

**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 **June 30, 2021**

OR

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

For the transition period from _____ to _____

Commission file number: **001-36709**

SIENTRA, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)
420 South Fairview Avenue, Suite 200
Santa Barbara, California
(Address of Principal Executive Offices)

20-5551000
(I.R.S. Employer
Identification No.)

93117
(Zip Code)

(805) 562-3500

(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	SIEN	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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

As of August 2, 2021, the number of outstanding shares of the registrant's common stock, par value \$0.01 per share, was 57,997,006.

SIENTRA, INC.

FORM 10-Q FOR THE QUARTER ENDED JUNE 30, 2021

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“Sientra”, “Sientra Platinum20”, “Sientra Full Circle”, “Sientra Smooth”, “Sientra Teardrop”, “Allox”, “Allox2”, “Anatomical Controlled”, “BIOCORNEUM”, “Curve”, “Dermaspan”, “Luxe”, “Softspan”, and “Silishield” are trademarks of our company. Our logo and our other trade names, trademarks and service marks appearing in this document are our property. Other trade names, trademarks and service marks appearing in this document are the property of their respective owners. Solely for convenience, our trademarks and trade names referred to in this document appear without the TM or the (R) symbol, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights, or the rights of the applicable licensor to these trademarks and trade names.

PART I — FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

SIENTRA, INC.

Condensed Consolidated Balance Sheets

(In thousands, except per share and share amounts)

(Unaudited)

	June 30, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	\$ 82,417	\$ 54,967
Accounts receivable, net of allowances of \$1,591 and \$1,047 at June 30, 2021 and December 31, 2020, respectively	21,319	19,771
Inventories, net	45,306	39,168
Prepaid expenses and other current assets	2,492	1,891
Current assets of discontinued operations	4	13,475
Total current assets	151,538	129,272
Property and equipment, net	13,846	12,301
Goodwill	9,202	9,202
Other intangible assets, net	8,776	9,387
Other assets	7,170	8,011
Non-current assets of discontinued operations	—	805
Total assets	\$ 190,532	\$ 168,978
Liabilities and Stockholders' Equity (Deficit)		
Current liabilities:		
Current portion of long-term debt	\$ 6,652	\$ 4,670
Accounts payable	6,369	5,799
Accrued and other current liabilities	19,621	28,408
Customer deposits	27,737	17,905
Sales return liability	10,572	9,192
Current liabilities of discontinued operations	1,134	4,686
Total current liabilities	72,085	70,660
Long-term debt	60,577	60,500
Derivative liability	76,580	26,570
Deferred and contingent consideration	2,662	2,350
Warranty reserve and other long-term liabilities	9,504	9,455
Total liabilities	221,408	169,535
Commitments and contingencies (Note 12)		
Stockholders' equity (deficit):		
Preferred stock, \$0.01 par value – Authorized 10,000,000 shares; none issued or outstanding	—	—
Common stock, \$0.01 par value — Authorized 200,000,000 shares; issued 57,929,094 and 50,712,151 and outstanding 57,856,367 and 50,639,424 shares at June 30, 2021 and December 31, 2020, respectively	579	506
Additional paid-in capital	602,491	558,059
Treasury stock, at cost (72,727 shares at June 30, 2021 and December 31, 2020)	(260)	(260)
Accumulated deficit	(633,686)	(558,862)
Total stockholders' equity (deficit)	(30,876)	(557)
Total liabilities and stockholders' equity (deficit)	\$ 190,532	\$ 168,978

See accompanying notes to condensed consolidated financial statements.

SIENTRA, INC.
Condensed Consolidated Statements of Operations
(In thousands, except per share and share amounts)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Net sales	\$ 20,103	\$ 9,309	\$ 38,415	\$ 21,780
Cost of goods sold	8,838	4,047	16,997	8,782
Gross profit	<u>11,265</u>	<u>5,262</u>	<u>21,418</u>	<u>12,998</u>
Operating expenses:				
Sales and marketing	10,477	5,443	22,296	14,889
Research and development	2,400	2,113	4,595	4,364
General and administrative	7,545	6,941	15,456	14,738
Restructuring	—	3	—	831
Total operating expenses	<u>20,422</u>	<u>14,500</u>	<u>42,347</u>	<u>34,822</u>
Loss from operations	(9,157)	(9,238)	(20,929)	(21,824)
Other income (expense), net:				
Interest income	1	17	3	197
Interest expense	(2,113)	(3,606)	(4,117)	(5,229)
Change in fair value of derivative liability	(7,270)	(18,380)	(50,010)	(18,510)
Other income (expense), net	—	(1)	(97)	36
Total other income (expense), net	<u>(9,382)</u>	<u>(21,970)</u>	<u>(54,221)</u>	<u>(23,506)</u>
Loss from continuing operations before income taxes	(18,539)	(31,208)	(75,150)	(45,330)
Income tax expense (benefit)	—	—	—	—
Loss from continuing operations	(18,539)	(31,208)	(75,150)	(45,330)
Income (loss) from discontinued operations, net of income taxes	(1,595)	(3,069)	326	(17,559)
Net loss	<u>\$ (20,134)</u>	<u>\$ (34,277)</u>	<u>\$ (74,824)</u>	<u>\$ (62,889)</u>
Basic and diluted net loss per share attributable to common stockholders				
Continuing operations	\$ (0.32)	\$ (0.62)	\$ (1.34)	\$ (0.91)
Discontinued operations	(0.03)	(0.06)	0.01	(0.35)
Basic and diluted net loss per share	<u>\$ (0.35)</u>	<u>\$ (0.68)</u>	<u>\$ (1.34)</u>	<u>\$ (1.26)</u>
Weighted average outstanding common shares used for net loss per share attributable to common stockholders:				
Basic and diluted	<u>57,647,883</u>	<u>50,145,538</u>	<u>56,003,274</u>	<u>50,031,105</u>

See accompanying notes to condensed consolidated financial statements.

SIENTRA, INC.
Condensed Consolidated Statement of Stockholders' Equity (Deficit)
(In thousands, except share amounts)
(Unaudited)

	Preferred stock		Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount	Shares	Amount	Shares	Amount			
Balances at December 31, 2019	—	\$ —	49,612,907	\$ 495	72,727	\$ (260)	\$ 550,562	\$ (468,915)	\$ 81,882
Issuance of common stock through ATM	—	—	37,000	1	—	—	263	—	264
Stock-based compensation	—	—	—	—	—	—	2,000	—	2,000
Employee stock purchase program (ESPP)	—	—	113,615	1	—	—	533	—	534
Vested restricted stock	—	—	472,914	5	—	—	(5)	—	—
Shares withheld for tax obligations on vested RSUs	—	—	(157,412)	(2)	—	—	(1,199)	—	(1,201)
Net loss	—	—	—	—	—	—	—	(28,612)	(28,612)
Balances at March 31, 2020	—	\$ —	50,079,024	\$ 500	72,727	\$ (260)	\$ 552,154	\$ (497,527)	\$ 54,867
Stock-based compensation	—	—	—	—	—	—	1,718	—	1,718
Stock option exercises	—	—	5,454	—	—	—	13	—	13
Employee stock purchase program (ESPP)	—	—	(1,012)	—	—	—	(5)	—	(5)
Vested restricted stock	—	—	363,795	4	—	—	(4)	—	—
Shares withheld for tax obligations on vested RSUs	—	—	(91,529)	(1)	—	—	(226)	—	(227)
Net loss	—	—	—	—	—	—	—	(34,277)	(34,277)
Balances at June 30, 2020	—	\$ —	50,355,732	\$ 503	72,727	\$ (260)	\$ 553,650	\$ (531,804)	\$ 22,089

	Preferred stock		Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount	Shares	Amount	Shares	Amount			
Balances at December 31, 2020	—	\$ —	50,712,151	\$ 506	72,727	\$ (260)	\$ 558,059	\$ (558,862)	\$ (557)
Proceeds from follow-on offering, net of costs	—	—	6,222,222	62	—	—	39,164	—	39,226
Stock-based compensation	—	—	—	—	—	—	3,163	—	3,163
Stock option exercises	—	—	12,727	—	—	—	51	—	51
Employee stock purchase program (ESPP)	—	—	95,919	1	—	—	322	—	323
Vested restricted stock	—	—	554,896	6	—	—	752	—	758
Shares withheld for tax obligations on vested RSUs	—	—	(82,830)	(1)	—	—	(1,214)	—	(1,215)
Net loss	—	—	—	—	—	—	—	(54,690)	(54,690)
Balances at March 31, 2021	—	\$ —	57,515,085	\$ 574	72,727	\$ (260)	\$ 600,297	\$ (613,552)	\$ (12,941)
Stock-based compensation	—	—	—	—	—	—	2,584	—	2,584
Stock option exercises	—	—	23,636	1	—	—	94	—	95
Vested restricted stock	—	—	471,759	5	—	—	242	—	247
Shares withheld for tax obligations on vested RSUs	—	—	(81,386)	(1)	—	—	(726)	—	(727)
Net loss	—	—	—	—	—	—	—	(20,134)	(20,134)
Balances at June 30, 2021	—	\$ —	57,929,094	\$ 579	72,727	\$ (260)	\$ 602,491	\$ (633,686)	\$ (30,876)

See accompanying notes to condensed consolidated financial statements.

SIENTRA, INC.
Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Six Months Ended June 30,	
	2021	2020
Cash flows from operating activities:		
Net loss	\$ (74,824)	\$ (62,889)
Income (loss) from discontinued operations, net of income taxes	326	(17,559)
Loss from continuing operations, net of income taxes	(75,150)	(45,330)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation and amortization	2,110	1,194
Provision for doubtful accounts	618	336
Provision for warranties	444	201
Provision for inventory	427	1,047
Fair value adjustments to derivative liability	50,010	18,510
Fair value adjustments of other liabilities held at fair value	49	(22)
Amortization of debt discount and issuance costs	1,722	2,559
Stock-based compensation expense	5,747	3,768
Payments of contingent consideration liability in excess of acquisition-date fair value	(2,416)	—
Other non-cash adjustments	459	85
Changes in operating assets and liabilities:		
Accounts receivable	(2,167)	(261)
Inventories	(6,565)	(4,473)
Prepaid expenses, other current assets and other assets	126	(606)
Accounts payable, accrued, and other liabilities	(1,465)	(9,981)
Customer deposits	9,832	2,056
Sales return liability	1,380	(597)
Net cash flow from operating activities - continuing operations	(14,839)	(31,514)
Net cash flow from operating activities - discontinued operations	(263)	(15,085)
Net cash used in operating activities	(15,102)	(46,599)
Cash flows from investing activities:		
Purchase of property and equipment	(3,170)	(2,115)
Net cash flow from investing activities - continuing operations	(3,170)	(2,115)
Net cash flow from investing activities - discontinued operations	11,314	(80)
Net cash provided by (used in) investing activities	8,144	(2,195)
Cash flows from financing activities:		
Proceeds from issuance of common stock for employee stock-based plans	1,474	529
Net proceeds from issuance of common stock	39,226	264
Tax payments related to shares withheld for vested restricted stock units (RSUs)	(1,942)	(1,428)
Gross borrowings under the Term Loan	1,000	—
Repayments under the Term Loan	—	(25,000)
Gross borrowings under the PPP loan	—	6,652
Repayment of the Revolving Loan	—	(6,508)
Net proceeds from issuance of the Convertible Note	—	60,000
Payments of contingent consideration up to acquisition-date fair value	(4,550)	—
Deferred financing costs	(800)	(1,524)
Net cash provided by financing activities	34,408	32,985
Net increase (decrease) in cash, cash equivalents and restricted cash	27,450	(15,809)
Cash, cash equivalents and restricted cash at:		
Beginning of period	55,300	87,951
End of period	\$ 82,750	\$ 72,142
Reconciliation of cash, cash equivalents, and restricted cash to the consolidated balance sheets		
Cash and cash equivalents	82,417	\$ 71,799
Restricted cash included in other assets	333	343
Total cash, cash equivalents and restricted cash	\$ 82,750	\$ 72,142
Supplemental disclosure of cash flow information:		
Interest paid	\$ 2,082	\$ 2,742
Supplemental disclosure of non-cash investing and financing activities:		
Property and equipment in accounts payable and accrued liabilities	265	236
Deferred financing costs in accounts payable and accrued liabilities	—	1,487

See accompanying notes to condensed consolidated financial statements.

