure has been remedied and (ii) thirty (30) days after confirmation by Escrow Agent to the Wellstat Parties and Transferor that it has received such Federal Reference Number (the date upon which the Closing occurs and the Escrow Agent releases the Transaction Documents in accordance with Section 2.7(a) hereof, the "Closing Date"). The Closing shall take place by electronic exchange of all relevant documentation. The Closing shall be effective at 12:01 a.m., Eastern Time, on the Closing Date.

(b) **Deliverables.** On the Closing Date, the Escrow Agent shall release to the Transferee the Transaction Documents dated as of the date of such release.

2.8 **Third-Party Consents.** Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute an agreement to transfer any Transferred Asset, or any claim, right or benefit arising under or resulting from a Transferred Asset, if such transfer or attempt to make such transfer, without the consent or approval of a Third Party, would constitute a breach or violation thereof or affect adversely the rights of Transferor thereunder; and no action under this Agreement shall constitute a transfer of such Transferred Asset in the absence of such consent or approval. Transferor and Transferee shall give reasonably prompt notice to the other party of any written notice from any Third Party alleging that the consent of such Third Party is or may be required in connection with the transactions contemplated by this Agreement. To the extent any asset, property or right that would otherwise constitute a Transferred Asset is not transferred as provided above, Transferee and Transferor shall use commercially reasonable efforts to enter into arrangements to provide Transferee with substantially all of the benefits and burdens (or economic equivalents) relating to such assets, properties and rights. After Closing, Transferee shall use reasonable best efforts to obtain as soon as practicable such consents or approvals (and the release of Transferor from any Liabilities related thereto) and Transferor shall cooperate with Transferee in such efforts.

2.9 **Further Conveyances and Assumptions.** Transferor and Transferee shall execute, acknowledge and deliver such further instruments, and take such further actions as may be reasonably necessary or appropriate to transfer the Transferred Assets to Transferee and to effect the assumption of the Assumed Liabilities by Transferee under this Agreement and to otherwise make effective the transactions contemplated hereby.

2.10 **Asset Schedules.** For the avoidance of doubt, all Receivership Assets (other than (i) those Intellectual Property assets described as having been abandoned by Transferor or that have expired prior to the date hereof in Schedule 2.1(a)(i) or Schedule 2.1(a)(ii), (ii) the Elected Excluded Assets and (iii) those tangible assets which, as of the date hereof, no longer physically exist) are Transferred Assets. Schedules 2.1(a)(i) and 2.1(a)(ii) hereof are meant to assist the parties in identifying such assets, but the omission of a Receivership Asset which is not an Excluded Asset from such schedules shall not affect the status of such asset as a Transferred Asset and the inclusion of an Excluded Asset on such schedules shall not affect the status of such asset as an Excluded Asset. Transferor makes no representation or warranty to Transferee with respect to the accuracy or completeness of Schedules 2.1(a)(i) and 2.1(a)(ii).

ARTICLE III

LIMITED REPRESENTATIONS AND WARRANTIES OF TRANSFEROR

Transferor hereby represents and warrants to Transferee as of the date hereof and as of the Closing, as follows:

3.1 **Existence.** Transferor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

3.2 **Corporate Power and Authority.** Transferor has full corporate power and authority to enter into this Agreement and perform its obligations hereunder. The execution and delivery of

this Agreement, the performance by Transferor of its obligations hereunder and the consummation of the transactions contemplated herein have been duly authorized by all corporate actions on the part of Transferor and its stockholders required by applicable Law and its constituent documents. This Agreement constitutes the legal, valid and binding obligation of Transferor, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

3.3 **No Violation.** Neither the execution and delivery of this Agreement nor the performance by Transferor of its obligations hereunder nor the consummation of the transactions contemplated hereby will (a) contravene any provision of the organizational or governing documents of Transferor; (b) violate, be in conflict with, constitute a default under, permit the termination of, require the consent of any other party to, or constitute a breach of any mortgage, indenture, lease, contract, agreement, instrument or commitment to which Transferor is a party or by which Transferor, or any of its assets or properties may be bound; or (c) to Transferor's knowledge, violate any Law or Order to which Transferor is subject or by which Transferor, or any of the Transferred Assets are bound, except in the case of Sections 3.3(b) and (c) as would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Transferor's ability to consummate the transactions contemplated hereby.

3.4 **Governmental Authorization.** Neither the execution, delivery nor performance by Transferor of this Agreement requires any consent, approval, license or other action by or in respect of, or registration, declaration or filing with, any Governmental Authority.

3.5 **Litigation.** As of the date hereof, to Transferor's knowledge there is no pending Action, litigation, mediation, arbitration or other legal or administrative proceeding pending or threatened against Transferor which seeks to condition or prohibit the transactions contemplated hereby.

3.6 **Brokers or Finders' Fees.** Transferor has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, or the transactions contemplated hereby, for which Transferee is or will become liable.

3.7 **Title; Absence of Liens.** As of the date hereof and through the Closing Date, Transferor has not assigned or transferred to any third party any interests in the Transferred Assets. Other than ATA Permitted Liens, the title to the Transferred Assets is not subject to any Liens, security interests, rights or licenses granted by Transferor.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF TRANSFEEE

Transferee hereby represents and warrants to Transferor as of the date hereof and as of the Closing, as follows:

4.1 **Existence.** Transferee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

4.2 **Power and Authority.** Transferee has all requisite power and authority to enter into this Agreement and perform its obligations hereunder. The execution and delivery of this Agreement, the performance by Transferee of its obligations hereunder and the consummation of the transactions contemplated herein have been duly authorized by all organizational actions on the part of Transferee required by applicable Law and its constituent documents. This Agreement constitutes the legal, valid and binding obligation of Transferee, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

4.3 **No Violation.** Neither the execution and delivery of this Agreement nor the performance by Transferee of its obligations hereunder nor the consummation of the transactions contemplated hereby will (a) contravene any provision of the organizational or governing documents of Transferee; (b) violate, be in conflict with, constitute a default under, permit the termination of, require the consent of any other party to, or constitute a breach of any mortgage, indenture, lease, contract, agreement, instrument or commitment to which Transferee is a party or by which Transferee, or any of its assets or properties may be bound; or (c) to Transferee's knowledge, violate any Law or Order to which Transferee is subject or by which Transferee, except in the case of Sections 4.3(b) and (c) as would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Transferee's ability to consummate the transactions contemplated hereby.

4.4 **Governmental Authorization.** Neither the execution, delivery nor performance by Transferee of this Agreement requires any consent, approval, license or other action by or in respect of, or registration, declaration or filing with, any Governmental Authority.

4.5 **Brokers or Finders' Fees.** Neither Transferee nor any of its Affiliates has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, or the transactions contemplated hereby, for which Transferor is or will become liable.

4.6 **No Consents.** No filing with, or consent, waiver, approval or authorization of, or notice to, any Governmental Authority or any other Person is or will be required to be made or obtained by Transferee in connection with the execution and delivery of this Agreement or any other document or instrument contemplated hereby or thereby, the consummation of any of the transactions contemplated hereby or thereby or the performance of any of its obligations hereunder or thereunder that have not been obtained by Transferee.

4.7 **Litigation.** As of the date hereof, there is no Action pending or, to Transferee's knowledge, threatened in, by or before any Governmental Authority that would, individually or in the aggregate, have a material adverse effect on Transferee's ability to consummate the transactions contemplated by this Agreement or perform its obligations hereunder.

4.8 **Investigation.** In entering into this Agreement, Transferee has relied upon its own investigation and analysis and the representations and warranties contained in Article III and those expressly set forth in the agreements between Transferor and Transferee entered into in connection herewith and Transferee acknowledges that neither Transferor nor any of its Affiliates makes or has made any other representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to Transferee or any of its Affiliates, and Transferee has not relied on any other such representation or warranty made or claimed to have been made by Transferor.

ARTICLE V

COVENANTS

5.1 Conduct of the Business.

(a) Transferor agrees that during the period from the date hereof until the earlier of the Closing or the termination of this Agreement, except as expressly provided in Section 5.1(b) hereof, or consented to by Transferee in writing (which consent shall not be unreasonably withheld or delayed), Transferor shall:

- (i) at its own expense, take reasonable steps to maintain and protect the tangible Transferred Assets as they exist at the Effective Date against loss, theft, destruction, breakage or falling into disrepair (normal wear and tear excepted), it being understood and agreed by Transferor and Transferee that tangible Transferred Assets are held and maintained at the Facilities pursuant to storage facility agreements and that Transferor's obligations under this Section 5.1(a)(i) as they relate to such tangible assets shall be satisfied (x) if Transferor complies with those terms and conditions of such agreements, including the continued payment of the Facilities' fees, which, if breached, would reasonably be expected to have a material adverse effect on any Transferred Asset and (y) if, upon notice to Transferor of the occurrence of an event (other than a breach of the storage facility agreements) that has resulted in, or which could reasonably be expected to result in, the loss, theft, destruction or breakage of assets, Transferor takes all actions reasonably necessary to mitigate any such loss, theft, destruction or breakage; provided that, Transferor shall not be obligated to continue mitigation if it has incurred costs in connection therewith in excess of \$5,000 if Transferor informs Transferee of the event and expected cost of mitigation and allows Transferee to continue mitigation efforts at Transferee's sole cost and expense; and
- (ii) not (x) amend or terminate (prior to its expiration) any Assumed Contract or (y) grant any interest in or license to use any of the Transferred Assets to any Third Party, other than the interest, if any, that Transferor may be required to grant to BioVeris in connection with the Purchase Right (as such term is defined in the ECL License) and not to modify or terminate the ECL License.

(b) During the period from the date hereof until the earlier of the Closing or the termination of this Agreement, Transferor shall provide prompt written notice to Transferee of any communications it receives relating to required filings, or renewal or maintenance fees to be paid for Transferred Assets which constitute Patents or Registered Trademarks or applications to register Trademarks. Transferor shall have no obligation to maintain or protect any Patents, Trademarks or other Intellectual Property. Transferee may, in its sole discretion and sole expense, maintain and protect the Transferred Assets which constitute Intellectual Property. In furtherance of the foregoing, during the period from the date hereof until the earlier of the Closing or the termination of this Agreement, the Wellstat Parties may make any filings they reasonably deem necessary or appropriate to protect against expiration or abandonment of such Transferred Assets for failure to pay renewal or maintenance fees or to prosecute, at the Wellstat Parties' sole expense. In connection with any such filings, Transferor will use commercially reasonable efforts to cooperate, to the extent reasonably necessary to permit the Wellstat Parties to make any such filings.

5.2 **Commercially Reasonable Efforts.** Prior to Closing, upon the terms and subject to the conditions provided herein, each of the parties hereto agrees to use its commercially reasonable efforts to take or cause to be taken all actions, to do or cause to be done, and to assist and cooperate with any party hereto in doing all things necessary, proper or advisable under applicable Laws and regulations to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including, without limitation: (a) the obtaining of consents, waivers or approvals of Third Parties to transfer the Transferred Assets which, if not obtained, would constitute a breach or violation of the agreements between Transferor and such parties or which would adversely affect the rights of Transferor relating to such assets, provided, however, that none of the parties hereto shall be obliged to make any payment to Third Parties for obtaining such consents, waivers or approvals; and (b) the execution and delivery of such instruments, and the taking of such other actions as the other party hereto may reasonably require in order to carry out the intent of this Agreement. Prior to the Closing, Transferor and Transferee agree to use their commercially reasonable efforts to cause Third Parties to Assumed Contracts to release Transferor from all Liabilities relating to the Assumed Contracts upon their assignment to Transferee; provided, however, that none of the parties hereto shall be obliged to make any payment to Third Parties for obtaining any such release.

5.3 **Governmental Authorization.** Transferor, on the one hand, and Transferee, on the other hand, shall promptly file all necessary registrations and filings required by any Governmental Authority in order to consummate the transactions contemplated hereby. Each of Transferee and Transferor further agrees that it will comply with any applicable post-Closing notification or requirements of any antitrust, trade competition, investment or control reporting or similar Law or regulation of any Governmental Authority with competent jurisdiction. Each of Transferee and Transferor agrees to cooperate with and promptly consult with, to provide any reasonably available information with respect to, and to provide, subject to appropriate confidentiality provisions, copies of all presentations and filings to any Governmental Authority to, Transferor or Transferee, as the case may be, or the counsel of Transferor or Transferee, as the case may be.

5.4 **Confidentiality.** The parties hereto agree that the terms and conditions of Section 28 (Confidentiality) of the Settlement Agreement are incorporated herein by reference and that the parties hereto shall be bound by such terms and conditions.

5.5 **Public Announcements.** No press release or announcement concerning the transactions contemplated hereby shall be issued by Transferee or Transferor or any of their Affiliates without the prior consent of the other party hereto, except as such press release or announcement may be required by Law, rule or regulation.

5.6 **Certain Tax Matters.** The following provisions shall govern the allocation of responsibility as between Transferee and Transferor for certain tax matters following the Closing Date:

(a) **Transfer Taxes and Costs.** All transfer, sales, use, value added, stamp, recording, registration, excise, or other similar Taxes and any notarial fees incurred in connection with (i) the transfer of any of the Transferred Assets pursuant to this Agreement or the Transaction Documents, (ii) the delivery of this Agreement or any of the Transaction Documents, and (iii) the consummation of any of the transactions contemplated by this Agreement or any of the Transaction Documents (collectively, "**Transfer Taxes**"), shall be borne in their entirety by Transferee. Transferee shall timely pay all such Transfer Taxes, and file all applicable filings, reports and returns related to such Transfer Taxes that Transferee is required to file under applicable Law, and Transferor shall reasonably cooperate with Transferee in connection therewith.