SIENTRA, INC.
Notes to the Condensed Consolidated Financial Statements
(Unaudited)

1. Summary of Significant Accounting Policies

a. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of Sientra, Inc. (“Sientra”, the “Company”, “we”, “our”, or “us”) in this Quarterly Report on Form 10-Q have been prepared in accordance with accounting principles generally accepted in the United States of America, or GAAP, and the rules and regulations of the U.S. Securities and Exchange Commission, or SEC. Accordingly, they do not include certain footnotes and financial presentations normally required under accounting principles generally accepted in the United States of America for complete financial reporting. The interim financial information is unaudited, but reflects all normal adjustments and accruals which are, in the opinion of management, considered necessary to provide a fair presentation for the interim periods presented. The accompanying condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2020 filed with the SEC on March 11, 2021, or the Annual Report. The results for the three and six months ended June 30, 2021 are not necessarily indicative of results to be expected for the year ending December 31, 2021, any other interim periods, or any future year or period.

As a result of the miraDry Sale discussed in Note 2, the miraDry business met the criteria to be reported as discontinued operations. Therefore, the Company is reporting the historical results of miraDry, including the results of operations, cash flows, and related assets and liabilities, as discontinued operations for all periods presented herein through the date of the Sale. Unless otherwise noted, the accompanying notes to the unaudited condensed consolidated financial statements have all been revised to reflect continuing operations only. As discussed in Note 11, following the Sale the Company has one operating segment in continuing operations named Plastic Surgery, formerly known as Breast Products.

b. Liquidity

Since the Company’s inception, it has incurred significant net operating losses and the Company anticipates that losses will continue in the near term. The Company expects its operating expenses will remain consistent with the current period and will need to generate significant net sales to achieve profitability. To date, the Company has funded operations primarily with proceeds from the sales of preferred stock, borrowings under term loans and the convertible note, sales of products since 2012, and the proceeds from the sale of common stock in public offerings. To fund ongoing operating and capital needs, the Company may need to raise additional capital in the future through the sale of equity securities and incremental debt financing.

Sale of the miraDry business

As mentioned above and discussed in Note 2, on May 11, 2021, the Company entered into a Purchase Agreement, pursuant to which the Company sold the miraDry business. On June 10, 2021, the Company received \$11.3 million in cash.

Debt financing – recent developments

On February 5, 2021, the Company entered into a Second Amended and Restated Credit and Security Agreement (Term Loan), by and among the Company, certain of the Company’s wholly-owned subsidiaries (together with Sientra, the “Borrowers”), the lenders party thereto from time to time and MidCap Financial Trust, as administrative agent and collateral agent (“Agent”) (the “Restated Term Loan Agreement”). The Restated Term Loan Agreement amends and restates the Company’s existing Amended and Restated Credit and Security Agreement (Term Loan), dated as of July 1, 2019.

Also on February 5, 2021, the Company entered into a Third Amendment to Amended and Restated Credit and Security Agreement (Revolving Loan), by and among the Borrowers, the lenders party thereto from time to time, and the Agent (the “Revolving Loan Amendment”). The Revolving Loan Amendment modified the Net Revenue (as defined therein) requirement in a manner consistent with the modification under the Restated Term Loan Agreement. In addition, the Revolving Loan Amendment made other conforming changes to the Restated Term Loan Agreement.

See Note 7 to the condensed consolidated financial statements for a full description of all of the Company’s long-term debt, revolving line of credit, convertible note, and Paycheck Protection Program (PPP) loan.

Equity financing – recent developments

On February 8, 2021, the Company completed a follow-on public offering of 5,410,628 shares of common stock at \$6.75 per share, as well as 811,594 additional shares of common stock pursuant to the full exercise of the over-allotment option granted to the underwriters. Net proceeds were approximately \$39.2 million after deducting underwriting discounts and commissions of approximately \$2.5 million and offering expenses of approximately \$0.3 million.

As of June 30, 2021, the Company had cash and cash equivalents of \$82.4 million. The accompanying condensed consolidated financial statements have been prepared on a going concern basis, which implies the Company will continue to realize its assets and discharge its liabilities in the normal course of business. The Company believes that its cash and cash equivalents will be sufficient to fund its operations for at least the next 12 months.

c. Use of Estimates

The preparation of the condensed consolidated financial statements, in conformity with GAAP, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

d. Recent Accounting Pronouncements

Recently Adopted Accounting Standards

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. The amendment removes certain exceptions for recognizing deferred taxes for investments, performing intraperiod allocation, and calculating income taxes in interim periods. The amendment also adds guidance to reduce complexity in certain areas, including recognizing deferred taxes for tax goodwill and allocating taxes to members of a consolidated group. The ASU is effective for annual and interim periods in fiscal years beginning after December 15, 2020. Early adoption was permitted. The Company adopted the applicable amendments within ASU 2019-12 in the first quarter of 2021 and there was no material impact on its condensed consolidated financial statements from the adoption.

Recently Issued Accounting Standards

In August 2020, the FASB issued ASU 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity*. The amendment eliminates certain accounting models and simplifies the accounting for convertible instruments and enhances disclosures for convertible instruments and earnings per share. The amendments are effective for public entities excluding smaller reporting companies for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. For all other entities, the amendments are effective for fiscal years beginning after December 15, 2023 including interim periods within those fiscal years and early adoption is permitted. The Company is currently evaluating the impact that adoption of the standard will have on the consolidated financial statements.

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848)-Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. The amendment provides optional expedients and exceptions for contract modifications that replace a reference rate affected by reference rate reform. The amendments are effective for all entities as of March 12, 2020 through December 31, 2022, and entities may elect to apply by Topic as of any date from the beginning of an interim period that includes or is subsequent to March 12, 2020, or prospectively from a date within an interim period that includes or is subsequent to March 12, 2020, up to the date that the financial statements are available to be issued. The Company is currently evaluating the impact the election of the optional expedient will have on the consolidated financial statements.

e. Risks and Uncertainties

Since December 2019, the global spread of COVID-19 has resulted in significant economic uncertainty, significant declines in business and consumer confidence and global demand in the non-essential healthcare industry (among others), a global economic slowdown, and could lead to a global recession. The cumulative effect of these disruptions have had, and may continue to have, an adverse impact on the Company's business and its results of operations. The COVID-19 pandemic continues to evolve and the full extent to which the COVID-19 pandemic will directly or indirectly impact the Company's business, results of operations and financial condition, including sales, expenses, reserves and allowances, manufacturing, and employee-related amounts, will depend on future developments that are highly uncertain and unpredictable, including efficacy and adoption of vaccines, future resurgences of the virus and its variants, the speed at which government restrictions are lifted, hospitals and healthcare systems patient capacity, and the willingness and ability of patients to seek medical procedures due to safety concerns or financial hardship. The Company continues to monitor and assess new information related to the COVID-19 pandemic, the actions taken to contain or treat COVID-19, as well as the economic impact on local, regional, national and international customers and markets.

As an aesthetics company, surgical procedures involving the Company's breast products are susceptible to local and national government restrictions, such as social distancing, "shelter in place" orders and business closures, due to the economic and logistical impacts these measures have on consumer demand as well as the practitioners' ability to administer such procedures. The inability or limited ability to perform such non-emergency procedures significantly harmed the Company's revenues since the second quarter of 2020 and continued to harm the Company's revenues during the six months ended June 30, 2021. While many states have lifted certain restrictions on non-emergency procedures, the Company will likely continue to experience future harm to its revenues while existing or new restrictions remain in place. It is not possible to accurately predict the length or severity of the COVID-19 pandemic or the timing for a broad and sustained ability to perform non-emergency procedures involving the Company's products.

Further, the spread of COVID-19 has caused the Company to modify workforce practices, and the Company may take further actions determined to be in the best interests of the Company's employees or as required by governments. In addition, capital markets and economies worldwide have also been negatively impacted by the COVID-19 pandemic, and it is possible that this can lead to a local and/or global economic recession, which may result in further harm to the aesthetics market. Such economic disruption could adversely affect the Company's business. The continued spread of COVID-19, or another infectious disease, could also result in delays or disruptions in the Company's supply chain or adversely affect the Company's manufacturing facilities and personnel. Further, trade and/or national security protection policies may be adjusted as a result of the COVID-19 pandemic, such as actions by governments that limit, restrict or prevent the movement of certain goods into a country and/or region, and current U.S./China trade relations may be further exacerbated by the pandemic.

The estimates used for, but not limited to, determining the collectability of accounts receivable, fair value of long-lived assets and goodwill, and sales returns liability required could be impacted by the pandemic. While the full impact of COVID-19 is unknown at this time, the Company has made appropriate estimates based on the facts and circumstances available as of the reporting date. These estimates may change as new events occur and additional information is obtained.

f. Reclassifications

Certain reclassifications have been made to prior year amounts to conform to the current year presentation.

2. Discontinued Operations

On June 10, 2021, the Company completed the sale of its miraDry business (the “Sale”) to miraDry Acquisition Company, Inc., a Delaware corporation (“Buyer”), an entity affiliated with 1315 Capital II, LP, as a result of the Company’s strategic decision to focus investment on its core Plastic Surgery segment, formerly known as Breast Products. The Sale was made pursuant to the terms and conditions of the Asset Purchase Agreement (the “Purchase Agreement”), dated May 11, 2021, among the Company and certain of its subsidiaries, Buyer, and, solely for purposes of Section 8.14 of the Purchase Agreement, 1315 Capital II, LP. The aggregate purchase price was \$10.0 million, which after certain adjustments for agreed upon changes in the estimated net asset value amount of purchased assets and assumed liabilities resulted in net upfront cash proceeds to the Company of approximately \$11.3 million. In connection with the Sale, the Company recognized a loss on sale of \$2.5 million for the three and six months ended June 30, 2021.

Subject to the terms and conditions of the Purchase Agreement, additional post close adjustments to the purchase price may be required based on the final net asset value of purchased assets and assumed liabilities as of the date of close, which is expected to be finalized within 120 days after the transaction close date. As such, a change in the loss associated with the Sale could occur in a future period, including upon such finalization of the purchase price with the Buyer.

In accordance with the Purchase Agreement, assumed liabilities did not include product liabilities, environmental, and employee claims arising prior to the closing date. The Purchase Agreement also included customary representations and warranties, as well as certain covenants, including, among other things, that: (i) the Company will abide by certain non-solicitation, exclusivity, and non-competition covenants, and (ii) the Company would enter into a transition services agreement (“TSA”) to provide certain transition services related to the business.

Under the TSA, the Company will provide certain post-closing services to the Buyer related to the miraDry business for a period of up to six months, including accounting, accounts receivable support, customer service, IT, regulatory, quality assurance, and clinical support. As consideration for these services, the Buyer will reimburse the Company for direct and certain indirect costs, as well as certain overhead or administrative expenses related to operating the business. The Company recognized \$0.2 million of TSA fees and cost reimbursements in operating expenses from continuing operations in the condensed consolidated statement of operations for the three months ended June 30, 2021. As of June 30, 2021, the Company has not received any payments relating to the TSA services and has recorded a receivable of \$0.2 million within other current assets in the condensed consolidated balance sheets. In connection with the accounts receivable support under the TSA, the Company received \$1.8 million in customer payments during the period from June 10, 2021 through June 30, 2021, and has recorded a \$1.8 million payable in accounts payable on the condensed consolidated balance sheets.

Additionally, the Company and the Buyer entered into a sublease agreement whereby the Buyer will sublease the miraDry office space in Santa Clara, CA. The sublease term is for an initial period of six months, with a first option period of an additional six months and a subsequent option period of twelve months. During the three months ended June 30, 2021, the Company recognized \$0.1 million of sublease income in general and administrative expenses in the condensed consolidated statements of operations.

The Sale met the discontinued operations criteria given that the business is a component and represented a strategic shift. The following table presents the aggregate carrying amounts of major classes of assets and liabilities of discontinued operations (in thousands):

	June 30, 2021	December 31, 2020
Assets of discontinued operations:		
Accounts receivable, net	\$ —	\$ 3,732
Inventories, net	—	9,480
Prepaid expenses and other current assets	4	263
Current assets of discontinued operations	4	13,475
Property and equipment, net	—	805
Total assets of discontinued operations	<u>\$ 4</u>	<u>\$ 14,280</u>
Liabilities of discontinued operations:		
Accounts payable	\$ 6	\$ 704
Accrued and other current liabilities	1,128	3,982
Total liabilities of discontinued operations	<u>\$ 1,134</u>	<u>\$ 4,686</u>

The results of operations for the miraDry business were included in income (loss) from discontinued operations on the accompanying condensed consolidated statements of operations. The following table provides information regarding the results of discontinued operations (in thousands):

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2021	2020	2021	2020
Net sales	\$ 4,423	\$ 3,139	\$ 9,347	\$ 7,600
Cost of goods sold	2,030	1,503	4,805	3,560
Gross profit	2,393	1,636	4,542	4,040
Operating expenses	1,491	4,711	1,687	21,535
Income (loss) from operations of discontinued operations	902	(3,075)	2,855	(17,495)
Other income (expense), net	(45)	6	(77)	(64)
Income (loss) from discontinued operations before income taxes	857	(3,069)	2,778	(17,559)
Loss on sale of discontinued operations before income taxes	(2,452)	—	(2,452)	—
Total income from discontinued operations before income taxes	(1,595)	(3,069)	326	(17,559)
Income tax expense (benefit)	—	—	—	—
Income (loss) from discontinued operations, net of income taxes	<u>\$ (1,595)</u>	<u>\$ (3,069)</u>	<u>\$ 326</u>	<u>\$ (17,559)</u>

The results of the miraDry business, including the results of operations, cashflows, and related assets and liabilities are reported as discontinued operations for all periods presented herein.

3. Revenue

The Company generates revenue primarily through the sale and delivery of promised goods or services to customers. Sales prices are documented in the executed sales contract, purchase order or order acknowledgement prior to the transfer of control to the customer. Typical payment terms are 30 days.

Revenue contracts may include multiple products or services, each of which is considered a separate performance obligation. Performance obligations typically include the delivery of promised products, such as breast implants,

tissue expanders, and BIOCORNEUM, along with service-type warranties. Other deliverables are sometimes promised but are ancillary and insignificant in the context of the contract as a whole. Revenue is allocated to each performance obligation based on its relative standalone selling price. The Company determines standalone selling prices based on observable prices for all performance obligations with the exception of the service-type warranty under the Platinum20 Limited Warranty Program, or Platinum20.

The liability for unsatisfied performance obligations under the service warranty as of June 30, 2021 were as follows:

	<u>Six Months Ended June 30,</u>	
	<u>2021</u>	
Balance as of December 31, 2020	\$	1,945
Additions and adjustments		890
Revenue recognized		(275)
Balance as of June 30, 2021	\$	<u>2,560</u>

Revenue for service warranties are recognized ratably over the term of the agreements. Specifically for Platinum20, the performance obligation is satisfied at the time that the benefits are provided and are expected to be satisfied over the following 3 to 24 month period for financial assistance and 20 years for product replacement.

For delivery of promised products, control transfers and revenue is recognized upon shipment, unless the contractual arrangement requires transfer of control when products reach their destination, for which revenue is recognized once the product arrives at its destination. A portion of the Company's revenue is generated from the sale of consigned inventory of breast implants and tissue expanders maintained at doctor, hospital, and clinic locations. For these products, revenue is recognized at the time the Company is notified by the customer that the product has been used, not when the consigned products are delivered to the customer's location.

Sales Return Liability

With the exception of the Company's BIOCORNEUM scar management products, the Company allows for the return of products from customers within six months after the original sale, which is accounted for as variable consideration. A sales return liability is established based on estimated returns using relevant historical experience taking into consideration recent gross sales and notifications of pending returns, as adjusted for changes in recent industry events and trends. The estimated sales returns are recorded as a reduction of revenue and as a sales return liability in the same period revenue is recognized. Actual sales returns in any future period are inherently uncertain and thus may differ from the estimates. If actual sales returns differ significantly from the estimates, an adjustment to revenue in the current or subsequent period would be recorded. The following table provides a rollforward of the sales return liability (in thousands):

	<u>Six Months Ended June 30,</u>			
	<u>2021</u>		<u>2020</u>	
Beginning balance	\$	9,192	\$	8,116
Addition to reserve for sales activity		77,464		49,911
Actual returns		(74,905)		(50,450)
Change in estimate of sales returns		(1,179)		(59)
Ending balance	\$	<u>10,572</u>	\$	<u>7,518</u>

4. Fair Value of Financial Instruments

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, customer deposits and sales return liability are reasonable estimates of their fair value because of the short maturity of these items. The fair value of the common stock warrant liability, contingent consideration, and the convertible feature related to the convertible note are discussed in Note 5. The fair value of the debt is based on the amount of future cash flows associated with the instrument discounted using the Company's market rate. As of June 30, 2021, the carrying value of the long-term debt was not materially different from the fair value. As of June 30, 2021, the carrying value and fair value of the convertible note were as follows (in thousands):

	June 30, 2021	
	Carrying Value	Fair Value
Convertible note	\$ 45,879	\$ 42,030

5. Balance Sheet Components

a. Inventories

Inventories, net consist of the following (in thousands):

	June 30, 2021	December 31, 2020
Raw materials	\$ 2,105	\$ 3,788
Work in progress	6,881	10,710
Finished goods	32,620	21,254
Finished goods - right of return	3,700	3,416
	<u>\$ 45,306</u>	<u>\$ 39,168</u>

b. Property and Equipment

Property and equipment, net consist of the following (in thousands):

	June 30, 2021	December 31, 2020
Leasehold improvements	\$ 2,574	\$ 2,523
Manufacturing equipment and toolings	9,032	8,362
Computer equipment	3,914	2,522
Software	3,692	3,010
Office equipment	167	167
Furniture and fixtures	1,184	1,040
	<u>20,563</u>	<u>17,624</u>
Less accumulated depreciation	<u>(6,717)</u>	<u>(5,323)</u>
	<u>\$ 13,846</u>	<u>\$ 12,301</u>

Depreciation expense for the three months ended June 30, 2021 and 2020 was \$0.8 million and \$0.4 million, respectively. Depreciation expense for the six months ended June 30, 2021 and 2020 was \$1.5 million and \$0.5 million, respectively.

c. Goodwill and Other Intangible Assets, net

Following the sale of the miraDry business, the Company has one reporting unit, Plastic Surgery, formerly known as Breast Products. The Company evaluates goodwill for impairment at least annually on October 1st and whenever circumstances suggest that goodwill may be impaired.

The carrying amount of goodwill during the six months ended June 30, 2021 and the year ended December 31, 2020 were as follows (in thousands):

	<u>Plastic Surgery</u>
Balances as of December 31, 2020	
Goodwill	23,480
Accumulated impairment losses	(14,278)
Goodwill, net	<u>\$ 9,202</u>
Balances as of June 30, 2021	
Goodwill	23,480
Accumulated impairment losses	(14,278)
Goodwill, net	<u>\$ 9,202</u>

As of June 30, 2021, the Plastic Surgery reporting unit had a negative carrying value.