(b) **Prorations.** All real and personal property taxes and similar ad valorem obligations imposed on a periodic basis, in each case levied with respect to the Transferred Assets for a taxable period which includes (but does not end on) the Closing Date, shall be apportioned between Transferor and Transferee as of the Closing Date based on the number of days in such taxable period prior to and including the Closing Date (the "**Pre-Closing Period**") and the number of days in such taxable period following the Closing Date (the "**Post-Closing Period**"). Transferor shall be liable for the proportionate amount of such taxes that is attributable to the Pre-Closing Period and Transferee for the proportionate amount of such taxes that is attributable to the Post-Closing Period. Within ninety (90) days after the Closing, Transferor and Transferee shall present a reimbursement to which each is entitled under this **Section 5.6(b)** together with such supporting evidence as is reasonably necessary to calculate the proration amount. The proration amount shall be paid by the party owing it to the other within ten (10) days after delivery of such statement. In the event that either Transferor or Transferee shall thereafter make a payment for which it is entitled to reimbursement under this **Section 5.6(b)**, the other party shall make such reimbursement (to the extent not already made pursuant to this **Section 5.6(b)**) promptly but in no event later than thirty (30) days after the presentation of a statement setting forth the amount of reimbursement to which the presenting party is entitled along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement. Any payment required under this **Section 5.6(b)** and not made within five (5) Business Days after its due date shall bear interest at the rate per annum determined, from time to time, under the provisions of Section 6621(a)(2) of the Code for each day until paid.

5.7 Delivery of Tangible Transferred Assets. As soon as reasonably possible after the Closing, Transferee shall, at its own expense, take delivery of any tangible property included in the Transferred Assets located in Transferor's storage facilities with JK Moving Services at 44112 Mercure Circle, Sterling, Virginia 20166, Precision BioServices, Inc. at 8425 Progress Drive, Suite M, Frederick, Maryland 21701 and Iron Mountain at 1000 Campus Drive, Collegeville, Pennsylvania 19426 (each such storage facility, a "Facility"); provided that, if Transferee does not take delivery of such assets within 30 calendar days after the Closing, Transferee shall be responsible for all storage costs for such assets until they are removed by Transferee (which delivery shall occur as soon as reasonably possible). Transferee shall be solely responsible for loading and shipping such tangible Transferred Assets, and for insuring the same during and after shipping. Any damage to the Transferred Assets or to Transferor's facilities resulting from such removal shall be paid by Transferee to Transferor promptly after notice is received by Transferee from Transferor as to the amount of such damages.

5.8 BioVeris Waiver. Within five (5) Business Days after the Effective Date, Transferor shall provide to BioVeris the Negotiation Notice (as such term is defined in the ECL License). Such notice will also request that BioVeris waive its rights set forth in Section 12.2(b) of the ECL License. Transferor shall not be required to pay anything to BioVeris to obtain such waiver. If Transferor fails to obtain such waiver within thirty (30) days following receipt of the Negotiation Notice by BioVeris, and Transferor and BioVeris negotiate, but are unable to agree on price and all other relevant transaction terms for BioVeris to acquire the ECL License from Transferor, Transferor shall deliver to BioVeris a Purchase Notice (as such term is defined in the ECL). The Transferor and Transferee hereby agree that the purchase price for the ECL License to be included in the Purchase Notice shall be \$1,000,000. A draft of the Purchase Notice shall be provided to Transferee for review prior to delivery to BioVeris.

5.9 Right to Inspect.

(a) Transferor shall be entitled to one visit per Facility to inspect the Transferred Assets located therein, in accordance with the terms of this Section 5.9. For each Facility, Transferee shall provide notice to Transferor of three possible different dates (specifying the time for the inspection on such date), each occurring Monday through Friday, 9:00am ET to 5:00pm ET, the earliest date of which shall be at least seven days after delivery of such notice. Transferor shall at least two (2) days prior to the earliest date, select one of those three dates and shall grant authorization to permit Transferee access to such Facility on such date. Transferor shall have the right to have a representative present at such Facility visit; however, for the avoidance of doubt, the presence of a representative of Transferor shall not be required for Transferee to enter the Facility at the date and time selected by Transferor in accordance herewith. If a Facility refuses to permit access on the date and time selected by Transferee and Transferor, a new date and time shall be selected by Transferee and Transferor in accordance with the terms hereof.

(b) If Transferee has been unable to visit a Facility prior to the date the Escrow Agent confirms to the Wellstat Parties and Transferor that it has received a Federal Reference Number on its wire transfer of the payments that the Wellstat Parties made or caused to be made to the Escrow Agent in accordance with Sections 5(a) or 5(b) or 5(c) of the Settlement Agreement due to reasons beyond Transferee's or Transferor's control (such failed visit, an "Inspection

Failure”), Transferor and Transferee shall, and Transferee shall cause the Wellstat Parties to, jointly notify the Escrow Agent in writing of such failure. When the reason for such inability has resolved, Transferor and Transferee shall cooperate in good faith to select a time and date as soon as reasonably possible to allow Transferee to conduct the missed inspection. Transferor shall have the right to have a representative present at such Facility visit; however, for the avoidance of doubt, the presence of a representative of Transferor shall not be required for Transferee to enter the Facility at the date and time selected by the parties in accordance herewith. Upon completion of all such missed inspections, the Transferor and Transferee shall, and Transferee shall cause the Wellstat Parties to, promptly provide joint notification to the Escrow Agent that the Inspection Failure has been remedied.

5.10 **Removal of ATA Permitted Liens.** After the Closing, Transferor shall promptly take all actions necessary to cause all Liens described in subsections (a) and (b) of the definition of ATA Permitted Liens, if any, on the Transferred Assets as of the Closing Date to be removed.

ARTICLE VI

TERMINATION

6.1 **Termination.** Notwithstanding anything herein to the contrary, this Agreement:

- (a) will terminate automatically upon the termination of the Settlement Agreement at any time prior to the Closing;
- (b) will terminate automatically if the Wellstat Parties fail to make or cause to be made payment of the Total Settlement Amount Balance (as defined in the Settlement Agreement) by the Final Payment Date (as defined in the Settlement Agreement);
- (c) may be terminated by the mutual written consent of Transferor and Transferee at any time prior to the Closing;
- (d) may be terminated by written notice of Transferor or Transferee if a final nonappealable order, writ, judgment, injunction, decree, stipulation, ruling, determination or award entered by or with any Governmental Authority or other nonappealable final action by a Governmental Authority permanently enjoining, restraining or otherwise prohibiting the Closing has been issued by a Governmental Authority of competent jurisdiction;
- (e) may be terminated by written notice of Transferee delivered on or prior to the Closing Date, without prejudice to any rights or obligations Transferee may have, if Transferor shall have materially breached any representation or warranty contained herein or breached any agreement or covenant contained herein to be performed on or prior to the Closing Date and such breach shall not be cured within ten (10) days following receipt by Transferor of a notice describing in reasonable detail the nature of such breach; and
- (f) may be terminated by written notice of Transferor delivered on or prior to the Closing Date, without prejudice to any rights or obligations Transferor may have, if Transferee shall have materially breached any representation or warranty or breached any agreement or

covenant contained herein to be performed on or prior to the Closing Date and such breach shall not be cured within the earlier of ten (10) days following receipt by Transferee of a notice describing in reasonable detail the nature of such breach.

6.2 **Procedure and Effect of Termination.**

(a) In the event of termination of this Agreement and abandonment of the transactions contemplated hereby, this Agreement shall forthwith terminate and (other than the provisions of Section 6.2(b)) shall become null and void and of no further effect, and the transactions contemplated hereby shall be abandoned without further action by Transferor or Transferee.

(b) If this Agreement is terminated pursuant to Section 6.1 hereof there shall be no liability or obligation hereunder on the part of Transferor or Transferee or any of their respective directors, officers, employees, Affiliates, controlling Persons, agents, advisors or representatives, except that the obligations provided for in this Section 6.2 and Article VI shall survive any such termination, and provided that nothing in this Article VI will be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement and termination of this Agreement shall not impair or alter the Parties' rights under the Settlement Agreement.

ARTICLE VII

MISCELLANEOUS PROVISIONS

7.1 **Survival; Limitations of Damages.**

(a) The representations and warranties contained in this Agreement shall survive the Closing until the nine (9) month anniversary thereof. For the avoidance of doubt, any claim of breach made prior to such nine (9) month anniversary shall survive until such claim is finally resolved. The covenants contained in this agreement that are required to be performed (i) prior to the Closing Date shall not survive the Closing and (ii) after the Closing shall continue in full force and effect in accordance with its terms.

(b) In the event of a breach by Transferor of the representations and warranties set forth in Section 3.7 (Title; Absence of Liens), upon notice of such breach by Transferee, Transferor shall promptly take all actions necessary to cause the Lien, security interest, right and/or license which is the subject of such breach to be removed. If Transferor fails to promptly cause such lien, security interest, right and/or license to be removed or if Transferor breaches the post-Closing covenant set forth in Section 5.10 (Removal of ATA Permitted Liens), Transferor's liability to Transferee for such breach shall be limited to the actual costs incurred by Transferee in removing the Lien, security interest, right and/or license, and Transferee shall not be entitled to recover any consequential, incidental, special or punitive damages in connection therewith.

7.2 **Amendment; Waiver.** Neither this Agreement, nor any of the terms or provisions hereof, may be amended, modified, supplemented or waived, except by a written instrument

signed 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 provision hereof, nor shall such waiver constitute a continuing waiver. No failure of either party to insist upon strict compliance by the other party with any obligation, covenant, agreement or condition contained in this Agreement shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

7.3 **Fees and Expenses.** Except as otherwise provided herein, each of the parties shall bear and pay its own costs and expenses incurred in connection with the origin, preparation, negotiation, execution and delivery of this Agreement and the agreements, instruments, documents and transactions referred to in or contemplated by this Agreement, including any fees, expenses or commissions of any of its advisors, agents, finders or brokers. Except as otherwise provided herein, any filing or other fees payable to any Governmental Authority in connection with the consummation of the transactions contemplated herein, including intellectual property assignment filings or other filings required by Section 5.3, shall be borne by Transferee. Except as aforesaid, each party shall indemnify the other party against any claims of Third Parties of any brokerage, finder's, agent's or similar fees or commissions in connection with the transactions contemplated hereby insofar as such claims are alleged to be based on arrangements or contacts made by, to or with the first mentioned party or its respective advisors or representatives.

7.4 **Notices.** All notices, requests, demands, document deliveries and other communications under this Agreement shall be in writing and shall be deemed to have been duly given, provided, made or received (a) when delivered personally, (b) when sent by electronic mail ("e-mail") or facsimile mail (in each case, on electronic confirmation of delivery), (c) one (1) Business Day after deposit with an overnight courier service (providing proof of delivery) or (d) three (3) Business Days after mailed by certified or registered mail, return receipt requested, with postage prepaid to the parties at the following addresses or e-mail addresses (or at such other address, e-mail address or facsimile number for a party as shall be specified by like notice):

(i) If to Transferor, to:

PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, NV 89451
Attention: General Counsel
Facsimile: (775) 832-8501
E-mail: general.counsel@pdl.com

with copies (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
Attention: Karen E. Bertero
Facsimile: (213) 229-7520
E-mail: KBertero@gibsondunn.com

Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10166
Attention: Robert L. Weigel
Facsimile: (212) 351-4035
E-mail: RWeigel@gibsondunn.com

(ii) If to Transferee, to:

Defined Diagnostics, LLC
14200 Shady Grove Road
Suite 600
Rockville, Maryland 20850
Attn: Managing Member – FORMAL NOTICE
Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: nwohlstadter@wellstat.com

with a simultaneous copies to:

Defined Diagnostics, LLC
14200 Shady Grove Road
Suite 600
Rockville, Maryland 20850
Attn: Legal Department – FORMAL NOTICE
Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: fbragg@wellstat.com

and with copies (which shall not constitute notice) to:

Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 10019
Attention: James Catterson Eric N. Whitney Tracy A. Belton
Facsimile: (212) 836-8689
E-mail: james.catterson@arnoldporter.com
eric.whitney@arnoldporter.com
tracy.belton@arnoldporter.com

7.5 **Assignment.** This Agreement and all of the provisions hereof shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by the parties hereto without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed); provided that Transferee shall be entitled to assign this Agreement or any of the rights hereunder without the prior written consent of Transferor at, prior to or following the Closing, so long as Transferee continues to be bound by and comply with its obligations hereunder and pursuant to the applicable terms and conditions of the Assumed Contracts,

including any applicable change of control or other restrictive covenants therein. Any assignment that is in violation of this Section 7.5 shall be void *ab initio*.

7.6 **Governing Law; Jurisdiction**. This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the laws of the United States where applicable. Any dispute or claim arising out of or relating to this Agreement shall be brought exclusively in the Supreme Court of the State of New York, County of New York and the parties hereby submit to the personal jurisdiction of that court with respect to any such dispute or claim.

7.7 **Specific Enforcement**. Transferee and Transferor hereby acknowledge and agree that the failure of a party to perform its agreements and covenants hereunder will cause irreparable injury to the other party for which monetary damages, even if available, will not be an adequate remedy. Accordingly, each of Transferor and Transferee hereby consents to the granting of equitable relief (including specific performance and injunctive relief) by any court of competent jurisdiction to enforce such party's obligations hereunder.