The components of the Company's other intangible assets consist of the following (in thousands):

	<u>Average Amortization Period (in years)</u>	<u>June 30, 2021</u>		
		<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Intangible Assets, net</u>
Intangibles with definite lives				
Customer relationships	10	\$ 4,940	\$ (4,040)	\$ 900
Trade names - finite life	12	800	(356)	444
Non-compete agreement	2	80	(80)	—
Regulatory approvals	1	670	(670)	—
Acquired FDA non-gel product approval	11	1,713	(1,713)	—
Manufacturing know-how	19	8,240	(1,258)	6,982
Total definite-lived intangible assets		<u>\$ 16,443</u>	<u>\$ (8,117)</u>	<u>\$ 8,326</u>
Intangibles with indefinite lives				
Trade names - indefinite life	—	450	—	450
Total indefinite-lived intangible assets		<u>\$ 450</u>	<u>\$ —</u>	<u>\$ 450</u>

	Average Amortization Period (in years)	December 31, 2020		
		Gross Carrying Amount	Accumulated Amortization	Intangible Assets, net
Intangibles with definite lives				
Customer relationships	10	\$ 4,940	\$ (3,856)	\$ 1,084
Trade names - finite life	12	800	(322)	478
Non-compete agreement	2	80	(80)	—
Regulatory approvals	1	670	(670)	—
Acquired FDA non-gel product approval	11	1,713	(1,713)	—
Manufacturing know-how	19	8,240	(865)	7,375
Total definite-lived intangible assets		<u>\$ 16,443</u>	<u>\$ (7,506)</u>	<u>\$ 8,937</u>
Intangibles with indefinite lives				
Trade names - indefinite life	—	450	—	450
Total indefinite-lived intangible assets		<u>\$ 450</u>	<u>\$ —</u>	<u>\$ 450</u>

Amortization expense for both the three months ended June 30, 2021 and 2020 were \$0.3 million. Amortization expense for the six months ended June 30, 2021 and 2020 was \$0.6 million and \$0.7 million, respectively. The following table summarizes the estimated amortization expense relating to the Company's definite-lived intangible assets as of June 30, 2021 (in thousands):

Period	Amortization Expense
2021	\$ 610
2022	1,163
2023	1,092
2024	948
2025	805
Thereafter	3,708
	<u>\$ 8,326</u>

d. Accrued and Other Current Liabilities

Accrued and other current liabilities consist of the following (in thousands):

	June 30, 2021	December 31, 2020
Payroll and related expenses	\$ 3,438	\$ 3,003
Accrued severance	241	2,900
Accrued commissions	2,830	4,734
Accrued manufacturing	102	225
Deferred and contingent consideration, current portion	3,197	10,146
Audit, consulting and legal fees	76	48
Accrued sales and marketing expenses	157	300
Lease liabilities	1,555	1,588
Other	8,025	5,464
	<u>\$ 19,621</u>	<u>\$ 28,408</u>

e. Accrued warranties

The following table provides a rollforward of the accrued assurance-type warranties (in thousands):

	Six Months Ended June 30,	
	2021	2020
Balance as of January 1	\$ 1,934	\$ 1,397
Warranty costs incurred during the period	(109)	(51)
Changes in accrual related to warranties issued during the period	432	206
Changes in accrual related to pre-existing warranties	12	(5)
Balance as of June 30	<u>\$ 2,269</u>	<u>\$ 1,547</u>

As of June 30, 2021 and 2020, both balances are included in “Warranty reserve and other long-term liabilities”.

f. Liabilities measured at fair value

Certain assets and liabilities are carried at fair value under GAAP. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

Financial assets and liabilities carried at fair value are to be classified and disclosed in one of the following three levels of the fair value hierarchy, of which the first two are considered observable and the last is considered unobservable:

- Level 1 — Quoted prices in active markets for identical assets or liabilities.
- Level 2 — Observable inputs (other than Level 1 quoted prices) such as quoted prices in active markets for similar assets or liabilities, quoted prices in markets that are not active for identical or similar assets or liabilities, or other inputs that are observable or can be corroborated by observable market data.
- Level 3 — Unobservable inputs that are supported by little or no market activity and that are significant to determining the fair value of the assets or liabilities, including pricing models, discounted cash flow methodologies and similar techniques.

Common stock warrants

The Company’s common stock warrant liabilities are carried at fair value determined according to the fair value hierarchy described above. The Company has utilized an option pricing valuation model to determine the fair value of its outstanding common stock warrant liabilities. The inputs to the model include fair value of the common stock related to the warrant, exercise price of the warrant, expected term, expected volatility, risk-free interest rate and dividend yield. The warrants are valued using the fair value of common stock as of the measurement date. The Company estimates its expected stock volatility based on company-specific historical and implied volatility information of its stock. The risk-free interest rate is determined by reference to the U.S. Treasury yield curve for time periods approximately equal to the remaining contractual term of the warrants. The Company has estimated a 0% dividend yield based on the expected dividend yield and the fact that the Company has never paid or declared dividends. As several significant inputs are not observable, the overall fair value measurement of the warrants is classified as Level 3.

Contingent consideration

The Company assessed the fair value of the contingent consideration for future royalty payments related to the acquisition of BIOCORNEUM and the contingent consideration for the future milestone payments related to the

acquisition of miraDry using a Monte-Carlo simulation model. The contingent consideration related to the acquisition of BIOCORNEUM consist of royalty obligations based on future net sales for a defined term, beginning in 2024. The significant assumption utilized in the fair value measurement was the revenue discount rate, which was 21.0%. The contingent consideration for milestone payments related to the acquisition of miraDry was based on the timing of achievement of target net sales, which is estimated based on an internal management forecast. The significant assumption utilized in the fair value measurement was the miraDry company discount rate, which was 11.2%. As these inputs are not observable, the overall fair value measurement of the contingent consideration is classified as Level 3.

Derivative liability

The Company assesses on a quarterly basis the fair value of the derivative liability associated with the conversion feature in the convertible note due in 2025. The conversion feature was bifurcated and recorded as a derivative liability on the condensed consolidated balance sheets with a corresponding discount at the date of issuance that is netted against the principal amount of the note. The Company utilizes a binomial lattice method to determine the fair value of the conversion feature, which utilizes inputs including the common stock price, volatility of common stock, the risk-free interest rate and the probability of conversion to common shares at the Base Conversion Rate in the event of a major transaction (e.g. a change in control). As the probability of conversion is a significant unobservable input, the overall fair value measurement of the conversion feature is classified as Level 3.

The following tables present information about the Company's liabilities that are measured at fair value on a recurring basis as of June 30, 2021 and December 31, 2020 and indicate the level of the fair value hierarchy utilized to determine such fair value (in thousands):

	Fair Value Measurements as of June 30, 2021 Using:			
	Level 1	Level 2	Level 3	Total
Liabilities:				
Liability for common stock warrants	\$ —	\$ —	\$ —	\$ —
Liability for contingent consideration	—	—	109	109
Liability for derivative	—	—	76,580	76,580
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 76,689</u>	<u>\$ 76,689</u>

	Fair Value Measurements as of December 31, 2020 Using:			
	Level 1	Level 2	Level 3	Total
Liabilities:				
Liability for common stock warrants	\$ —	\$ —	\$ —	\$ —
Liability for contingent consideration	—	—	7,026	7,026
Liability for derivative	—	—	26,570	26,570
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 33,596</u>	<u>\$ 33,596</u>

The following table provides a rollforward of the aggregate fair values of the Company's liabilities for which fair value is determined by Level 3 inputs (in thousands):

	Contingent consideration liability	Derivative liability
Balance, December 31, 2020	\$ 7,026	\$ 26,570
Change in fair value	49	50,010
Settlements	(6,966)	—
Balance, June 30, 2021	<u>\$ 109</u>	<u>\$ 76,580</u>

The liability for the current portion of contingent consideration is included in "Accrued and other current liabilities" and the long-term portion is included in "Deferred and contingent consideration" in the condensed consolidated balance sheets. The liability for the conversion feature related to the convertible note is included in "Derivative liability" in the condensed consolidated balance sheets.

The Company recognizes changes in the fair value of the derivative liability in “Change in fair value of derivative liability” in the condensed consolidated statement of operations and changes in the contingent consideration are recognized in “General and administrative” expense in the condensed consolidated statement of operations.

6. Leases

Components of lease expense were as follows:

Lease Cost	Classification	Three Months Ended June 30,		Six Months Ended June 30,	
		2021	2020	2021	2020
Operating lease cost	Operating expenses	\$ 405	\$ 428	\$ 834	\$ 841
Operating lease cost	Inventory	124	117	223	233
Sublease income	Operating expenses	(69)	—	(69)	—
Total operating lease cost		\$ 460	\$ 545	\$ 988	\$ 1,074
Finance lease cost					
Amortization of right-of-use assets	Operating expenses	9	10	18	21
Amortization of right-of-use assets	Inventory	12	9	23	13
Interest on lease liabilities	Other income (expense), net	2	3	4	4
Total finance lease cost		\$ 23	\$ 22	\$ 45	\$ 38
Total lease cost		\$ 483	\$ 567	\$ 1,033	\$ 1,112

As mentioned above in Note 2, as part of the sale of the miraDry business the Company entered into a sublease agreement whereby the Buyer will sublease the miraDry office space in Santa Clara, CA. The initial sublease term is for six months, with a first option period of an additional six months and a subsequent option period of twelve months. During the initial term of six months, the Company expects cash receipts of approximately \$0.5 million.

Short-term lease expense for the three and six months ended June 30, 2021 and 2020 was not material.

Supplemental cash flow information related to operating and finance leases for the six months ended June 30, 2021 was as follows (in thousands):

	Six Months Ended June 30,	
	2021	2020
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash outflows from operating leases	\$ 824	\$ 909
Operating cash outflows from finance leases	42	36
Right-of-use assets obtained in exchange for lease obligations:		
Operating leases	\$ —	\$ 1,106
Finance leases	—	157

Supplemental balance sheet information related to operating and finance leases was as follows (in thousands, except lease term and discount rate):

	June 30, 2021	December 31, 2020
Reported as:		
Other assets		
Operating lease right-of-use assets	\$ 6,370	\$ 7,176
Finance lease right-of-use assets	117	158
Total right-of use assets	<u>\$ 6,487</u>	<u>\$ 7,334</u>
Accrued and other current liabilities		
Operating lease liabilities	\$ 1,476	\$ 1,504
Finance lease liabilities	78	84
Warranty reserve and other long-term liabilities		
Operating lease liabilities	5,206	5,946
Finance lease liabilities	53	77
Total lease liabilities	<u>\$ 6,813</u>	<u>\$ 7,611</u>
Weighted average remaining lease term (years)		
Operating leases	4	5
Finance leases	2	2
Weighted average discount rate		
Operating leases	7.81%	7.75%
Finance leases	6.22%	6.15%

As of June 30, 2021, maturities of the Company's operating and finance lease liabilities are as follows (in thousands):

Period	Operating leases	Finance leases	Total
Remainder of 2021	\$ 1,054	\$ 48	\$ 1,102
2022	1,920	57	1,977
2023	1,968	32	2,000
2024	1,507	1	1,508
2025	579	—	579
2026 and thereafter	955	—	955
Total lease payments	<u>\$ 7,983</u>	<u>\$ 138</u>	<u>\$ 8,121</u>
Less imputed interest	1,301	7	1,308
Total lease liabilities	<u>\$ 6,682</u>	<u>\$ 131</u>	<u>\$ 6,813</u>

7. Debt

Term Loan and Revolving Loan

On July 25, 2017, the Company entered into a Term Loan Credit and Security Agreement and a Revolving Loan Credit and Security Agreement with MidCap Financial Trust ("MidCap"), which replaced the Company's prior Silicon Valley Bank Loan Agreement. Both agreements were amended and restated on July 1, 2019 and further amended on November 7, 2019 (as so amended, the "Restated Term Loan Agreement" and the "Restated Revolving Credit Agreement" and, together, the "Credit Agreements").

The Restated Term Loan Agreement provided for the following tranches: (i) a \$35 million term loan facility drawn at signing, (ii) a \$5 million term loan facility drawn at signing, (iii) at any time after September 30, 2020 to December 31, 2020, a \$10.0 million term loan facility (subject to the satisfaction of certain conditions, including evidence that the Company's net revenue for the past 12 months was greater than or equal to \$100.0 million), and (iv) until December 31, 2020 and upon the consent of the agent and the lenders following a request from the Company, an additional \$15.0 million term loan facility. The loan matures on July 1, 2024 and carries an interest rate of LIBOR plus 7.50%. The Company will make monthly payments of accrued interest from the funding date until July 31, 2021, to be followed by monthly installments of principal and interest through the maturity date. The Company may prepay some or all of the principal prior to its maturity date provided the Company pays MidCap a prepayment fee. The loan provided that the Company shall pay an exit fee equal to 5.0% of the aggregate amount of all term loans funded to the Company.

On May 11, 2020, the Company entered into the Second Amendment to the Amended and Restated Credit and Security Agreement (Term Loan), by and among the Company, certain of the Company's subsidiaries, the lenders party thereto and MidCap Financial Trust as agent (the "Term Amendment"). The Term Amendment provided for, among other things, the prepayment by the Company of \$25.0 million of outstanding principal, \$0.1 million of accrued interest, and \$1.25 million in prepaid exit fees with the parties agreeing to waive the prepayment fee with respect to these amounts. The Term Amendment increased the tranche 3 commitment amount from \$10.0 million to \$15.0 million, extended the tranche 3 termination date from December 31, 2020 to June 30, 2021, and amended certain conditions upon which the tranche 3 commitment can be withdrawn, including evidence that the Company's net revenue for the past six months was greater than or equal to \$30.0 million. In addition, the Term Amendment amended certain financial requirements including reducing the Company's minimum unrestricted cash amount from \$20.0 million to \$5.0 million and amended certain minimum net revenue requirements. Further, the monthly minimum net revenue requirements were revised to be calculated on a trailing three-month basis.

On February 5, 2021, the Company entered into a Second Amended and Restated Credit and Security Agreement (Term Loan), by and among the Company, certain of the Company's subsidiaries, the lenders party thereto from time to time and MidCap Financial Trust, as administrative agent and collateral agent ("Agent") (the "Restated Term Loan Agreement"). The Restated Term Loan Agreement amends and restates the Company's existing Amended and Restated Credit and Security Agreement, dated as of July 1, 2019. Pursuant to the Restated Term Loan Agreement, tranche 3 commitments were reduced from \$15 million to \$1 million and were advanced on the effective date of the Restated Term Loan Agreement and the remaining unfunded tranche of \$15 million was revised to two \$5 million tranche commitments, with tranche 4 availability commencing on July 1, 2021 and tranche 5 availability commencing July 1, 2022. The parties agreed to extend the last day of the interest only period for all tranches from July 31, 2021 in the Existing Term Loan Agreement to December 31, 2022 in the Restated Term Loan Agreement. The Restated Term Loan Agreement contains certain minimum net revenue requirements based on the Company's 12-month trailing net revenue, as well as certain minimum unrestricted cash requirements that increase upon the funding of the tranche 4 and tranche 5 loans. The exit fee was modified to apply only to the amount of any tranche 4 and 5 loans advanced. Finally, in connection with the Restated Term Loan Agreement, the Company agreed to pay an amendment fee of \$750,000.

As of June 30, 2021, there was \$16.0 million of outstanding principal related to the term loans and \$1.3 million of unamortized debt issuance costs which are included in "Long-term debt" on the condensed consolidated balance sheets.

The Restated Revolving Credit Agreement provides for, among other things, a revolving loan of up to \$10.0 million. The amount of loans available to be drawn under the Revolving Credit Agreement is based on a borrowing base equal to 85% of the net collectible value of eligible accounts receivable plus 40% of eligible finished goods inventory, or the Borrowing Base, provided that availability from eligible finished goods inventory does not exceed 20% of the Borrowing Base. The revolving loan carries an interest rate of LIBOR plus 4.50%. The Company may make (subject to the applicable borrowing base at the time) and repay borrowings from time to time until the maturity of the facility on July 1, 2024.

On May 11, 2020, the Company entered into the Second Amendment to Amended and Restated Credit and Security Agreement (Revolving Loan), by and among the Company, certain of the Company's subsidiaries, the lenders party thereto and MidCap Financial Trust as agent (the "Revolving Amendment"). The Revolving Amendment included conforming changes to reflect the changes in the Term Amendment. In addition, the Revolving Amendment reduced the borrowing base by the portion of the eligible inventory previously included in the calculation.

Also on February 5, 2021, the Company entered into a Third Amendment to the Amended and Restated Credit and Security Agreement (Revolving Loan), by and among the Company, the lenders party thereto from time to time, and the Agent (the "Revolving Loan Amendment"). The Revolving Loan Amendment modified the net revenue requirement in a manner consistent with the modification under the Restated Term Loan Agreement. In addition, the Revolving Loan Amendment made other conforming changes to the Restated Term Loan Agreement.

As of June 30, 2021, there were no borrowings outstanding under the Revolving Loan. As of June 30, 2021, the unamortized debt issuance costs related to the revolving loan was approximately \$0.1 million and was included in "Other assets" on the condensed consolidated balance sheets.

The amortization of debt issuance costs on the term loan and the revolving loan for the three months ended June 30, 2021 and 2020 were \$0.1 million and \$0.4 million, respectively. The amortization of debt issuance costs on the term loan and revolving loan for the six months ended June 30, 2021 and 2020 was \$0.3 million and \$0.5 million, respectively, and was included in interest expense in the condensed consolidated statements of operations.

The Credit Agreements include customary affirmative and restrictive covenants and representations and warranties, including a financial covenant for minimum revenues, a financial covenant for minimum cash requirements, a covenant against the occurrence of a "change in control," financial reporting obligations, and certain limitations on indebtedness, liens, investments, distributions, collateral, mergers or acquisitions, taxes, and deposit accounts. Upon the occurrence of an event of default, a default interest rate of an additional 5.0% may be applied to any outstanding principal balances, and MidCap may declare all outstanding obligations immediately due and payable and take such other actions as set forth in the Credit Agreements. The Company's obligations under the Credit Agreements are secured by a security interest in substantially all of the Company's assets.

Convertible Note

On March 11, 2020, the Company issued \$60.0 million of unsecured and subordinated convertible notes with an interest rate of 4.00% ("Note") to Deerfield Partners, L.P. ("Holder") in order to fund ongoing operations. The Note matures on March 11, 2025, subject to earlier conversion by the option of the Holder at any time in whole or in part into common shares of the Company, for a period up to five years. Upon conversion by the Holder, the Company shall deliver, shares of the Company's common stock at a conversion rate of 14,634 per \$1,000 principal amount of the Note (which represents an initial conversion rate price of \$4.10), or the Base Conversion Rate, in each case subject to customary anti-dilution adjustments. In addition to the typical anti-dilution adjustment, the Note also provides the Holder with additional consideration ("Make-Whole Provision") beyond the settlement of the conversion obligation, in the event of a major transaction prior to maturity (e.g. a change in control). Upon conversion by the Holder in the event of a major transaction, the Company shall deliver, either cash, shares of the Company's common stock or a combination of cash and common stock at the Base Conversion rate plus the additional consideration from the Make-Whole Provision. The \$60.0 million principal amount of the Note is not payable until the maturity date of March 11, 2025, unless converted to equity earlier. Beginning on July 1, 2020, the Company pays quarterly interest in cash on the Note at 4.00% per annum.

The conversion features in the outstanding convertible debt instrument are accounted for as a free-standing embedded derivative bifurcated from the principal balance of the Note, as (1) the conversion features are not clearly and closely related to the debt instrument and are not considered to be indexed to the Company's equity, (2) the conversion features standing alone meet the definition of a derivative, and (3) the Note is not remeasured at fair value each reporting period with changes in fair value recorded in the condensed consolidated statement of operations.

The initial embedded derivative liability of \$16.1 million was recorded as a non-current liability on the condensed consolidated balance sheet and is remeasured to fair value at each balance sheet date with a resulting non-cash gain or loss related to the change in the fair value being charged to earnings (loss). As of June 30, 2021, the fair value of the derivative liability was \$76.6 million. A corresponding debt discount to the initial embedded derivative liability of \$16.1 million and issuance costs of \$1.5 million were recorded on the issuance date and is netted against the principal amount of the Note. As of June 30, 2021, the unamortized debt discount and issuance costs were \$14.1 million. The Company will amortize the debt discount and debt issuance costs to interest expense under the effective interest method over the term of the Note, at a resulting effective interest rate of approximately 12%. For both the three months ended June 30, 2021 and 2020, the amortization of the convertible debt discount and issuance costs were \$0.7 million. For the six months ended June 30, 2021 and 2020, the amortization of the convertible debt discount and issuance costs were \$1.4 million and \$0.8 million, respectively. Both were included in interest expense in the condensed consolidated statements of operations.

CARES Act

On April 20, 2020, the Company was granted a loan of \$6.7 million under the Paycheck Protection Program of the CARES Act, or the PPP Loan, from Silicon Valley Bank, or the Lender. The PPP Loan matures on April 20, 2022, or the Maturity Date, and bears interest at a rate of 1.0% per annum. Under the terms of the PPP Loan, the Company will make no payments until the date which forgiveness of the PPP Loan is determined, which can be up to 10 months following the end of the covered period (which is defined as 24 weeks from the date of the loan), or the Deferral Period. Commencing one month after the expiration of the Deferral Period, and continuing on the same day of each month until the Maturity Date, the Company will pay to Lender monthly payments of principal and interest, in an amount required to fully amortize the principal amount outstanding on the PPP Loan on the last day of the Deferral Period by the Maturity Date. As of June 30, 2021, \$6.7 million is recorded in “Current portion of long-term debt” on the Company’s condensed consolidated balance sheets.

All or a portion of the PPP Loan may be forgiven upon submission of documentation of expenditures in accordance with certain specified requirements. Under the CARES Act, loan forgiveness is available for the sum of documented payroll costs, covered rent payments, covered mortgage interest and covered utilities during the 24-week period beginning on the date of loan approval. Not more than 40% of the forgiven amount may be for non-payroll costs. The amount of the PPP Loan eligible to be forgiven will be reduced if the Company’s full-time headcount declines, or if salaries and wages for employees with salaries of \$100,000 or less annually are reduced by more than 25%. The Company will be required to repay any portion of the outstanding principal that is not forgiven, along with accrued interest, in accordance with the amortization schedule described above. The Company has elected to account for the PPP loan in accordance with ASC 470 – Debt, and any forgiveness of the loan will be treated as a gain on extinguishment within the condensed consolidated statement of operations.

On July 30, 2021, the Company was notified by Silicon Valley Bank that they received payment in full from the Small Business Administration for the amount of the Company’s PPP Loan and the Company’s PPP Loan had been fully forgiven.