7.8 **Severability**. Each term and provision of this Agreement constitutes a separate and distinct undertaking, covenant, term or provision hereof. In the event that any term or provision of this Agreement shall be determined to be unenforceable, invalid or illegal in any respect, such unenforceability, invalidity, or illegality shall not affect any other term or provision of this Agreement, but this Agreement shall be construed as if such unenforceable, invalid or illegal term or provision had never been contained herein. Moreover, if any term or provision of this Agreement shall for any reason be held to be excessively broad as to time, duration, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent permitted under applicable Law as it shall then exist.

7.9 **Schedules and Exhibits**. The schedules and exhibits attached hereto shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth in this Agreement.

7.10 **Entire Agreement**. This Agreement, including all schedules and exhibits to this Agreement, together with the Settlement Agreement and the agreements contemplated thereby, contains, and is intended as, a complete statement of all the terms and arrangements between the parties with respect to the matters provided for, supersedes any previous agreements and understandings between the parties with respect to those matters and cannot be changed or terminated orally.

7.11 **Interpretation**.

(a) When a reference is made in this Agreement to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. Any table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this

Agreement. All terms defined in this Agreement shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

(b) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

7.12 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties, and nothing herein expressed or implied shall give or be construed to give any other Person any legal or equitable rights hereunder.

7.13 **Counterparts and Electronic Delivery.** This Agreement may be executed in counterparts and multiple originals and by facsimile, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or electronic transmission (“Electronic Delivery”) shall constitute effective execution and delivery of this Agreement as to the parties, shall be treated as an original agreement and signature pages thereof for all purposes, and shall be deemed to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto shall raise the use of such Electronic Delivery to deliver a signature, or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery, as a defense to the formation of a contract and each such party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

Signature page follows.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the date first set forth above.

DEFINED DIAGNOSTICS, LLC,
a Delaware limited liability company

By:

Name: Nadine H. Wohlstadter
Title: Managing Member

a Delaware corporation

PDL BIOPHARMA, INC.,

By:

Name:

Title:

Exhibit 1.1

Definitions

“Action” means any claim, action, cause of action or suit, litigation, controversy, assessment, arbitration, audit, examination, investigation, hearing, charge, complaint, demand, notice or proceedings to, from, by or before any Governmental Authority.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

“Agreement” shall have the meaning given in the Preamble.

“Allocated Consideration” shall have the meaning given to it in Section 2.5.

“Assumed Contracts” shall have the meaning given in Section 2.1(a)(ii).

“Assumed Liabilities” shall have the meaning given in Section 2.3.

“ATA Permitted Liens” means any (a) Liens for utilities and Taxes not yet due and payable or being contested in good faith; (b) materialmans’, mechanics’, artisans’, shippers’, warehousemans’ or other similar common law or statutory liens incurred in the ordinary course of business; and (c) Liens granted by Transferee before the Transferred Assets were acquired by Transferor from the Receiver.

“BioVeris” means BioVeris Corporation.

“Business Day” means a day except a Saturday, a Sunday or other day on which banks in the City of New York, New York are authorized or required by Law to be closed.

“Closing” shall have the meaning given in Section 2.7(a).

“Closing Date” shall have the meaning given in Section 2.7(a).

“Code” means the Internal Revenue Code of 1986, as amended.

“Contract” means any written, oral, implied or other agreement, contract, understanding, arrangement, instrument, note, guaranty, indemnity, warranty, deed, assignment, purchase order, work order, commitment, covenant, assurance or undertaking of any nature which in any case creates legally binding obligations.

“Copyrights” means copyrights (registered and unregistered) and applications for registration.

“Dollars” or “\$” means U.S. dollars.

“ECL License” shall have the meaning given in Section 2.5.

“Effective Date” shall have the meaning given to it in the Settlement Agreement.

“Elected Excluded Assets” shall have the meaning given in Section 2.2(k).

“Electronic Delivery” shall have the meaning given in Section 7.13.

“Excluded Assets” shall have the meaning given in Section 2.2.

“Excluded Contracts” shall have the meaning given in Section 2.2(h).

“Excluded Liabilities” shall have the meaning given in Section 2.4.

“Facility” shall have the meaning given in Section 5.7.

“Governmental Authority” means any government, court, regulatory or administrative agency, commission or authority or other governmental instrumentality, whether federal, state or local, domestic, foreign, multinational or supranational.

“Indebtedness” of any Person means, without duplication, (a) the principal of, interest on and premium (if any) in respect of (i) indebtedness of such Person for money borrowed and (ii) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (b) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement including trade accounts payable and other accrued current liabilities arising in the ordinary course of business; (c) all obligations of such Person under leases required to be capitalized in accordance with generally accepted accounting principles; (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (e) the liquidation value of all redeemable preferred stock of such Person; (f) all obligations of the type referred to in clauses (a) through (e) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (g) all obligations of the type referred to in clauses (a) through (f) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Inspection Failure” shall have the meaning given in Section 5.9(b).

“Intellectual Property” means Patents, Trademarks, Copyrights, Trade Secrets, and other intellectual property rights recognized in any jurisdiction, whether protected, created or arising under the laws of the United States or any other jurisdiction, including rights to sue for and remedies against past, present and future infringements thereof, and rights of priority and protection of interests therein under the laws of any jurisdiction worldwide.

“Law” means any law, statute, rule, regulation, standard, ordinance or other pronouncement having the effect of law of any foreign jurisdiction, the United States or any state, county, city or other political subdivision or of any Governmental Authority, including, without limitation, common law.

“Liability” or “Liabilities” means any debt, loss, damage, adverse claim, Tax, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability or otherwise), and including all costs and expenses relating thereto.

“Lien” means, with respect to any asset (including any security), any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset.

“Order” means any writ, judgment, decree, injunction, award, assessment, decision, ruling or similar order of any Governmental Authority (in each such case whether preliminary or final).

“Patents” means patents, utility models and any similar or equivalent statutory rights with respect to the protection of inventions, and all applications for any of the foregoing, together with all re-issuances, continuations, continuations-in-part, divisionals, revisions, extensions and reexaminations thereof.

“Person” means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity, including a Governmental Authority.

“Post-Closing Period” shall have the meaning given in Section 5.6(b).

“Pre-Closing Period” shall have the meaning given in Section 5.6(b).

“Receivership APA” shall have the meaning given in the Recitals.

“Receivership Assets” shall have the meaning given in the Recitals.

“Settlement Agreement” shall have the meaning given in the Recitals.

“Tax” or “Taxes” means any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including a tax under Section 59A of the Code), capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, real property transfer, recording, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, customs duty, amount under any escheat or unclaimed property law, fee or other similar assessment or charge in the nature of a tax, imposed by any Governmental Authority, including any interest or penalty thereon or addition thereto.

“Tax Returns” means any return, report, form, claim for refund, estimate, information return or statement or other similar document filed or required to be filed with any Governmental

Authority with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Third Party” means any Person other than Transferor or Transferee or an Affiliate of Transferor or Transferee.

“Trade Secrets” means any information, including a formula, pattern, compilation, program, device, method, technique or process that derives independent economic value, actual or potential, from not being generally known to the public or to other Persons who can obtain economic value from its disclosure or use.

“Trademark” means trade names, trademarks and service marks (registered and unregistered), logos, slogans and trade dress, including applications to register any of the foregoing, together with the goodwill symbolized by any of the foregoing.

“Transaction Documents” shall have the meaning given in the Recitals.

“Transfer Taxes” shall have the meaning given in Section 5.6(a).

“Transferee” shall have the meaning given in the Preamble.

“Transferor” shall have the meaning given in the Preamble.

“Transferor Taxes” means any Taxes (a) of Transferor that could become a liability of, or be assessed or collected against, Transferee, or that could become a Lien on the Transferred Assets, and (b) relating to or arising out of the Transferred Assets that are incurred in or attributable to any period, or any portion of any period, commencing after May 24, 2017 and ending on or prior to the Closing Date (including any Taxes that are the responsibility of Transferor pursuant to Section 5.6), but excluding any Taxes which are the responsibility of Transferee pursuant to Section 5.6. For the sake of clarity, Transferor Taxes shall not include any Taxes payable pursuant to any Assumed Contract.

“Transferred Assets” shall have the meaning given in Section 2.1.

EXHIBIT H
(Deed of Trust)

[See attached.]

EXHIBIT I
(Limited Power of Attorney)

LIMITED POWER OF ATTORNEY

On this ___ day of _____, 2020, for good and valuable consideration, including, without limitation, the terms of that certain Settlement and Mutual Release Agreement dated August 11, 2020 (the "Settlement Agreement") executed in connection herewith, PDL BioPharma, Inc., a Delaware corporation ("PDL"), hereby appoints _____ as its agent and true and lawful attorney-in-fact and grants to _____, a Limited Power of Attorney to correct, make, execute, initial, re-execute, deliver, file, refile, record and/or re-record, in PDL's name, any documents for the release, satisfaction or extinguishment of any lien, encumbrance or cloud on title as to or against any property owned by: (a) Hebron Valley Farms, Inc., a Virginia corporation; (b) SJW Properties, Inc., a Virginia corporation; (c) HVF, Inc., a Virginia corporation; and/or (d) NHW, LLC, a Virginia limited liability company, including without limitation, any lien, encumbrance or cloud on title created by or in connection with the Deed of Trust dated March 20, 2013 (the "Deed of Trust") which was recorded on March 25, 2013 at Instrument Number 130000518 in the land records of the Circuit Court Clerk's Office for the County of Madison, Virginia or any and all obligations secured by the Deed of Trust. This appointment of agency and Limited Power of Attorney includes the power to correct any and all errors or omissions in the Certificate and Affidavit of Satisfaction releasing the Deed of Trust and executed in connection with the Settlement Agreement, including, by way of example and without limitation, typographical, clerical or other errors or any other omissions:

- Related to names including, but not limited to, wrong or misspelled names;
- Related to the description of any property encumbered by the Deed of Trust including, but not limited to, wrong or misspelled street, city or town names and incorrect house numbers;
- Related to any legal description;
- Related to any Tax Map Numbers or other identifying numbers for any parcel of real property;
- Related to any applicable county name including, but not limited to, wrong or misspelled county names; and
- Related to the date of any documents including, but not limited to, wrong and incomplete dates.

In the event this appointment of agency and Limited Power of Attorney is to be exercised, _____ will provide PDL with a copy of the document(s) corrected, made, executed, initialed, re-executed, delivered, filed, refiled, recorded and/or re-recorded on PDL's behalf. This appointment of agency and Limited Power of Attorney is coupled with an interest, shall be irrevocable, is limited to the rights granted herein, and may not be used to alter the terms of the Settlement Agreement.

[signature page to follow]

IN WITNESS WHEREOF, the undersigned has executed this Limited Power of Attorney as of the date and year written.

PDL BIOPHARMA, INC, a Delaware corporation

By:

Name:

Title:

STATE OF _____

CITY/COUNTY OF _____; to-wit:

The foregoing Limited Power of Attorney was acknowledged, subscribed and sworn to before me this _____ day of _____, 2020, by _____, as the _____ of PDL BioPharma, Inc., a Delaware corporation, Delaware Corporation, on behalf of PDL BioPharma, Inc.

My commission expires:

Notary Public
SEAL

ASSET TRANSFER AGREEMENT

This **ASSET TRANSFER AGREEMENT** (together with all exhibits, schedules and other documents attached hereto, this “Agreement”) dated as of August 11, 2020 is made by and between **DEFINED DIAGNOSTICS, LLC (F/K/A WELLSTAT DIAGNOSTICS LLC)**, a Delaware limited liability company (“Transferee”), and **PDL BIOPHARMA, INC.**, a Delaware corporation (“Transferor”).

RECITALS

A. Transferor and Transferee were parties to that certain Asset Purchase Agreement, dated as of December 22, 2015, as amended by that certain Amendment No. 1 to Asset Purchase Agreement, dated as of May 24, 2017, (as amended, the “Receivership APA”), pursuant to which Transferor acquired certain assets from Transferee (the “Receivership Assets”) and assumed certain liabilities of Transferee on May 24, 2017.

B. Transferor and Transferee are parties to that certain Settlement Agreement, dated as of the date hereof (the “Settlement Agreement”), pursuant to which the parties thereto agreed to permanently settle, compromise and resolve the claims and causes of action set forth therein.

C. The Settlement Agreement provides that, if certain payments are made by the Wellstat Parties (as defined in the Settlement Agreement) to Transferor in accordance with the terms of the Settlement Agreement, then Transferee’s assets acquired by Transferor through the Receivership APA, as they exist as of the date hereof, shall be transferred by Transferor to Transferee on an “AS IS” AND “WHERE IS” basis, except for the representations and warranties set forth in Section 3.7 hereof.

D. Simultaneously with the execution hereof, Transferor has delivered to the Escrow Agent (as defined in the Settlement Agreement) the following: (i) a duly executed bill of sale and assignment, substantially in the form attached hereto as Exhibit A; (ii) a duly executed intellectual property assignment agreement for Intellectual Property other than Patents, substantially in the form attached hereto as Exhibit B; (iii) a duly executed patent assignment agreement, substantially in the form attached hereto as Exhibit C; (iv) duly executed Patent Security Agreement Releases (as such term is defined in the Settlement Agreement) and (v) duly executed Trademark Security Agreement Releases (as such term is defined in the Settlement Agreement) (the document set forth in (i), (ii), (iii) and the Patent Security Agreement Releases and Trademark Security Agreement Releases relating solely to Diagnostics, the “Transaction Documents”).