Future Principal Payments of Debt

The future schedule of principal payments for all outstanding debt as of June 30, 2021 was as follows (in thousands):

<u>Fiscal Year</u>		
Remainder of 2021	\$	3,326
2022		3,326
2023		10,105
2024		5,895
2025		60,000
Total	\$	82,652

8. Stockholders' Equity

a. Authorized Stock

The Company's Amended and Restated Certificate of Incorporation authorizes the Company to issue 210,000,000 shares of common and preferred stock, consisting of 200,000,000 shares of common stock with \$0.01 par value and 10,000,000 shares of preferred stock with \$0.01 par value. As of June 30, 2021 and December 31, 2020, the Company had no preferred stock issued or outstanding.

b. Common Stock Warrants

On January 17, 2013, the Company entered into a Loan and Security Agreement, or the Original Term Loan Agreement, with Oxford Finance, LLC, or Oxford. On June 30, 2014, the Company entered into an Amended and Restated Loan and Security Agreement, or the Amended Term Loan Agreement, with Oxford. In connection with the Original Term Loan Agreement and the Amended Term Loan Agreement, the Company issued to Oxford (i) seven-year warrants in January 2013 to purchase shares of the Company's common stock with a value equal to 3.0% of the tranche A, B and C term loans amounts, or the Original Warrants, and (ii) seven-year warrants in June 2014 to purchase shares of the Company's common stock with a value equal to 2.5% of the tranche D term loan amount. The warrants have an exercise price per share of \$14.671. The warrants within Tranche A expired on January 17, 2020, the warrants within Tranche B expired on August 1, 2020, and the warrants within Tranche C expired on December 13, 2020. As of June 30, 2021, there were warrants within Tranche D to purchase an aggregate of 17,040 shares of common stock outstanding.

c. Stock Option Plans

In April 2007, the Company adopted the 2007 Equity Incentive Plan, or the 2007 Plan. The 2007 Plan provides for the granting of stock options to employees, directors and consultants of the Company. Options granted under the 2007 Plan may either be incentive stock options or nonstatutory stock options. Incentive stock options, or ISOs, may be granted only to Company employees. Nonstatutory stock options, or NSOs, may be granted to all eligible recipients. A total of 1,690,448 shares of the Company's common stock were initially reserved for issuance under the 2007 Plan.

The Company's board of directors adopted the 2014 Equity Incentive Plan, or 2014 Plan, in July 2014, and the stockholders approved the 2014 Plan in October 2014. The 2014 Plan became effective upon completion of the IPO on November 3, 2014, at which time the Company ceased granting awards under the 2007 Plan. Under the 2014 Plan, the Company may issue ISOs, NSOs, stock appreciation rights, restricted stock awards, restricted stock unit awards and other forms of stock awards, or collectively, stock awards, all of which may be granted to employees, including officers, non-employee directors and consultants of the Company and their affiliates. ISOs may be granted only to employees. A total of 1,027,500 shares of common stock were initially reserved for issuance under the 2014 Plan, subject to certain annual increases. As of June 30, 2021, a total of 1,715,812 shares of the Company's common stock were available for issuance under the 2014 Plan.

Pursuant to a board-approved Inducement Plan, the Company may issue NSOs and restricted stock unit awards, or collectively, stock awards, all of which may only be granted to new employees of the Company and their affiliates in accordance with NASDAQ Stock Market Rule 5635(c)(4) as an inducement material to such individuals entering into employment with the Company. As of June 30, 2021, inducement grants for 1,822,120 shares of common stock have been awarded, and 665,929 shares of common stock were available for future issuance under the Inducement Plan.

Options under the 2007 Plan and the 2014 Plan may be granted for periods of up to ten years as determined by the Company's board of directors, provided, however, that (i) the exercise price of an ISO shall not be less than 100% of the estimated fair value of the shares on the date of grant, and (ii) the exercise price of an ISO granted to a more than 10% shareholder shall not be less than 110% of the estimated fair value of the shares on the date of grant. An NSO has no such exercise price limitations. NSOs under the Inducement Plan may be granted for periods of up to ten years as determined by the board of directors, provided, the exercise price will not be less than 100% of the estimated fair value of the shares on the date of grant. Options generally vest with 25% of the grant vesting on the first anniversary and the balance vesting monthly on a straight-lined basis over the requisite service period of three additional years for the award. Additionally, options have been granted to certain key executives that vest upon achievement of performance conditions based on performance targets as defined by the board of directors, which have included net sales targets and defined corporate objectives over the performance period with possible payout ranging from 0% to 100% of the target award. Compensation expense is recognized on a straight-lined basis over the vesting term of one year based upon the probable performance target that will be met. The vesting provisions of individual options may vary but provide for vesting of at least 25% per year.

The following summarizes all option activity under the 2007 Plan, 2014 Plan and Inducement Plan:

	Option Shares	Weighted average exercise price	Weighted average remaining contractual term (year)
Balances at December 31, 2020	1,959,501	\$ 4.79	5.92
Exercised	(36,363)	3.99	
Forfeited	(111,587)	7.39	
Balances at June 30, 2021	<u>1,811,551</u>	\$ 4.65	5.71

For stock-based awards the Company recognizes compensation expense based on the grant date fair value using the Black-Scholes option valuation model. Stock-based compensation expense related to stock options for the three and six months ended June 30, 2021 were \$0.2 million and \$0.3 million, respectively. There was no stock-based compensation expense related to stock options for the three and six months ended June 30, 2020. As of June 30, 2021, unrecognized compensation costs related to stock options was \$1.8 million.

d. Restricted Stock Units

The Company has issued restricted stock unit awards, or RSUs, under the 2014 Plan and the Inducement Plan. The RSUs issued to employees generally vest on a straight-line basis annually over a 3-year requisite service period. RSUs issued to non-employees generally vest either monthly or annually over the service term. In 2020, the Company implemented a sell-to-cover program for employees who elect to sell shares to cover any withholding taxes due upon vesting. For employees who do not elect to sell shares to cover withholding taxes, the Company nets shares upon vesting and pays the withholding taxes directly.

Activity related to RSUs is set forth below:

	Number of shares	Weighted average grant date fair value
Balances at December 31, 2020	3,093,790	\$ 6.97
Granted	1,474,916	7.34
Vested	(1,026,655)	5.82
Forfeited	(202,893)	2.19
Balances at June 30, 2021	<u>3,339,158</u>	\$ 7.78

Stock-based compensation expense for RSUs for the three months ended June 30, 2021 and 2020 was \$2.3 million and \$1.5 million, respectively. Stock-based compensation expense for RSUs for the six months ended June 30, 2021 and 2020 was \$5.2 million and \$3.4 million, respectively. As of June 30, 2021, there was \$13.4 million of total unrecognized compensation costs related to non-vested RSU awards. The cost is expected to be recognized over a weighted average period of approximately 2.04 years.

e. Employee Stock Purchase Plan

The Company's board of directors adopted the 2014 Employee Stock Purchase Plan, or ESPP, in July 2014, and the stockholders approved the ESPP in October 2014. The ESPP allows eligible employees to purchase shares of the Company's common stock at a discount through payroll deductions of up to 15% of their eligible compensation, subject to any plan limitations. The ESPP provides for offering periods not to exceed 27 months, and each offering period will include purchase periods, which will be the approximately six-month period commencing with one exercise date and ending with the next exercise date. Employees are able to purchase shares at 85% of the lower of the fair market value of the Company's common stock on the first trading day of the offering period or on the purchase date. A total of 255,500 shares of common stock were initially reserved for issuance under the ESPP, subject to certain annual increases.

During the six months ended June 30, 2021, employees purchased 95,919 shares of common stock at a weighted average price of \$3.37 per share. As of June 30, 2021, the number of shares of common stock available for future issuance was 1,356,767.

The Company estimated the fair value of employee stock purchase rights using the Black-Scholes model. Stock-based compensation expense related to the ESPP was \$0.2 million for both the three months ended June 30, 2021 and 2020. Stock-based compensation expense related to the ESPP was \$0.3 million for both the six months ended June 30, 2021 and 2020.

f. Significant Modifications

During the six months ended June 30, 2021 and 2020, there were no material modifications of equity awards.

9. Net Loss Per Share

Basic net loss per share attributable to common stockholders is computed by dividing net loss by the weighted average number of common shares outstanding during each period. Diluted net loss per common share is computed by dividing net loss available to common stockholders by the weighted average number of common shares and dilutive potential common share equivalents then outstanding, to the extent they are dilutive. Potential common shares consist of shares issuable upon the exercise of stock options and warrants (using the treasury stock method). Dilutive net loss per share is the same as basic net loss per share for all periods presented because the effects of potentially dilutive items were anti-dilutive.

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
Loss from continuing operations	\$ (18,539)	\$ (31,208)	\$ (75,150)	\$ (45,330)
Income (loss) from discontinued operations, net of income taxes	(1,595)	(3,069)	326	(17,559)
Net loss	<u>\$ (20,134)</u>	<u>\$ (34,277)</u>	<u>\$ (74,824)</u>	<u>\$ (62,889)</u>
Weighted average common shares outstanding, basic and diluted	57,647,883	50,145,538	56,003,274	50,031,105
Basic and diluted net loss per share attributable to common stockholders				
Continuing operations	\$ (0.32)	\$ (0.62)	\$ (1.34)	\$ (0.91)
Discontinued operations	(0.03)	(0.06)	0.01	(0.35)
Basic and diluted net loss per share	<u>\$ (0.35)</u>	<u>\$ (0.68)</u>	<u>\$ (1.34)</u>	<u>\$ (1.26)</u>

The Company excluded the following potentially dilutive securities, outstanding as of June 30, 2021 and 2020, from the computation of diluted net loss per share attributable to common stockholders for the three and six months ended June 30, 2021 and 2020 because they had an anti-dilutive impact due to the net loss attributable to common stockholders incurred for the periods.

	<u>June 30,</u>	
	<u>2021</u>	<u>2020</u>
Stock options to purchase common stock	1,811,551	1,583,631
Warrants for the purchase of common stock	17,040	32,375
Equity contingent consideration	607,442	607,442
Stock issuable upon conversion of convertible note	16,175,862	19,733,352
	<u>18,611,895</u>	<u>21,956,800</u>

The Company uses the if-converted method for calculating any potential dilutive effects of the convertible note. The Company did not adjust the net loss for the three and six months ended June 30, 2021 to eliminate any interest expense or gain/loss for the derivative liability related to the note in the computation of diluted loss per share, as the effects would be anti-dilutive.

10. Income Taxes

The Company operates in several tax jurisdictions and is subject to taxes in each jurisdiction in which it conducts business. To date, the Company has incurred cumulative net losses and maintains a full valuation allowance on its net deferred tax assets due to the uncertainty surrounding realization of such assets. The Company had no tax expense for both the three and six months ended June 30, 2021 and 2020.

11. Segment Information

Following the sale of the miraDry business on June 10, 2021, the Company has one reportable segment named Plastic Surgery, formally known as Breast Products. The Plastic Surgery segment focuses on sales of silicone gel breast implants, tissue expanders and scar management products under the brands Sientra Round, Sientra Teardrop, AlloX2, Dermaspan, Softspan and BIOCORNEUM.

The net sales, net operating loss and net assets for the Plastic Surgery segment are presented in the condensed consolidated statement of operations and condensed consolidated balance sheets as continuing operations.

12. Commitments and Contingencies

The Company is subject to claims and assessment from time to time in the ordinary course of business. The Company accrues a liability for such matters when it is probable that future expenditures will be made and such expenditures can be reasonably estimated.