E. Accordingly, subject to the terms and conditions of this Agreement, Transferor desires to transfer to Transferee, and Transferee desires to accept from Transferor, all of the Transferred Assets.

AGREEMENT

For and in consideration of the premises, mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and intending to be legally bound, the parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 As used in this Agreement, capitalized terms shall have the meanings set forth or referenced in Exhibit 1.1 or elsewhere herein.

ARTICLE II

ASSETS AND LIABILITIES

2.1 **Transfer of Assets.** Upon the terms and subject to the conditions of this Agreement, at the Closing, Transferor shall sell, assign, transfer, convey and deliver to Transferee, free and clear of all Liens, other than ATA Permitted Liens, and Transferee agrees to purchase and acquire all right, title and interest of Transferor in and to the following assets, properties and rights (the "Transferred Assets") on an "AS IS" AND "WHERE IS" basis without any express or implied warranty of any kind or nature, except for the representations and warranties set forth in Section 3.7 hereof:

(a) **Receivership Assets.** Receivership Assets (other than (i) those Intellectual Property assets described as having been abandoned by Transferor or that have expired prior to the date hereof in Schedule 2.1(a)(i) or Schedule 2.1(a)(ii), (ii) the Elected Excluded Assets (as defined below) and (iii) those tangible assets which, as of the date hereof, no longer physically exist), including, without limitation, all right, title and interest of Transferor in and to the following assets, properties and rights:

- (i) **Assets.** All of the assets described on Schedule 2.1(a)(i); and
- (ii) **Assumed Contracts.** All Intellectual Property and other rights (and all obligations) in, to and under the agreements relating to the Transferred Assets and listed on Schedule 2.1(a)(ii) (the "Assumed Contracts"), subject to the terms and conditions of such Assumed Contracts and this Article II, and provided that, as set forth in Section 2.8, no Assumed Contract shall be subject to transfer hereunder unless any and all Third Party consents required under such Assumed Contract have been obtained before Closing.

(b) **Records.** Assignable books, records, files, data, financial statements or other information directly related to title in and to the Transferred Assets which are in Transferee's possession or control.

2.2 **Excluded Assets.** The Transferred Assets shall include only those assets described in Section 2.1, but, notwithstanding the foregoing, shall exclude all of the following property (collectively, the “Excluded Assets”):

- (a) Benefit Plans. All rights in connection with, and assets of, the employee benefit plans of Transferor;
- (b) Employees. All employees of Transferor;
- (c) Corporate Documents. All minute books, stock books and Tax Returns of Transferor;
- (d) Claims. Any claims, counterclaims and rights of offset solely against Liabilities not assumed by Transferee;
- (e) Rights under this Agreement. All rights of Transferor under this Agreement, the Transaction Documents and the Settlement Agreement;
- (f) Stock. The shares of capital stock of Transferor;
- (g) Insurance. All insurance policies, except for proceeds and returns of premiums received by Transferor relating to the Transferred Assets prior to Closing;
- (h) Excluded Contracts. All Contracts of Transferor, other than the Assumed Contracts (collectively, the “Excluded Contracts”). For the avoidance of doubt, the Settlement Agreement is an Excluded Contract;
- (i) Personnel Records. All personnel records and other records that Transferor is required by law to retain in its possession;
- (j) Phone Numbers and Email Addresses. All phone numbers and email addresses owned by a party other than Transferor, and all information assets or other property owned by a party other than Transferor;
- (k) Elected Excluded Assets. Any Receivership Assets identified by Transferee in writing to Transferor prior to the Closing (such assets, the “Elected Excluded Assets”); and
- (l) Nonexistent Assets. Any tangible Receivership Asset which, as of the date hereof, no longer physically exists.

2.3 **Assumed Liabilities.** In addition to any other amounts to be paid by Transferee as provided in Section 2.5 hereof, upon the terms and subject to the conditions of this Agreement, at Closing, Transferee shall assume and thereafter pay, perform, satisfy and fully discharge when due, and shall hold Transferor harmless from, any and all liabilities and obligations of Transferor arising after the Closing Date with respect to the Transferred Assets, including those arising under or out of the Assumed Contracts (collectively, the “Assumed Liabilities”).

2.4 **Excluded Liabilities.** The Excluded Liabilities shall remain the sole responsibility of Transferor and shall be retained, paid, performed and discharged solely by Transferor. Transferee will not assume or be liable for any Excluded Liability. “Excluded Liabilities” means all Liabilities of Transferor other than Assumed Liabilities, including, for the avoidance of doubt, (a) all Liabilities arising prior to the Closing out of, or relating to or with respect to, (i) the employment or performance of services, or termination of employment or services, of any individual by Transferor, (ii) workers’ compensation claims against Transferor or (iii) any employee benefit plans of Transferor; (b) all Liabilities in respect of any pending or threatened Action or other claim, (c) fees and expenses payable by Transferor in accordance with Section 7.3, (d) all Transferor Taxes; and (e) all Liabilities under the Excluded Contracts.

2.5 **Consideration.** The Transferred Assets are being transferred for and in consideration of the premises, mutual covenants and agreements contained herein and in the Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed. The parties agree that the value of the consideration set forth in the foregoing sentence is \$4,500,000 (the “Allocated Consideration”), of which \$500,000 is the value given for all tangible Transferred Assets and \$4,000,000 is the value given for all intangible Transferred Assets; provided that, in the event that BioVeris exercises its right to acquire the License Agreement by and between Transferor (as successor in interest of Transferee) and BioVeris dated as of June 26, 2007 (the “ECL License”) pursuant to Section 12.2(b) thereof, the Allocated Consideration shall be reduced by any amount paid by BioVeris to Transferor for such acquisition.

2.6 **“AS IS” and “WHERE IS” Basis.** Notwithstanding anything to the contrary in this Agreement other than the representations and warranties set forth in Section 3.7 hereof, Transferee acknowledges and agrees that the Transferred Assets are being transferred on an “AS IS” and “WHERE IS” basis and neither Transferor nor its agents or representatives makes, or has made, any representations or warranties whatsoever, express or implied, including any representations or warranties of merchantability, fitness for a particular purpose, non-infringement, system integration, or accuracy or completeness of informational content and, in the case of Intellectual Property, of subsistence, validity or enforceability.

2.7 **Closing.**

(a) **Place and Time.** The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place as soon as possible, but not later than within two (2) Business Days, following confirmation by Escrow Agent to the Wellstat Parties and Transferor that it has received a Federal Reference Number on its wire transfer of the payments that the Wellstat Parties made or caused to be made to the Escrow Agent in accordance with Sections 5(a) or 5(b) or 5(c) of the Settlement Agreement; provided that, if prior to such date, there has been an Inspection Failure (as defined in Section 5.9) and the Transferor, Transferee and the Wellstat Parties have jointly notified the Escrow Agent in writing of such failure, the Closing shall be delayed until the earlier of the date that is (i) ten (10) Business Days following the date Transferor, Transferee and the Wellstat Parties provide joint notification to the Escrow Agent that the Inspection Failure has been remedied and (ii) thirty (30) days after confirmation by Escrow Agent to the Wellstat Parties and Transferor that it has received such Federal Reference Number (the date upon which the Closing occurs and the Escrow Agent releases the Transaction

Documents in accordance with Section 2.7(a) hereof, the “Closing Date”). The Closing shall take place by electronic exchange of all relevant documentation. The Closing shall be effective at 12:01 a.m., Eastern Time, on the Closing Date.

(b) Deliverables. On the Closing Date, the Escrow Agent shall release to the Transferee the Transaction Documents dated as of the date of such release.

2.8 **Third-Party Consents**. Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute an agreement to transfer any Transferred Asset, or any claim, right or benefit arising under or resulting from a Transferred Asset, if such transfer or attempt to make such transfer, without the consent or approval of a Third Party, would constitute a breach or violation thereof or affect adversely the rights of Transferor thereunder; and no action under this Agreement shall constitute a transfer of such Transferred Asset in the absence of such consent or approval. Transferor and Transferee shall give reasonably prompt notice to the other party of any written notice from any Third Party alleging that the consent of such Third Party is or may be required in connection with the transactions contemplated by this Agreement. To the extent any asset, property or right that would otherwise constitute a Transferred Asset is not transferred as provided above, Transferee and Transferor shall use commercially reasonable efforts to enter into arrangements to provide Transferee with substantially all of the benefits and burdens (or economic equivalents) relating to such assets, properties and rights. After Closing, Transferee shall use reasonable best efforts to obtain as soon as practicable such consents or approvals (and the release of Transferor from any Liabilities related thereto) and Transferor shall cooperate with Transferee in such efforts.

2.9 **Further Conveyances and Assumptions**. Transferor and Transferee shall execute, acknowledge and deliver such further instruments, and take such further actions as may be reasonably necessary or appropriate to transfer the Transferred Assets to Transferee and to effect the assumption of the Assumed Liabilities by Transferee under this Agreement and to otherwise make effective the transactions contemplated hereby.

2.10 **Asset Schedules**. For the avoidance of doubt, all Receivership Assets (other than (i) those Intellectual Property assets described as having been abandoned by Transferor or that have expired prior to the date hereof in Schedule 2.1(a)(i) or Schedule 2.1(a)(ii), (ii) the Elected Excluded Assets and (iii) those tangible assets which, as of the date hereof, no longer physically exist) are Transferred Assets. Schedules 2.1(a)(i) and 2.1(a)(ii) hereof are meant to assist the parties in identifying such assets, but the omission of a Receivership Asset which is not an Excluded Asset from such schedules shall not affect the status of such asset as a Transferred Asset and the inclusion of an Excluded Asset on such schedules shall not affect the status of such asset as an Excluded Asset. Transferor makes no representation or warranty to Transferee with respect to the accuracy or completeness of Schedules 2.1(a)(i) and 2.1(a)(ii).

ARTICLE III

LIMITED REPRESENTATIONS AND WARRANTIES OF TRANSFEROR

Transferor hereby represents and warrants to Transferee as of the date hereof and as of the Closing, as follows:

3.1 **Existence**. Transferor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

3.2 **Corporate Power and Authority**. Transferor has full corporate power and authority to enter into this Agreement and perform its obligations hereunder. The execution and delivery of this Agreement, the performance by Transferor of its obligations hereunder and the consummation of the transactions contemplated herein have been duly authorized by all corporate actions on the part of Transferor and its stockholders required by applicable Law and its constituent documents. This Agreement constitutes the legal, valid and binding obligation of Transferor, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

3.3 **No Violation**. Neither the execution and delivery of this Agreement nor the performance by Transferor of its obligations hereunder nor the consummation of the transactions contemplated hereby will (a) contravene any provision of the organizational or governing documents of Transferor; (b) violate, be in conflict with, constitute a default under, permit the termination of, require the consent of any other party to, or constitute a breach of any mortgage, indenture, lease, contract, agreement, instrument or commitment to which Transferor is a party or by which Transferor, or any of its assets or properties may be bound; or (c) to Transferor's knowledge, violate any Law or Order to which Transferor is subject or by which Transferor, or any of the Transferred Assets are bound, except in the case of Sections 3.3(b) and (c) as would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Transferor's ability to consummate the transactions contemplated hereby.

3.4 **Governmental Authorization**. Neither the execution, delivery nor performance by Transferor of this Agreement requires any consent, approval, license or other action by or in respect of, or registration, declaration or filing with, any Governmental Authority.

3.5 **Litigation**. As of the date hereof, to Transferor's knowledge there is no pending Action, litigation, mediation, arbitration or other legal or administrative proceeding pending or threatened against Transferor which seeks to condition or prohibit the transactions contemplated hereby.

3.6 **Brokers or Finders' Fees**. Transferor has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, or the transactions contemplated hereby, for which Transferee is or will become liable.

3.7 **Title; Absence of Liens**. As of the date hereof and through the Closing Date, Transferor has not assigned or transferred to any third party any interests in the Transferred Assets. Other than ATA Permitted Liens, the title to the Transferred Assets is not subject to any Liens, security interests, rights or licenses granted by Transferor.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF TRANSFEREE

Transferee hereby represents and warrants to Transferor as of the date hereof and as of the Closing, as follows:

4.1 **Existence**. Transferee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

4.2 **Power and Authority**. Transferee has all requisite power and authority to enter into this Agreement and perform its obligations hereunder. The execution and delivery of this Agreement, the performance by Transferee of its obligations hereunder and the consummation of the transactions contemplated herein have been duly authorized by all organizational actions on the part of Transferee required by applicable Law and its constituent documents. This Agreement constitutes the legal, valid and binding obligation of Transferee, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

4.3 **No Violation**. Neither the execution and delivery of this Agreement nor the performance by Transferee of its obligations hereunder nor the consummation of the transactions contemplated hereby will (a) contravene any provision of the organizational or governing documents of Transferee; (b) violate, be in conflict with, constitute a default under, permit the termination of, require the consent of any other party to, or constitute a breach of any mortgage, indenture, lease, contract, agreement, instrument or commitment to which Transferee is a party or by which Transferee, or any of its assets or properties may be bound; or (c) to Transferee's knowledge, violate any Law or Order to which Transferee is subject or by which Transferee, except in the case of Sections 4.3(b) and (c) as would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Transferee's ability to consummate the transactions contemplated hereby.

4.4 **Governmental Authorization**. Neither the execution, delivery nor performance by Transferee of this Agreement requires any consent, approval, license or other action by or in respect of, or registration, declaration or filing with, any Governmental Authority.

4.5 **Brokers or Finders' Fees**. Neither Transferee nor any of its Affiliates has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, or the transactions contemplated hereby, for which Transferor is or will become liable.

4.6 **No Consents**. No filing with, or consent, waiver, approval or authorization of, or notice to, any Governmental Authority or any other Person is or will be required to be made or obtained by Transferee in connection with the execution and delivery of this Agreement or any other document or instrument contemplated hereby or thereby, the consummation of any of the

transactions contemplated hereby or thereby or the performance of any of its obligations hereunder or thereunder that have not been obtained by Transferee.

4.7 **Litigation.** As of the date hereof, there is no Action pending or, to Transferee's knowledge, threatened in, by or before any Governmental Authority that would, individually or in the aggregate, have a material adverse effect on Transferee's ability to consummate the transactions contemplated by this Agreement or perform its obligations hereunder.

4.8 **Investigation.** In entering into this Agreement, Transferee has relied upon its own investigation and analysis and the representations and warranties contained in Article III and those expressly set forth in the agreements between Transferor and Transferee entered into in connection herewith and Transferee acknowledges that neither Transferor nor any of its Affiliates makes or has made any other representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to Transferee or any of its Affiliates, and Transferee has not relied on any other such representation or warranty made or claimed to have been made by Transferor.

ARTICLE V

COVENANTS

5.1 Conduct of the Business.

(a) Transferor agrees that during the period from the date hereof until the earlier of the Closing or the termination of this Agreement, except as expressly provided in Section 5.1(b) hereof, or consented to by Transferee in writing (which consent shall not be unreasonably withheld or delayed), Transferor shall:

- (i) at its own expense, take reasonable steps to maintain and protect the tangible Transferred Assets as they exist at the Effective Date against loss, theft, destruction, breakage or falling into disrepair (normal wear and tear excepted), it being understood and agreed by Transferor and Transferee that tangible Transferred Assets are held and maintained at the Facilities pursuant to storage facility agreements and that Transferor's obligations under this Section 5.1(a)(i) as they relate to such tangible assets shall be satisfied (x) if Transferor complies with those terms and conditions of such agreements, including the continued payment of the Facilities' fees, which, if breached, would reasonably be expected to have a material adverse effect on any Transferred Asset and (y) if, upon notice to Transferor of the occurrence of an event (other than a breach of the storage facility agreements) that has resulted in, or which could reasonably be expected to result in, the loss, theft, destruction or breakage of assets, Transferor takes all actions reasonably necessary to mitigate any such loss, theft, destruction or breakage; provided that, Transferor shall not be obligated to continue mitigation if it has incurred costs in connection therewith in excess of \$5,000 if Transferor informs Transferee of the event

and expected cost of mitigation and allows Transferee to continue mitigation efforts at Transferee's sole cost and expense; and

- (ii) not (x) amend or terminate (prior to its expiration) any Assumed Contract or (y) grant any interest in or license to use any of the Transferred Assets to any Third Party, other than the interest, if any, that Transferor may be required to grant to BioVeris in connection with the Purchase Right (as such term is defined in the ECL License) and not to modify or terminate the ECL License.

(b) During the period from the date hereof until the earlier of the Closing or the termination of this Agreement, Transferor shall provide prompt written notice to Transferee of any communications it receives relating to required filings, or renewal or maintenance fees to be paid for Transferred Assets which constitute Patents or Registered Trademarks or applications to register Trademarks. Transferor shall have no obligation to maintain or protect any Patents, Trademarks or other Intellectual Property. Transferee may, in its sole discretion and sole expense, maintain and protect the Transferred Assets which constitute Intellectual Property. In furtherance of the foregoing, during the period from the date hereof until the earlier of the Closing or the termination of this Agreement, the Wellstat Parties may make any filings they reasonably deem necessary or appropriate to protect against expiration or abandonment of such Transferred Assets for failure to pay renewal or maintenance fees or to prosecute, at the Wellstat Parties' sole expense. In connection with any such filings, Transferor will use commercially reasonable efforts to cooperate, to the extent reasonably necessary to permit the Wellstat Parties to make any such filings.

5.2 Commercially Reasonable Efforts. Prior to Closing, upon the terms and subject to the conditions provided herein, each of the parties hereto agrees to use its commercially reasonable efforts to take or cause to be taken all actions, to do or cause to be done, and to assist and cooperate with any party hereto in doing all things necessary, proper or advisable under applicable Laws and regulations to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including, without limitation: (a) the obtaining of consents, waivers or approvals of Third Parties to transfer the Transferred Assets which, if not obtained, would constitute a breach or violation of the agreements between Transferor and such parties or which would adversely affect the rights of Transferor relating to such assets, provided, however, that none of the parties hereto shall be obliged to make any payment to Third Parties for obtaining such consents, waivers or approvals; and (b) the execution and delivery of such instruments, and the taking of such other actions as the other party hereto may reasonably require in order to carry out the intent of this Agreement. Prior to the Closing, Transferor and Transferee agree to use their commercially reasonable efforts to cause Third Parties to Assumed Contracts to release Transferor from all Liabilities relating to the Assumed Contracts upon their assignment to Transferee; provided, however, that none of the parties hereto shall be obliged to make any payment to Third Parties for obtaining any such release.

5.3 Governmental Authorization. Transferor, on the one hand, and Transferee, on the other hand, shall promptly file all necessary registrations and filings required by any Governmental Authority in order to consummate the transactions contemplated hereby. Each of Transferee and Transferor further agrees that it will comply with any applicable post-Closing notification or

requirements of any antitrust, trade competition, investment or control reporting or similar Law or regulation of any Governmental Authority with competent jurisdiction. Each of Transferee and Transferor agrees to cooperate with and promptly consult with, to provide any reasonably available information with respect to, and to provide, subject to appropriate confidentiality provisions, copies of all presentations and filings to any Governmental Authority to, Transferor or Transferee, as the case may be, or the counsel of Transferor or Transferee, as the case may be.

5.4 **Confidentiality.** The parties hereto agree that the terms and conditions of Section 28 (Confidentiality) of the Settlement Agreement are incorporated herein by reference and that the parties hereto shall be bound by such terms and conditions.

5.5 **Public Announcements.** No press release or announcement concerning the transactions contemplated hereby shall be issued by Transferee or Transferor or any of their Affiliates without the prior consent of the other party hereto, except as such press release or announcement may be required by Law, rule or regulation.

5.6 **Certain Tax Matters.** The following provisions shall govern the allocation of responsibility as between Transferee and Transferor for certain tax matters following the Closing Date:

(a) **Transfer Taxes and Costs.** All transfer, sales, use, value added, stamp, recording, registration, excise, or other similar Taxes and any notarial fees incurred in connection with (i) the transfer of any of the Transferred Assets pursuant to this Agreement or the Transaction Documents, (ii) the delivery of this Agreement or any of the Transaction Documents, and (iii) the consummation of any of the transactions contemplated by this Agreement or any of the Transaction Documents (collectively, "**Transfer Taxes**"), shall be borne in their entirety by Transferee. Transferee shall timely pay all such Transfer Taxes, and file all applicable filings, reports and returns related to such Transfer Taxes that Transferee is required to file under applicable Law, and Transferor shall reasonably cooperate with Transferee in connection therewith.

(b) **Prorations.** All real and personal property taxes and similar ad valorem obligations imposed on a periodic basis, in each case levied with respect to the Transferred Assets for a taxable period which includes (but does not end on) the Closing Date, shall be apportioned between Transferor and Transferee as of the Closing Date based on the number of days in such taxable period prior to and including the Closing Date (the "**Pre-Closing Period**") and the number of days in such taxable period following the Closing Date (the "**Post-Closing Period**"). Transferor shall be liable for the proportionate amount of such taxes that is attributable to the Pre-Closing Period and Transferee for the proportionate amount of such taxes that is attributable to the Post-Closing Period. Within ninety (90) days after the Closing, Transferor and Transferee shall present a reimbursement to which each is entitled under this **Section 5.6(b)** together with such supporting evidence as is reasonably necessary to calculate the proration amount. The proration amount shall be paid by the party owing it to the other within ten (10) days after delivery of such statement. In the event that either Transferor or Transferee shall thereafter make a payment for which it is entitled to reimbursement under this **Section 5.6(b)**, the other party shall make such reimbursement (to the extent not already made pursuant to this **Section 5.6(b)**) promptly but in no event later than thirty (30) days after the presentation of a

statement setting forth the amount of reimbursement to which the presenting party is entitled along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement. Any payment required under this Section 5.6(b) and not made within five (5) Business Days after its due date shall bear interest at the rate per annum determined, from time to time, under the provisions of Section 6621(a)(2) of the Code for each day until paid.

5.7 Delivery of Tangible Transferred Assets. As soon as reasonably possible after the Closing, Transferee shall, at its own expense, take delivery of any tangible property included in the Transferred Assets located in Transferor's storage facilities with JK Moving Services at 44112 Mercure Circle, Sterling, Virginia 20166, Precision BioServices, Inc. at 8425 Progress Drive, Suite M, Frederick, Maryland 21701 and Iron Mountain at 1000 Campus Drive, Collegeville, Pennsylvania 19426 (each such storage facility, a "Facility"); provided that, if Transferee does not take delivery of such assets within 30 calendar days after the Closing, Transferee shall be responsible for all storage costs for such assets until they are removed by Transferee (which delivery shall occur as soon as reasonably possible). Transferee shall be solely responsible for loading and shipping such tangible Transferred Assets, and for insuring the same during and after shipping. Any damage to the Transferred Assets or to Transferor's facilities resulting from such removal shall be paid by Transferee to Transferor promptly after notice is received by Transferee from Transferor as to the amount of such damages.

5.8 BioVeris Waiver. Within five (5) Business Days after the Effective Date, Transferor shall provide to BioVeris the Negotiation Notice (as such term is defined in the ECL License). Such notice will also request that BioVeris waive its rights set forth in Section 12.2(b) of the ECL License. Transferor shall not be required to pay anything to BioVeris to obtain such waiver. If Transferor fails to obtain such waiver within thirty (30) days following receipt of the Negotiation Notice by BioVeris, and Transferor and BioVeris negotiate, but are unable to agree on price and all other relevant transaction terms for BioVeris to acquire the ECL License from Transferor, Transferor shall deliver to BioVeris a Purchase Notice (as such term is defined in the ECL). The Transferor and Transferee hereby agree that the purchase price for the ECL License to be included in the Purchase Notice shall be \$1,000,000. A draft of the Purchase Notice shall be provided to Transferee for review prior to delivery to BioVeris.

5.9 Right to Inspect.

(a) Transferor shall be entitled to one visit per Facility to inspect the Transferred Assets located therein, in accordance with the terms of this Section 5.9. For each Facility, Transferee shall provide notice to Transferor of three possible different dates (specifying the time for the inspection on such date), each occurring Monday through Friday, 9:00am ET to 5:00pm ET, the earliest date of which shall be at least seven days after delivery of such notice. Transferor shall at least two (2) days prior to the earliest date, select one of those three dates and shall grant authorization to permit Transferee access to such Facility on such date. Transferor shall have the right to have a representative present at such Facility visit; however, for the avoidance of doubt, the presence of a representative of Transferor shall not be required for Transferee to enter the Facility at the date and time selected by Transferor in accordance herewith. If a Facility refuses to permit access on the date and time selected by Transferee and Transferor, a new date and time shall be selected by Transferee and Transferor in accordance with the terms hereof.

(b) If Transferee has been unable to visit a Facility prior to the date the Escrow Agent confirms to the Wellstat Parties and Transferor that it has received a Federal Reference Number on its wire transfer of the payments that the Wellstat Parties made or caused to be made to the Escrow Agent in accordance with Sections 5(a) or 5(b) or 5(c) of the Settlement Agreement due to reasons beyond Transferee's or Transferor's control (such failed visit, an "Inspection Failure"), Transferor and Transferee shall, and Transferee shall cause the Wellstat Parties to, jointly notify the Escrow Agent in writing of such failure. When the reason for such inability has resolved, Transferor and Transferee shall cooperate in good faith to select a time and date as soon as reasonably possible to allow Transferee to conduct the missed inspection. Transferor shall have the right to have a representative present at such Facility visit; however, for the avoidance of doubt, the presence of a representative of Transferor shall not be required for Transferee to enter the Facility at the date and time selected by the parties in accordance herewith. Upon completion of all such missed inspections, the Transferor and Transferee shall, and Transferee shall cause the Wellstat Parties to, promptly provide joint notification to the Escrow Agent that the Inspection Failure has been remedied.

5.10 **Removal of ATA Permitted Liens.** After the Closing, Transferor shall promptly take all actions necessary to cause all Liens described in subsections (a) and (b) of the definition of ATA Permitted Liens, if any, on the Transferred Assets as of the Closing Date to be removed.