Product Liability Litigation

On October 7, 2019, a lawsuit was filed in the Superior Court of the State of California against the Company and Silimed Industria de Implantes Ltda. (the Company's former contract manufacturer). The lawsuit alleges that the Company's textured breast implants caused certain of the plaintiffs to develop a condition known as breast implant associated anaplastic large cell lymphoma ("BIA-ALCL"), and that the Company is liable to the plaintiffs based on claims for strict liability (failure to warn), strict liability (defective manufacture), negligence and loss of consortium. On January 21, 2020, the Company filed a demurrer to the plaintiff's complaint, which demurrer the Court granted in a tentative ruling dated March 9, 2021 with leave to replead. The Plaintiffs filed an amended complaint on April 6, 2021 and the Company filed a demurrer to that complaint on May 6, 2021. Briefing on the demurrer is complete and oral argument is presently scheduled for September 2021. The Company intends to vigorously defend itself in this lawsuit. Given the nature of this case, the Company is unable to estimate the reasonably possible loss or range of loss, if any, arising from this matter.

On September 23, 2020, a lawsuit was filed in the Eastern District of Tennessee against the Company. The lawsuit alleges that the Company's textured breast implants caused certain of the plaintiffs to develop a condition known as breast implant associated anaplastic large cell lymphoma ("BIA-ALCL"), and that the Company is liable to the plaintiffs based on claims for negligence, strict liability (manufacturing defects), strict liability (failure to warn), breach of express and implied warranties, and punitive damages. The Company filed a motion to dismiss the complaint on December 7, 2020. Briefing on the motion is complete and oral argument is presently scheduled for January 2022. The Company intends to vigorously defend itself in this lawsuit. Given the nature of this case, the Company is unable to estimate the reasonably possible loss or range of loss, if any, arising from this matter.

13. Subsequent Events

On July 30, 2021, the Company was notified by Silicon Valley Bank that they received payment in full from the Small Business Administration for the amount of the Company's PPP Loan and the Company's PPP Loan had been fully forgiven.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited condensed consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q and the audited financial statements and notes thereto as of and for the year ended December 31, 2020 and the related Management's Discussion and Analysis of Financial Condition and Results of Operations are contained in our Annual Report on Form 10-K for the year ended December 31, 2020, filed with the Securities and Exchange Commission on March 11, 2021, or the Annual Report. Unless the context requires otherwise, references in this Quarterly Report on Form 10-Q to "Sientra," "the Company," "we," "us" and "our" refer to Sientra, Inc. and its consolidated subsidiaries.

Forward-Looking Statements

The information in this discussion contains forward-looking statements and information within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, which are subject to the "safe harbor" created by those sections. These forward-looking statements include, but are not limited to, statements concerning our strategy, future operations, future financial position, future revenues, projected costs, prospects and plans and objectives of management. The words "anticipates," "believes," "estimates," "expects," "intends," "may," "plans," "projects," "will," "would" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements that we make. These forward-looking statements involve risks and uncertainties that could cause our actual results to differ materially from those in the forward-looking statements, including, without limitation, the risks set forth in Part II, Item 1A, "Risk Factors" in this Quarterly Report on Form 10-Q and in our other filings with the SEC. The forward-looking statements are applicable only as of the date on which they are made, and we do not assume any obligation to update any forward-looking statements.

Overview

We are a medical aesthetics company uniquely centered on becoming the leader of transformative treatments and technologies focused on progressing the art of plastic surgery. We were founded to provide greater choices to board-certified plastic surgeons and patients in need of medical aesthetics products. We have developed a broad portfolio of products with technologically differentiated characteristics, supported by independent laboratory testing and strong clinical trial outcomes. We sell our breast implants in the U.S. for augmentation procedures exclusively to board-certified and board-admissible plastic surgeons and tailor our customer service offerings to their specific needs, which we believe helps secure their loyalty and confidence. In 2020, we also began to sell our breast implants in Japan through a distributor partner. We sell our breast tissue expanders for reconstruction procedures predominantly to hospitals and surgery centers, and our BIOCORNEUM scar management products to plastic surgeons, dermatologists and other specialties.

As discussed in Recent developments below, we completed the sale of the miraDry business on June 10, 2021, and as a result the miraDry business met the criteria to be reported as discontinued operations. Therefore, we are reporting the historical results of miraDry, including the results of operations, cash flows, and related assets and liabilities, as discontinued operations for all periods presented herein through the date of the Sale. Unless otherwise noted, the unaudited condensed consolidated financial statements have all been revised to reflect continuing operations only. Following the Sale, we have one operating segment in continuing operations named Plastic Surgery, formerly known as Breast Products.

Our Plastic Surgery segment focuses on sales of our breast implants, tissue expanders and scar management products. We currently sell our products in the U.S. through a direct sales organization, which as of June 30, 2021, consisted of 63 employees, including 8 sales managers.

Recent developments

Sale of the miraDry Business

On June 10, 2021, we completed the sale of the miraDry business (the “Sale”) to miraDry Acquisition Company, Inc., a Delaware corporation (“Buyer”), an entity affiliated with 1315 Capital II, LP, as a result of our strategic decision to focus investment on the core Plastic Surgery segment, formerly known as Breast Products. The Sale was made pursuant to the terms and conditions of the Asset Purchase Agreement (the “Purchase Agreement”), dated May 11, 2021, among us and certain of our subsidiaries, Buyer, and, solely for purposes of Section 8.14 of the Purchase Agreement, 1315 Capital II, LP. The aggregate purchase price was \$10.0 million, which after certain adjustments for agreed upon changes in the estimated net asset value amount of purchased assets and assumed liabilities resulted in net upfront cash proceeds to us of approximately \$11.3 million. In connection with the Sale, we recognized a loss on sale of \$2.5 million for the three and six months ended June 30, 2021.

Subject to the terms and conditions of the Purchase Agreement, additional post close adjustments to the purchase price may be required based on the final net asset value of purchased assets and assumed liabilities as of the date of close, which is expected to be finalized within 120 days after the transaction close date. As such, a change in the loss associated with the Sale could occur in a future period, including upon such finalization of the purchase price with the Buyer.

In accordance with the Purchase Agreement, assumed liabilities did not include product liabilities, environmental, and employee claims arising prior to the closing date. The Purchase Agreement also included customary representations and warranties, as well as certain covenants, including, among other things, that: (i) we will abide by certain non-solicitation, exclusivity, and non-competition covenants, and (ii) we would enter into a transition services agreement to provide certain transition services related to the Business.

Prior to entering into the Purchase Agreement, in April 2020, in part as a result of the impact of COVID-19, we re-focused our miraDry business to drive bioTip utilization to our existing installed base. On December 31, 2020, we eliminated our separate miraDry U.S. salesforce and transitioned miraDry sales responsibility into the Plastic Surgery Business Development team.

COVID-19 Pandemic

Since December 2019, the global spread of COVID-19 has resulted in significant economic uncertainty, significant declines in business and consumer confidence and global demand in the non-essential healthcare industry (among others), a global economic slowdown, and could lead to a global recession. The cumulative effect of these disruptions have had, and may continue to have, an adverse impact on our business and results of operations. The COVID-19 pandemic continues to evolve and the full extent to which the COVID-19 pandemic will directly or indirectly impact our business, results of operations and financial condition, including sales, expenses, reserves and allowances, manufacturing, and employee-related amounts, will depend on future developments that are highly uncertain and unpredictable, including efficacy and adoption of vaccines, future resurgences of the virus and its variants, the speed at which government restrictions are lifted, hospitals and healthcare systems patient capacity, and the willingness and ability of patients to seek medical procedures due to safety concerns or financial hardship. We continue to monitor and assess new information related to the COVID-19 pandemic, the actions taken to contain or treat COVID-19, as well as the economic impact on local, regional, national and international customers and markets.

As an aesthetics company, surgical procedures involving our breast products are susceptible to local and national government restrictions, such as social distancing, “shelter in place” orders and business closures, due to the economic and logistical impacts these measures have on consumer demand as well as the practitioners’ ability to administer such procedures. The inability or limited ability to perform such non-emergency procedures significantly harmed our revenues since the second quarter of 2020 and continued to harm our revenues during the six months ended June 30, 2021. While many states have lifted certain restrictions on non-emergency procedures, we will likely continue to experience future harm to our revenues while existing or new restrictions remain in place. It is not possible to accurately predict the length or severity of the COVID-19 pandemic or the timing for a broad and sustained ability to perform non-emergency procedures involving the Company’s products.

Further, the spread of COVID-19 has caused us to modify our workforce practices, and we may take further actions that we determine are in the best interests of our employees or as required by governments. In addition, capital markets and economies worldwide have also been negatively impacted by the COVID-19 pandemic, and it is possible that this can lead to a local and/or global economic recession, which may result in further harm to the aesthetics market. Such economic disruption could adversely affect our business. The continued spread of COVID-19, or another infectious disease, could also result in delays or disruptions in our supply chain or adversely affect our manufacturing facilities and personnel. Further, trade and/or national security protection policies may be adjusted as a result of the COVID-19 pandemic, such as actions by governments that limit, restrict or prevent the movement of certain goods into a country and/or region, and current U.S./China trade relations may be further exacerbated by the pandemic.

The estimates used for, but not limited to, determining the collectability of accounts receivable, fair value of long-lived assets and goodwill, and sales returns liability required could be impacted by the pandemic. While the full impact of COVID-19 is unknown at this time, we have made appropriate estimates based on the facts and circumstances available as of the reporting date. These estimates may change as new events occur and additional information is obtained.

Components of Operating Results

Net Sales

Our net sales include sales of silicone gel breast implants, tissue expanders and BIOCORNEUM. We recognize revenue on breast implants and tissue expanders, net of sales discounts and estimated returns, as the customer has a standard six-month window to return purchased breast implants and tissue expanders. We defer the value of our service warranty revenue and recognize it once all performance obligations have been met.

We expect that, in the future, our net sales will fluctuate on a quarterly basis due to a variety of factors, including seasonality of breast augmentation procedures and the impact of the pandemic. We believe that aesthetic procedures are subject to seasonal fluctuation due to patients planning their procedures leading up to the summer season and in the period around the winter holiday season.

Cost of Goods Sold and Gross Margin

Cost of goods sold consists primarily of raw material, labor, overhead, and variable manufacturing costs, reserve for product assurance warranties, royalty costs, excess and obsolete inventory reserves, and warehouse and other related costs.

With respect to our supplier contracts, all our products and raw materials are manufactured under contracts with fixed unit costs which can increase over time at specified amounts.

We provide an assurance and service warranty on our silicone gel breast implants. The estimated warranty costs are recorded at the time of sale. Costs related to our service warranty are recorded when expense is incurred related to meeting our performance obligations.

We expect our overall gross margin, which is calculated as net sales less cost of goods sold for a given period divided by net sales, to fluctuate in future periods primarily as a result of quantity of units sold, manufacturing price increases, the changing mix of products sold with different gross margins, warranty costs, overhead costs and targeted pricing programs.