ARTICLE VI

TERMINATION

6.1 **Termination.** Notwithstanding anything herein to the contrary, this Agreement:

- (a) will terminate automatically upon the termination of the Settlement Agreement at any time prior to the Closing;
- (b) will terminate automatically if the Wellstat Parties fail to make or cause to be made payment of the Total Settlement Amount Balance (as defined in the Settlement Agreement) by the Final Payment Date (as defined in the Settlement Agreement);
- (c) may be terminated by the mutual written consent of Transferor and Transferee at any time prior to the Closing;
- (d) may be terminated by written notice of Transferor or Transferee if a final nonappealable order, writ, judgment, injunction, decree, stipulation, ruling, determination or award entered by or with any Governmental Authority or other nonappealable final action by a Governmental Authority permanently enjoining, restraining or otherwise prohibiting the Closing has been issued by a Governmental Authority of competent jurisdiction;
- (e) may be terminated by written notice of Transferee delivered on or prior to the Closing Date, without prejudice to any rights or obligations Transferee may have, if Transferor shall have materially breached any representation or warranty contained herein or breached any agreement or covenant contained herein to be performed on or prior to the Closing Date and such

breach shall not be cured within ten (10) days following receipt by Transferor of a notice describing in reasonable detail the nature of such breach; and

(f) may be terminated by written notice of Transferor delivered on or prior to the Closing Date, without prejudice to any rights or obligations Transferor may have, if Transferee shall have materially breached any representation or warranty or breached any agreement or covenant contained herein to be performed on or prior to the Closing Date and such breach shall not be cured within the earlier of ten (10) days following receipt by Transferee of a notice describing in reasonable detail the nature of such breach.

6.2 Procedure and Effect of Termination.

(a) In the event of termination of this Agreement and abandonment of the transactions contemplated hereby, this Agreement shall forthwith terminate and (other than the provisions of Section 6.2(b)) shall become null and void and of no further effect, and the transactions contemplated hereby shall be abandoned without further action by Transferor or Transferee.

(b) If this Agreement is terminated pursuant to Section 6.1 hereof there shall be no liability or obligation hereunder on the part of Transferor or Transferee or any of their respective directors, officers, employees, Affiliates, controlling Persons, agents, advisors or representatives, except that the obligations provided for in this Section 6.2 and Article VI shall survive any such termination, and provided that nothing in this Article VI will be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement and termination of this Agreement shall not impair or alter the Parties' rights under the Settlement Agreement.

ARTICLE VII

MISCELLANEOUS PROVISIONS

7.1 Survival; Limitations of Damages.

(a) The representations and warranties contained in this Agreement shall survive the Closing until the nine (9) month anniversary thereof. For the avoidance of doubt, any claim of breach made prior to such nine (9) month anniversary shall survive until such claim is finally resolved. The covenants contained in this agreement that are required to be performed (i) prior to the Closing Date shall not survive the Closing and (ii) after the Closing shall continue in full force and effect in accordance with its terms.

(b) In the event of a breach by Transferor of the representations and warranties set forth in Section 3.7 (Title; Absence of Liens), upon notice of such breach by Transferee, Transferor shall promptly take all actions necessary to cause the Lien, security interest, right and/or license which is the subject of such breach to be removed. If Transferor fails to promptly cause such lien, security interest, right and/or license to be removed or if Transferor breaches the post-Closing covenant set forth in Section 5.10 (Removal of ATA Permitted Liens), Transferor's

liability to Transferee for such breach shall be limited to the actual costs incurred by Transferee in removing the Lien, security interest, right and/or license, and Transferee shall not be entitled to recover any consequential, incidental, special or punitive damages in connection therewith.

7.2 **Amendment; Waiver.** Neither this Agreement, nor any of the terms or provisions hereof, may be amended, modified, supplemented or waived, except by a written instrument signed 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 provision hereof, nor shall such waiver constitute a continuing waiver. No failure of either party to insist upon strict compliance by the other party with any obligation, covenant, agreement or condition contained in this Agreement shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

7.3 **Fees and Expenses.** Except as otherwise provided herein, each of the parties shall bear and pay its own costs and expenses incurred in connection with the origin, preparation, negotiation, execution and delivery of this Agreement and the agreements, instruments, documents and transactions referred to in or contemplated by this Agreement, including any fees, expenses or commissions of any of its advisors, agents, finders or brokers. Except as otherwise provided herein, any filing or other fees payable to any Governmental Authority in connection with the consummation of the transactions contemplated herein, including intellectual property assignment filings or other filings required by Section 5.3, shall be borne by Transferee. Except as aforesaid, each party shall indemnify the other party against any claims of Third Parties of any brokerage, finder's, agent's or similar fees or commissions in connection with the transactions contemplated hereby insofar as such claims are alleged to be based on arrangements or contacts made by, to or with the first mentioned party or its respective advisors or representatives.

7.4 **Notices.** All notices, requests, demands, document deliveries and other communications under this Agreement shall be in writing and shall be deemed to have been duly given, provided, made or received (a) when delivered personally, (b) when sent by electronic mail ("e-mail") or facsimile mail (in each case, on electronic confirmation of delivery), (c) one (1) Business Day after deposit with an overnight courier service (providing proof of delivery) or (d) three (3) Business Days after mailed by certified or registered mail, return receipt requested, with postage prepaid to the parties at the following addresses or e-mail addresses (or at such other address, e-mail address or facsimile number for a party as shall be specified by like notice):

(i) If to Transferor, to:

PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, NV 89451
Attention: General Counsel
Facsimile: (775) 832-8501
E-mail: general.counsel@pdl.com

with copies (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue

Los Angeles, CA 90071
Attention: Karen E. Bertero
Facsimile: (213) 229-7520
E-mail: KBertero@gibsondunn.com

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Robert L. Weigel
Facsimile: (212) 351-4035
E-mail: RWeigel@gibsondunn.com

(ii) If to Transferee, to:

Defined Diagnostics, LLC
14200 Shady Grove Road
Suite 600
Rockville, Maryland 20850
Attn: Managing Member – FORMAL NOTICE
Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: nwohlstadter@wellstat.com

with a simultaneous copies to:

Defined Diagnostics, LLC
14200 Shady Grove Road
Suite 600
Rockville, Maryland 20850
Attn: Legal Department – FORMAL NOTICE
Telephone: (240) 631-2500
Facsimile: (240) 683-5830
E-mail: fbragg@wellstat.com

and with copies (which shall not constitute notice) to:

Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 10019
Attention: James Catterson Eric N. Whitney Tracy A. Belton
Facsimile: (212) 836-8689
E-mail: james.catterson@arnoldporter.com
eric.whitney@arnoldporter.com
tracy.belton@arnoldporter.com

7.5 **Assignment.** This Agreement and all of the provisions hereof shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns. Neither this

Agreement nor any of the rights or obligations hereunder may be assigned by the parties hereto without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed); provided that Transferee shall be entitled to assign this Agreement or any of the rights hereunder without the prior written consent of Transferor at, prior to or following the Closing, so long as Transferee continues to be bound by and comply with its obligations hereunder and pursuant to the applicable terms and conditions of the Assumed Contracts, including any applicable change of control or other restrictive covenants therein. Any assignment that is in violation of this Section 7.5 shall be void *ab initio*.

7.6 **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the laws of the United States where applicable. Any dispute or claim arising out of or relating to this Agreement shall be brought exclusively in the Supreme Court of the State of New York, County of New York and the parties hereby submit to the personal jurisdiction of that court with respect to any such dispute or claim.

7.7 **Specific Enforcement.** Transferee and Transferor hereby acknowledge and agree that the failure of a party to perform its agreements and covenants hereunder will cause irreparable injury to the other party for which monetary damages, even if available, will not be an adequate remedy. Accordingly, each of Transferor and Transferee hereby consents to the granting of equitable relief (including specific performance and injunctive relief) by any court of competent jurisdiction to enforce such party's obligations hereunder.

7.8 **Severability.** Each term and provision of this Agreement constitutes a separate and distinct undertaking, covenant, term or provision hereof. In the event that any term or provision of this Agreement shall be determined to be unenforceable, invalid or illegal in any respect, such unenforceability, invalidity, or illegality shall not affect any other term or provision of this Agreement, but this Agreement shall be construed as if such unenforceable, invalid or illegal term or provision had never been contained herein. Moreover, if any term or provision of this Agreement shall for any reason be held to be excessively broad as to time, duration, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent permitted under applicable Law as it shall then exist.

7.9 **Schedules and Exhibits.** The schedules and exhibits attached hereto shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth in this Agreement.

7.10 **Entire Agreement.** This Agreement, including all schedules and exhibits to this Agreement, together with the Settlement Agreement and the agreements contemplated thereby, contains, and is intended as, a complete statement of all the terms and arrangements between the parties with respect to the matters provided for, supersedes any previous agreements and understandings between the parties with respect to those matters and cannot be changed or terminated orally.

7.11 **Interpretation.**

(a) When a reference is made in this Agreement to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to, this

Agreement unless otherwise indicated. Any table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

(b) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

7.12 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties, and nothing herein expressed or implied shall give or be construed to give any other Person any legal or equitable rights hereunder.

7.13 **Counterparts and Electronic Delivery.** This Agreement may be executed in counterparts and multiple originals and by facsimile, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or electronic transmission (“Electronic Delivery”) shall constitute effective execution and delivery of this Agreement as to the parties, shall be treated as an original agreement and signature pages thereof for all purposes, and shall be deemed to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto shall raise the use of such Electronic Delivery to deliver a signature, or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery, as a defense to the formation of a contract and each such party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

Signature page follows.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the date first set forth above.

DEFINED DIAGNOSTICS, LLC,
a Delaware limited liability company

By:

Name: Nadine H. Wohlstadter
Title: Managing Member

a Delaware corporation

PDL BIOPHARMA, INC.,

By:

Name:

Title:

Exhibit 1.1

Definitions

“Action” means any claim, action, cause of action or suit, litigation, controversy, assessment, arbitration, audit, examination, investigation, hearing, charge, complaint, demand, notice or proceedings to, from, by or before any Governmental Authority.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

“Agreement” shall have the meaning given in the Preamble.

“Allocated Consideration” shall have the meaning given to it in Section 2.5.

“Assumed Contracts” shall have the meaning given in Section 2.1(a)(ii).

“Assumed Liabilities” shall have the meaning given in Section 2.3.

“ATA Permitted Liens” means any (a) Liens for utilities and Taxes not yet due and payable or being contested in good faith; (b) materialmans’, mechanics’, artisans’, shippers’, warehousemans’ or other similar common law or statutory liens incurred in the ordinary course of business; and (c) Liens granted by Transferee before the Transferred Assets were acquired by Transferor from the Receiver.

“BioVeris” means BioVeris Corporation.

“Business Day” means a day except a Saturday, a Sunday or other day on which banks in the City of New York, New York are authorized or required by Law to be closed.

“Closing” shall have the meaning given in Section 2.7(a).

“Closing Date” shall have the meaning given in Section 2.7(a).

“Code” means the Internal Revenue Code of 1986, as amended.

“Contract” means any written, oral, implied or other agreement, contract, understanding, arrangement, instrument, note, guaranty, indemnity, warranty, deed, assignment, purchase order, work order, commitment, covenant, assurance or undertaking of any nature which in any case creates legally binding obligations.

“Copyrights” means copyrights (registered and unregistered) and applications for registration.

“Dollars” or “\$” means U.S. dollars.

“ECL License” shall have the meaning given in Section 2.5.

“Effective Date” shall have the meaning given to it in the Settlement Agreement.

“Elected Excluded Assets” shall have the meaning given in Section 2.2(k).

“Electronic Delivery” shall have the meaning given in Section 7.13.

“Excluded Assets” shall have the meaning given in Section 2.2.

“Excluded Contracts” shall have the meaning given in Section 2.2(h).

“Excluded Liabilities” shall have the meaning given in Section 2.4.

“Facility” shall have the meaning given in Section 5.7.

“Governmental Authority” means any government, court, regulatory or administrative agency, commission or authority or other governmental instrumentality, whether federal, state or local, domestic, foreign, multinational or supranational.

“Indebtedness” of any Person means, without duplication, (a) the principal of, interest on and premium (if any) in respect of indebtedness of such Person for money borrowed and (ii) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (b) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement including trade accounts payable and other accrued current liabilities arising in the ordinary course of business; (c) all obligations of such Person under leases required to be capitalized in accordance with generally accepted accounting principles; (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (e) the liquidation value of all redeemable preferred stock of such Person; (f) all obligations of the type referred to in clauses (a) through (e) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (g) all obligations of the type referred to in clauses (a) through (f) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Inspection Failure” shall have the meaning given in Section 5.9(b).

“Intellectual Property” means Patents, Trademarks, Copyrights, Trade Secrets, and other intellectual property rights recognized in any jurisdiction, whether protected, created or arising under the laws of the United States or any other jurisdiction, including rights to sue for and remedies against past, present and future infringements thereof, and rights of priority and protection of interests therein under the laws of any jurisdiction worldwide.

“Law” means any law, statute, rule, regulation, standard, ordinance or other pronouncement having the effect of law of any foreign jurisdiction, the United States or any state, county, city or other political subdivision or of any Governmental Authority, including, without limitation, common law.

“Liability” or “Liabilities” means any debt, loss, damage, adverse claim, Tax, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability or otherwise), and including all costs and expenses relating thereto.

“Lien” means, with respect to any asset (including any security), any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset.

“Order” means any writ, judgment, decree, injunction, award, assessment, decision, ruling or similar order of any Governmental Authority (in each such case whether preliminary or final).

“Patents” means patents, utility models and any similar or equivalent statutory rights with respect to the protection of inventions, and all applications for any of the foregoing, together with all re-issuances, continuations, continuations-in-part, divisionals, revisions, extensions and reexaminations thereof.

“Person” means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity, including a Governmental Authority.

“Post-Closing Period” shall have the meaning given in Section 5.6(b).

“Pre-Closing Period” shall have the meaning given in Section 5.6(b).

“Receivership APA” shall have the meaning given in the Recitals.

“Receivership Assets” shall have the meaning given in the Recitals.

“Settlement Agreement” shall have the meaning given in the Recitals.

“Tax” or “Taxes” means any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including a tax under Section 59A of the Code), capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, real property transfer, recording, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, customs duty, amount under any escheat or unclaimed property law, fee or other similar assessment or charge in the nature of a tax, imposed by any Governmental Authority, including any interest or penalty thereon or addition thereto.

“Tax Returns” means any return, report, form, claim for refund, estimate, information return or statement or other similar document filed or required to be filed with any Governmental

Authority with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Third Party” means any Person other than Transferor or Transferee or an Affiliate of Transferor or Transferee.

“Trade Secrets” means any information, including a formula, pattern, compilation, program, device, method, technique or process that derives independent economic value, actual or potential, from not being generally known to the public or to other Persons who can obtain economic value from its disclosure or use.

“Trademark” means trade names, trademarks and service marks (registered and unregistered), logos, slogans and trade dress, including applications to register any of the foregoing, together with the goodwill symbolized by any of the foregoing.

“Transaction Documents” shall have the meaning given in the Recitals.

“Transfer Taxes” shall have the meaning given in Section 5.6(a).

“Transferee” shall have the meaning given in the Preamble.

“Transferor” shall have the meaning given in the Preamble.

“Transferor Taxes” means any Taxes (a) of Transferor that could become a liability of, or be assessed or collected against, Transferee, or that could become a Lien on the Transferred Assets, and (b) relating to or arising out of the Transferred Assets that are incurred in or attributable to any period, or any portion of any period, commencing after May 24, 2017 and ending on or prior to the Closing Date (including any Taxes that are the responsibility of Transferor pursuant to Section 5.6), but excluding any Taxes which are the responsibility of Transferee pursuant to Section 5.6. For the sake of clarity, Transferor Taxes shall not include any Taxes payable pursuant to any Assumed Contract.

“Transferred Assets” shall have the meaning given in Section 2.1.

COMMERCIAL SUBLEASE AGREEMENT

This Commercial Sublease Agreement ("Lease") is made this 5th day of November, 2020 by and between RDH Investments, LLC ("Landlord"), and PDL BioPharma, Inc. ("Tenant").

Landlord makes available for lease a portion of the Building designated as Suite 100 (the "Premises"), containing approximately 1,750± rentable square feet as highlighted in **Exhibit B**. Landlord desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from Landlord for the term, at the rental rate and upon the covenants, conditions and provisions herein set forth. It is acknowledged hereby that Tenant has visually inspected the Premises and all floor area measurements are approximate and Landlord assumes no liability for any variance.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Lease Term:

A. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the same from Landlord, for a "Lease Term" of twenty five and one half (25.5) Months. The lease Commencement shall be November 15, 2020 ("Lease Commencement Date"). Lease shall terminate December 31, 2022.

B. Landlord shall use its best efforts to grant Tenant possession as nearly as possible to the beginning of the Lease Term or before. If Landlord is unable to provide the Premises in a timely manner, rent shall abate for the period of delay. Tenant shall make no other claim against Landlord for any such delay. Lease Commencement shall be November 15, 2020 ("Lease Commencement Date") and rent commencement shall begin January 1, 2021.

2. Option Term:

Tenant shall have the right to exercise one (1) six (6) month option to extend the term under this Lease with escalations at then fair market value, by providing Landlord with at least ninety (90) days written notice prior to the lease termination date.

3. Lease Commencement:

Lease Commencement shall be November 15, 2020 ("Lease Commencement Date"). Tenant shall have early access to install data, phone and other equipment after full execution of this lease, and to start tenant improvements as needed. Tenant shall provide the appropriate insurance certificates to Landlord before Landlord grants access.

4. Holding Over:

If after expiration of the Lease Term or any Option Terms, Tenant remains in possession of the Premises with Landlord's permission (express or implied), Tenant shall become a Tenant from month to month only, upon all the provisions of this Lease, except that the monthly rental rate shall be One Hundred Ten percent (110%) of rental rate specified for 2022 specified below. If either party desires to terminate such month to month tenancy, it shall give the other party not less than ninety (90) days advance written notice of the date of termination.

5. Rent Commencement:

A. Tenant shall pay to Landlord first month rent of \$3,062.50 and a "Security Deposit" equal to the amount of Six Thousand One Hundred Twenty Five Dollars and no Cents (\$6,125.00), due at Lease execution.

B. Tenant is to be provided one and one half (1.5) months free of rent. Rent shall commence January 1, 2021. Tenant shall be responsible for utilities for the full term of the lease.

C. Rent shall increase three percent (3%) each year after first year.

D. Tenant shall pay to Landlord during the Lease Term rent in monthly installments per the following schedule:

Dates	Rent per Month	Total Rent
November 15, 2020- – December 31, 2020	Abated	Abated
January 1, 2021 – December 31, 2021	\$3,062.50	\$36,750.00
January 1, 2022 – December 31, 2022	\$3,154.38	\$37,852.56

E. Starting January 1, 2021, each rent installment payment shall be due in advance on the first day of each calendar month during the Lease Term to Landlord at c/o Paradise Cruise, 1540 South King Street, Honolulu, HI 96826 or at such other place designated by written notice from Landlord or Tenant. The rent payment amount for any partial calendar months included in the Lease Term shall be prorated on a daily basis.

6. Use:

The Premises shall be used for Professional Administrative Office.

Tenant shall not do or permit to be done in or about the Premises anything which is illegal or unlawful or use the Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, or device.

7. Sublease and Assignment:

Tenant shall not sublease all or any part of the Premises, or assign this Lease in whole or in part without Landlord's consent, such consent not to be unreasonably withheld or delayed.

Landlord may at any time assign or transfer its interest as Landlord in and to this Lease, or any part thereof, and may at any time sell or transfer its interest in the building. Tenant agrees to attorn to the assignee, transferee or purchaser from Landlord from and after the date of notice to Tenant of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Lease were made in the first instance, by and between Tenant and such assignee, transferee or purchaser. For the avoidance of doubt, any assignment, transfer or sale of the building or the Lease shall not have any effect on the terms of the Lease.

8. Repairs & Tenant Improvements:

A. Tenant has performed a walk through inspection of the premises and is unaware of any condition such that the premises are not currently or with Tenant's proposed improvements in tenantable and good condition. Tenant further agrees upon termination or expiration of this Lease to deliver up possession of the Premises in as good order, condition and repair as they were in at the time Tenant entered into possession thereof, reasonable wear and tear excepted, free of Tenant's personal property, garbage and other waste, and to return the keys to the Landlord. Tenant's occupancy is not an acceptance of any latent or hidden conditions of the premises that could result in significant impairment to habitability thereof.

B. Landlord shall deliver the Premises in "as is" condition, subject to the preceding paragraph A regarding latent or hidden conditions of the premises that could result in significant impairment to the habitability thereof. Tenant, at Tenant's sole cost and expense, and at Landlord's written consent, shall be responsible for all construction and improvements to the Leased Premises as provided in the following paragraph and in Exhibit B (the "Tenant Improvements").

Immediately following Tenant's acceptance of the Premises and conditioned upon Landlord's prior review of specifications and written approval, Tenant, utilizing the services of a competent licensed contractor, shall make the following improvements to the Premises: Install (1) a wall in the conference room; (2) insulate wall and ceiling above grid; (3) install the appropriate electrical and appropriate switches to allow for separate lighting control in new open space; (4) modify safety systems as a required by code; (5) acquire the appropriate approvals and permits to complete the improvements. These tenant improvements are illustrated in Exhibit B. These and any additional improvements made during the term of this lease shall be the sole cost and expense of the Tenant. In addition, all further tenant improvements performed during the term of this lease exceeding \$2,500 must be approved in writing by Landlord prior to commencement of work.

During the Lease Term, Tenant shall make at Tenant's expense, all necessary routine repairs to the interior portion of the Premises. Tenant required repairs shall include such items as superficial damage of floors, walls, ceilings, and other interior, non-structural parts of the

Premises damaged or worn through normal occupancy. Tenant shall have no responsibility for or liability with relation to any damage or unsafe conditions of the foundation, the structural and external components of the Premises (including the entry way and common areas), or for major mechanical systems within or external to the premises (including ventilation and climate control), or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

9. Alterations and Improvements:

With prior written approval of the scope of work, Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner using a licensed contractor and utilizing good quality materials. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease Term or placed or installed on the Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

10. Property Taxes:

Landlord shall pay, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the Lease Term on the Premises, and all personal property taxes with respect to Landlord's personal property, if any, on the Premises. Tenant shall be responsible for paying all personal property taxes with respect to Tenant's personal property at the Premises.

11. Insurance:

A. If the Premises or any other part of the Building is damaged by fire or other casualty resulting from any intentional act of Tenant or any of Tenant's agents or employees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

B. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Premises naming the Landlord as additional insured.

C. Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each in the Building with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection under Nevada law of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof; workers compensation of not less than \$500,000 and provide a waiver of subrogation in favor of the other. Landlord and Tenant shall be listed as an

additional insured on the respective policy or policies of comprehensive general liability insurance of the other, and each party shall provide the other with current Certificates of Insurance evidencing compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration. Landlord shall not be required to maintain insurance against thefts within the Premises or the Building.

12. Utilities:

Landlord shall pay all standard charges for water, sewer and gas. Tenant's Premises are separately metered for electricity. Tenant shall pay for any and all electrical charges, security system activation and monitoring charges, internet connectivity charges, telephone and other data service charges. Landlord and Tenant agree to share equally the electricity charges for the common area which includes the Building entry and restrooms; provided that upon the addition of any additional tenants, such amounts shall be charged pro rata between the Landlord and/or Tenants. These shared expenses will be billed monthly upon Landlord's invoice from NV Energy.

Tenant acknowledges that the Premises are designed to provide standard HVAC, electrical current capable of providing normal electrical capacity for office use and standard office lighting. Tenant shall use commercially reasonable efforts to not use equipment or devices that overload the wiring or interfere with electrical services to other Tenants and will advise Landlord in the event of any repeated or consistent overload of the wiring and electrical services caused by Tenant's equipment. Any such required upgrades to accommodate Tenant's power requirements will be made at Tenant's cost.

Tenant shall be responsible to pay for the cost of the janitorial expense for Tenant's suite. Tenant may contract with the building owner's janitorial service.

13. Signs:

Tenant shall be allowed to have the company name on the door. Landlord shall have the right to hang a sign in the lobby indicating where the suite is located. Tenant shall be allowed to place their name, logo and suite number on building standard signage at the suite entrance with landlord's approval and in accordance with Building's Rules and Regulations, at Tenant's sole expense. All signage shall be at Tenant's sole expense.

When Tenant vacates Premises, Tenant shall repair all damage, if any, to the Premises resulting from the removal of signs installed by Tenant.

14. Entry & Security:

Tenant shall have building access 24 hours a day, 365 days a year. Tenant shall provide and maintain Tenant's own security system within Tenant's Premises. Tenant's Security Systems shall not interfere with normal building operations or disturb other tenants. Tenant shall be provided two (2) keys to Premises and may make copies as additional keys are required.

Additional keys can be made upon request at the actual cost of keying. If keys are lost, Tenant will be responsible for the cost of rekeying the cylinder and replacement keys.

Upon prior notice, Landlord shall have the right to enter upon the Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Premises. Tenant shall not unreasonably withhold consent to the Landlord to enter the Premises in order to inspect same, make necessary or agreed repairs or improvements, supply necessary or agreed services, or exhibit the Premises to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

Landlord or his agent may enter the Premises without consent of the Tenant:

(A) At any time in case of emergency - prospective changes in weather conditions that pose a likelihood of danger to the property may be considered an emergency;

(B) On a scheduled basis and between the hours of 8:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace and air-conditioning filters, and the like.

Except in cases under item (A) above, the Landlord shall be required to give the Tenant twenty-four hour notice of his intent to enter.

15. Parking:

During the term of this Lease, Tenant shall have the non-exclusive use in common with Landlord, other tenants of the Building, their guests and invitees, of the non-reserved common automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Landlord. Per City of Reno parking code unreserved parking spaces shall be provided within the parking area of the building. Non-complying vehicles upon such event shall be removed at owner's expense.

16. Building Rules and Regulations:

Tenant will comply with the Rules and Regulations of the Building. The Rules and Regulations adopted by Landlord may be reasonably altered by Landlord, where necessary for the safe and reasonable use of the premises from time to time and Tenant will cause all of its agents, employees, invitees and visitors to abide by such alternations; all changes to such Rules and Regulations will be sent by Landlord to Tenant in writing. The initial rules for the Building are attached hereto as Exhibit "A" and incorporated herein for all purposes. Landlord reserves the right to make such other and further reasonable Rules and Regulations as in his judgment may from time to time be needed or desirable for safety, care and cleanliness of the Premises or Building and the preservation of good order therein.

17. Damage and Destruction:

Subject to Section 11(A) above, if the Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for

Tenant's purposes, then Tenant shall have the right within thirty (30) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Premises, and if such damage does not render the Premises unusable for Tenant's purposes, Landlord shall promptly repair such damage at the cost of the Landlord. In making the repairs called for in this paragraph, Landlord shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain necessary materials or labor or other matters which are beyond the reasonable control of Landlord. Tenant shall be relieved from paying rent and other charges during any portion of the Lease Term that the Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes. Rent and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

18. Default:

Should Tenant fail to pay rent when due, or fail to perform any term hereof, after not less than five (5) days written notice of such default given in the manner required by Nevada law, Landlord, at its option, may terminate all rights of Tenant hereunder, unless Tenant, within said time, shall cure such default. If Tenant abandons or vacates the property while in default of the payment of rent, Landlord may consider any property left on the Premises to be abandoned and may dispose of same in any manner allowed by law. In the event of a default by Tenant, Landlord may elect to (a) continue the Lease in effect and enforce all its rights and remedies hereunder, including the right to recover the rent as it becomes due, or (b) at any time, terminate all of Tenant's rights hereunder and recover from Tenant all damages it may incur by reason of the breach of the Lease, including the cost of recovering the Premises, and including the worth at the time of such termination, or at the time of an award if suit be instituted to enforce this provision, of the amount by which the unpaid rent for the balance of the term exceeds the amount of such lost rent.

At all times hereunder, Landlord shall conduct itself in a manner consistent and in accordance with an obligation to mitigate damages and the duty of good faith and fair dealing owed to Tenant pursuant to this Lease.

19. Interest and Late Charges:

The Tenant acknowledges that the late payment of rent to the Landlord will cause the Landlord to incur costs not contemplated by this Lease, the exact amount of which the Landlord is not capable of determining. Accordingly, if any monthly installment of the annual rent which is not received within (5) days after the due date, the Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue rent. Further, and in addition to any late charges, any sums payable by the Tenant to the Landlord under the terms of this Lease which shall be past due for a period of thirty (30) or more days, shall bear interest from the due date at the rate of twelve percent (12%) per annum or maximum allowable by law. Returned checks shall be subject to a charge of \$50.00.

20. Quiet Possession:

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Premises during the term of this Lease.

21. Condemnation:

If any legally, constituted authority condemns the Building or such part thereof which shall make the Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rent as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

22. Subordination:

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Premises of the Building, and Tenant agrees upon demand to execute such further reasonable and necessary instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may reasonably request. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require relating to the foregoing.

23. Indemnification:

Tenant will save and hold Landlord harmless from all loss, damage, liability or expense resulting from any injury to any person or any loss of or damage to any property caused by or resulting from any act or omission of Tenant or any officer, agent, or employee of Tenant in or about the Premises or Building.

24. Cross-indemnification:

Landlord will save and hold Tenant harmless from all loss, damage, liability or expense resulting from any injury to any person or any loss of or damage to any property caused by or

resulting from any act or omission of Landlord or any officer, agent, employee, of Landlord in or about the Premises or Building.

25. Security Deposit:

Six Thousand One Hundred Twenty Five Dollars and no Cents (\$6,125.00).

Landlord shall hold the Security Deposit without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant.

Landlord may assign and deliver the Security Deposit to any purchaser or transferee of Landlord's interest in this Lease or the Premises, and Landlord shall thereupon be released from any obligations related to the Security Deposit provided that such purchaser assumes in writing all of Landlord's obligations under this Lease. Tenant shall thereafter look only to such purchaser for recovery of the Security Deposit.

26. Notice:

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States mail, addressed as follows:

If to Landlord to: Mr. Layne H. Wada
RDH Investments, LLC
1540 South King Street
Honolulu, HI 96826

If to Tenant to:

With a copy to:

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

27. Brokers:

Tenant and Landlord acknowledge that Landlord is represented in this transaction by Ken Stark of Stark & Associates Commercial Real Estate, and that Tenant is represented by Louie Llamas of Stark & Associates in this office lease. Landlord and Tenant acknowledge that

they have had no other dealings with any real estate broker or agent other than those aforementioned and it knows of no other broker, agent or finder who is or might be entitled to a commission or fee in connection with this Lease. The commission earned by the Brokers shall be paid per separate agreement upon full execution of a Lease agreement.

28. Waiver:

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

29. Memorandum of Lease:

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

30. Headings:

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

31. Successors:

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

32. Compliance with Law:

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Premises.

33. Waiver of Counterclaims and Trial by Jury:

Landlord and Tenant Waive their right to trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy.

34. Final Agreement:

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

35. Governing Law; No Jury Trial; Attorney's Fees and Costs:

This Agreement shall be governed by the laws of the State of Nevada without regard to the conflicts of law provisions thereof and all actions to enforce or interpret this Agreement shall be brought in the courts of the State of Nevada located in Washoe County. Each Party irrevocably submits to the jurisdiction of such courts for the purpose of any suit, action or other proceeding arising out of this Agreement. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY IN ANY SUCH ACTIONS. Should either party be required to bring an action for any relief against the other relating to the recovery of rent, the prevailing party shall be paid its costs and a reasonable sum for attorney's fees.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

LANDLORD: TENANT:

RDH Investments, LLC PDL BioPharma, Inc.

By: Layne H. Wada By: _____

Its: Vice President Its: _____

Date: November 5, 2020 Date: _____

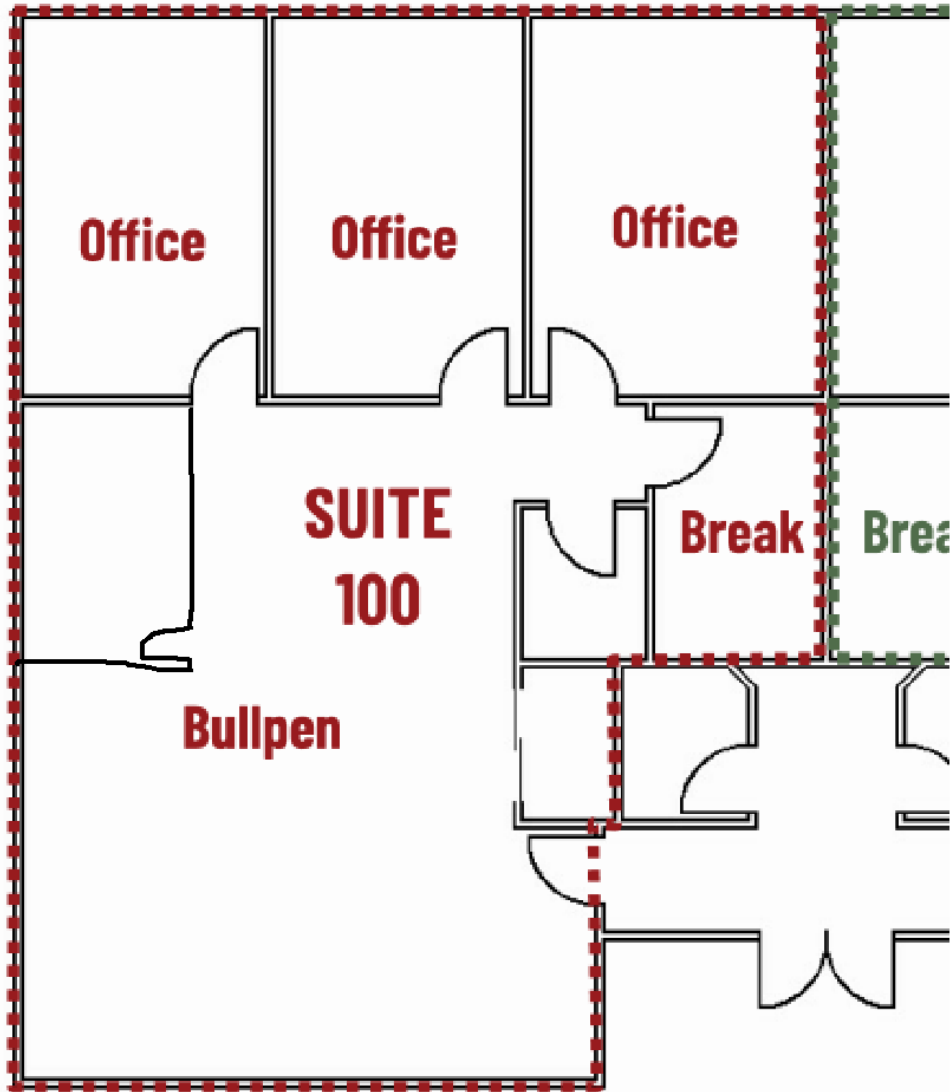
OFFICE BUILDING
EXHIBIT A
RULES and REGULATIONS

1. No advertisement, sign, lettering, notice or device shall be placed in or upon the Premises, the Building, or the windows, walls, and exterior doors except such as may be approved in writing by Landlord and as included in the Lease.
2. Lettering upon the directory board and the doors as required by Tenant shall be made by the sign company designated by Landlord, but the costs shall be paid by Tenant. The Building directories will be provided exclusively for the display of the name and location of Tenants and their manager or representative; and Landlord reserves the right to exclude any other names there from.
3. No additional locks shall be placed upon any doors of the Premises, and Tenant agrees not to have any duplicate keys made without the consent of the Landlord. If more than two (2) keys for any door lock are desired, such additional keys shall be paid for by the Tenant.
4. Upon termination of this lease, Tenant shall surrender all keys.
5. The entrances, corridors, and stairways shall not be obstructed by Tenant, or used for any other purpose than ingress or egress to and from the Premises. Tenant shall not bring into or keep an animal within the Building.
6. Tenant shall not disturb other occupants of the Building by making loud, undue, or unseemly noise. Tenant shall not, without Landlord's written consent, install or operate in or upon the Premises any machinery or machinery causing noise or vibration perceptible outside the Premises. With the exception of standard office equipment, coffee makers, refrigerator, microwave are allowed. No toxic chemical, fuel or explosives shall be brought into the Building.
7. Tenants shall not mark, drive nails, screw or drill into woodwork or plaster, or paint; in any way deface Building or any part thereof, on the Premises or any part thereof or fixtures therein. The expense of remedying any breakage, damage or stoppage resulting from a violation of this rule shall be borne by the Tenants. This is not meant to preclude Tenant from hanging pictures, artwork, plaques and related items on walls internal to Premises, as customary in professional offices. Tenant shall be able to bolt down a safe and computer locker in the electrical room within the Premises.
8. Canvassing, soliciting and peddling in the Building are prohibited and each Tenant shall cooperate to prevent such activity.
9. Landlord reserves the right to close and keep locked all the Building entrances and exit doors on Sundays and legal holidays and between the hours of 5:00 p.m. of any day and 7:00 a.m. of the following day and during such further hours as Landlord may deem

advisable for the adequate protection of the Building and the property of the Tenants. Tenant shall have access via key pad access when the building is locked and secured.

10. Landlord assumes no responsibility for and shall not be liable for any damage resulting from any error in regard to any identification of Tenant or its employees and from admission to or exclusion from the Building.
11. The Landlord shall, at his cost and expense, operate the HVAC system on Tenant's business days. Comfort range of the buildings shall be between a high of 74 degrees to a low of 70 degrees. Tenant shall turnoff lights when not occupying the Premise to conserve energy and assist the Landlord in maintaining reasonable operating expenses of the Premises
12. Tenant shall provide for janitor services throughout the Tenant's suite at Tenant's sole cost.
13. Tenant shall exercise care and caution to insure that all water faucets or water apparatuses, electricity and gas are carefully and entirely shut off and all windows closed and doors locked before tenant or its employees leave the Building, so as to prevent waste or damage. The Tenant shall be responsible for any damage to the Premises or Building and for all damage or injuries sustained by other tenants or occupants of the Building arising from the Tenant's failure to observe this provision.
14. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations of the Building.
15. Landlord reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be needed or desirable for safety, care and cleanliness of the Premises or Building and the preservation of good order therein.

**OFFICE BUILDING
EXHIBIT B
PREMISES**



CERTIFICATIONS

I, Dominique Monnet, President and Chief Executive Officer, of PDL BioPharma, Inc., certify that:

- (1) I have reviewed this Quarterly Report on Form 10-Q of PDL BioPharma, Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- (4) I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report my conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- (5) I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2020

/s/ DOMINIQUE MONNET

Dominique Monnet
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Edward A. Imbrogno, Vice President, Chief Financial Officer and Chief Accounting Officer, of PDL BioPharma, Inc., certify that:

- (1) I have reviewed this Quarterly Report on Form 10-Q of PDL BioPharma, Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- (4) I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report my conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- (5) I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2020

/s/ EDWARD A. IMBROGNO

Edward A. Imbrogno
Vice President, Chief Financial Officer and Chief Accounting Officer
(Principal Financial Officer and Principal Accounting Officer)

CERTIFICATIONS

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. Section 1350), Dominique Monnet, President and Chief Executive Officer of PDL BioPharma, Inc. (the "Company"), hereby certifies that, to the best of his knowledge:

- (1) The Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2020, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, and
- (2) The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 12, 2020

By:

/s/ DOMINIQUE MONNET

Dominique Monnet
President and Chief Executive Officer
(Principal Executive Officer)

/s/ EDWARD A. IMBROGNO

Edward A. Imbrogno
Vice President, Chief Financial Officer and Chief Accounting Officer
(Principal Financial Officer and Principal Accounting Officer)

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- (1) This certification accompanies the Quarterly Report on Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of PDL BioPharma, Inc. under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing. A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to PDL BioPharma, Inc. and will be retained by PDL BioPharma, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.