Sales and Marketing Expenses

Our sales and marketing expenses primarily consist of salaries, bonuses, benefits, incentive compensation, stock-based compensation, consumer marketing, and travel for our sales, marketing and customer support personnel. Our sales and marketing expenses also include expenses for trade shows, our no-charge customer shipping program and no-charge product evaluation units, as well as educational and promotional activities. We expect our sales and marketing expenses to fluctuate in future periods as a result of headcount and timing of our marketing programs.

Research and Development Expenses

Our research and development, or R&D, expenses primarily consist of clinical expenses, product development costs, regulatory expenses, consulting services, outside research activities, quality control and other costs associated with the development of our products and compliance with Good Clinical Practices, or cGCP, requirements. R&D expenses also include related personnel and consultant compensation and stock-based compensation expense. We expense R&D costs as they are incurred. We expect our R&D expenses to vary as different development projects are initiated, including improvements to our existing products, expansions of our existing product lines, new product acquisitions and our clinical studies.

General and Administrative Expenses

Our general and administrative, or G&A, expenses primarily consist of salaries, bonuses, benefits, incentive compensation and stock-based compensation for our executive, financial, legal, and administrative functions. Other G&A expenses include contingent consideration fair market value adjustments, bad debt expense, outside legal counsel and litigation expenses, independent auditors and other outside consultants, corporate insurance, facilities and information technologies expenses. We expect future G&A expenses to remain consistent with the current period, and we also expect to continue to incur G&A expenses in connection with operating as a public company.

Other Income (Expense), net

Other income (expense), net primarily consists of interest income, interest expense, changes in the fair value of the embedded derivative liability and common stock warrants, and amortization of issuance costs associated with our Credit Agreements.

Income Taxes

Income tax expense consists of an estimate for income taxes based on the projected income tax expense for the period. We operate in several tax jurisdictions and are subject to taxes in each jurisdiction in which we conduct business. To date, we have incurred cumulative net losses and maintain a full valuation allowance on our net deferred tax assets due to the uncertainty surrounding realization of such assets.

Critical Accounting Policies and Significant Judgments and Estimates

The preparation of our unaudited condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities, and the revenues and expenses incurred during the reported periods. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We discussed accounting policies and assumptions that involve a higher degree of judgment and complexity in Note 1 of the “Notes to Financial Statements” in our audited financial statements included in the Annual Report. There have been no material changes to our critical accounting policies and estimates from those disclosed in the Annual Report.

Recent Accounting Pronouncements

Please refer to Note 1 - Summary of Significant Accounting Policies in the notes to the unaudited condensed consolidated financial statements included in this Form 10-Q for information on recent accounting pronouncements and the expected impact on our unaudited condensed consolidated financial statements.

Results of Operations

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

The following table sets forth our results of operations for the three months ended June 30, 2021 and 2020:

	Three Months Ended June 30,	
	2021	2020
	(In thousands)	
Statement of operations data		
Net sales	\$ 20,103	\$ 9,309
Cost of goods sold	8,838	4,047
Gross profit	11,265	5,262
Operating expenses		
Sales and marketing	10,477	5,443
Research and development	2,400	2,113
General and administrative	7,545	6,941
Restructuring	—	3
Total operating expenses	20,422	14,500
Loss from operations	(9,157)	(9,238)
Other income (expense), net		
Interest income	1	17
Interest expense	(2,113)	(3,606)
Change in fair value of derivative liability	(7,270)	(18,380)
Other income (expense), net	—	(1)
Total other income (expense), net	(9,382)	(21,970)
Loss from continuing operations before income taxes	(18,539)	(31,208)
Income tax	—	—
Loss from continuing operations	(18,539)	(31,208)
Loss from discontinued operations, net of income taxes	(1,595)	(3,069)
Net loss	\$ (20,134)	\$ (34,277)

Net Sales

Net sales increased \$10.8 million, or 116.0%, to \$20.1 million for the three months ended June 30, 2021 as compared to \$9.3 million for the three months ended June 30, 2020. The increase was primarily due to an increase in the volume of domestic and international sales of gel implants with additional smaller increases in BioCorneum and expanders. Additionally, the Company's net sales were less impacted by the COVID-19 pandemic in the current period in comparison to the prior period.

As of June 30, 2021, our sales organization included 63 employees, as compared to 52 employees as of June 30, 2020. The increase is primarily attributed to additional Plastic Surgery sales representatives.

Cost of Goods Sold and Gross Margin

Cost of goods sold increased \$4.8 million, or 118.4%, to \$8.8 million for the three months ended June 30, 2021 as compared to \$4.0 million for the three months ended June 30, 2020. The increase was primarily due to an increase in the sales volume of all products.

The gross margins for the three months ended June 30, 2021 and 2020 were 56.0% and 56.5%, respectively. The decrease was primarily due to lower margins on international gel implant sales as a result of our entry into the Japan market and an increase in period distribution and production costs, partially offset by a reduction in inventory reserves.

Sales and Marketing Expenses

Sales and marketing expenses increased \$5.0 million, or 92.5%, to \$10.5 million for the three months ended June 30, 2021 as compared to \$5.4 million for the three months ended June 30, 2020. The increase was primarily due to increases in employee payroll, commissions, and shipping expenses associated with increased sales headcount and the increased volume of sales of products.

Research and Development Expenses

R&D expenses increased \$0.3 million, or 13.6%, to \$2.4 million for the three months ended June 30, 2021 as compared to \$2.1 million for the three months ended June 30, 2020. The increase was primarily due to increases in employee payroll and incentive compensation related expenses.

General and Administrative Expenses

G&A expenses increased \$0.6 million, or 8.7%, to \$7.5 million for the three months ended June 30, 2021 as compared to \$6.9 million for the three months ended June 30, 2020. The increase was primarily due to increases in employee payroll and incentive compensation, legal, insurance and tax expenses, offset by decreases in consulting and audit expenses.

Restructuring Expenses

There were no restructuring expenses for the three months ended June 30, 2021, as the organizational efficiency initiative was completed as of December 31, 2020. Restructuring expenses for the three months ended June 30, 2020 consisted of miscellaneous remaining expenses for the organizational efficiency initiative.

Other Income (Expense), net

Other income (expense), net for the three months ended June 30, 2021 decreased \$12.6 million as compared to the three months ended June 30, 2020 primarily due to a lower increase in the fair value of the derivative liability resulting from an increase in the Company's stock price during the period, coupled with a decrease in interest expense due to interest and fees associated with the amendment of our Credit Agreement incurred in the prior period which did not reoccur in the current period.

Income Tax Expense

For the three months ended June 30, 2021 and 2020 there was no income tax expense.

Income (Loss) from discontinued operations

Income from discontinued operations for the three months ended June 30, 2021 increased \$1.5 million due to the Company's change in business strategy to focus on bioTips prior to the sale of the miraDry business, offset by the loss recognized on the sale of the miraDry business.

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

The following table sets forth our results of operations for the six months ended June 30, 2021 and 2020:

	Six Months Ended June 30,	
	2021	2020
(In thousands)		
Statement of operations data		
Net sales	\$ 38,415	\$ 21,780
Cost of goods sold	16,997	8,782
Gross profit	21,418	12,998
Operating expenses		
Sales and marketing	22,296	14,889
Research and development	4,595	4,364
General and administrative	15,456	14,738
Restructuring	—	831
Total operating expenses	42,347	34,822
Loss from operations	(20,929)	(21,824)
Other income (expense), net		
Interest income	3	197
Interest expense	(4,117)	(5,229)
Change in fair value of derivative liability	(50,010)	(18,510)
Other income (expense), net	(97)	36
Total other income (expense), net	(54,221)	(23,506)
Loss from continuing operations before income taxes	(75,150)	(45,330)
Income tax	—	—
Loss from continuing operations	(75,150)	(45,330)
Income (loss) from discontinued operations, net of income taxes	326	(17,559)
Net loss	\$ (74,824)	\$ (62,889)

Net Sales

Net sales increased \$16.6 million, or 76.4%, to \$38.4 million for the six months ended June 30, 2021 as compared to \$21.8 million for the six months ended June 30, 2020. The increase was primarily due to an increase in the volume of domestic and international sales of gel implants with additional smaller increases in BioCorneum and expanders. Additionally, the Company's net sales were less impacted by the COVID-19 pandemic in the current period in comparison to the prior period.

Cost of Goods Sold and Gross Margin

Cost of goods sold increased \$8.2 million, or 93.5%, to \$17.0 million for the six months ended June 30, 2021 as compared to \$8.8 million for the six months ended June 30, 2020. The increase was primarily due to an increase in the sales volume of all products.

The gross margins for the six months ended June 30, 2021 and 2020 were 55.8% and 59.7%, respectively. The decrease was primarily due to lower margins on international gel implant sales as a result of our entry into the Japan market and an increase in period distribution and production costs, partially offset by a reduction in inventory reserves.

Sales and Marketing Expenses

Sales and marketing expenses increased \$7.4 million, or 49.7%, to \$22.3 million for the six months ended June 30, 2021 as compared to \$14.9 million for the six months ended June 30, 2020. The increase was primarily due to increases in employee payroll, commissions, and shipping expenses associated with increased sales headcount and the increased volume of sales of products.

Research and Development Expenses

R&D expenses increased \$0.2 million, or 5.3%, to \$4.6 million for the six months ended June 30, 2021 as compared to \$4.4 million for the six months ended June 30, 2020. The increase was primarily due to increases in employee payroll and incentive compensation related expenses.

General and Administrative Expenses

G&A expenses increased \$0.7 million, or 4.9%, to \$15.5 million for the six months ended June 30, 2021 as compared to \$14.7 million for the six months ended June 30, 2020. The increase was primarily due to increases in employee payroll and incentive compensation, legal, insurance, and tax expenses, offset by decreases in consulting and audit expenses.

Restructuring Expenses

There were no restructuring expenses for the six months ended June 30, 2021, as the organizational efficiency initiative was completed as of December 31, 2020. Restructuring expenses for the six months ended June 30, 2020 consisted primarily of severance expenses of employees affected by the initiative.

Other Income (Expense), net

Other income (expense), net for the six months ended June 30, 2021 increased \$30.7 million as compared to the six months ended June 30, 2020 primarily due to the increase in the fair value of the derivative liability resulting from an increase in the Company's stock price during the period, and an increase in the amortization of debt issuance costs and debt discounts associated with our Credit Agreements and convertible note, offset by a decrease in interest expense due to interest and fees associated with the amendment of our Credit Agreement incurred in the prior period which did not reoccur in the current period.

Income Tax Expense

For the six months ended June 30, 2021 and 2020 there was no income tax expense.

Income (Loss) from discontinued operations

Income from discontinued operations for the six months ended June 30, 2021 increased \$17.9 million, due to the Company's change in business strategy to focus on bioTips prior to the sale of the miraDry business, offset by the loss recognized on the sale of the miraDry business.

Liquidity and Capital Resources

Since our inception, we have incurred significant net operating losses and anticipate that our losses will continue in the near term. We expect our operating expenses will remain consistent and we will need to generate significant net sales to achieve profitability. To date, we have funded our operations primarily with proceeds from the sales of preferred stock, borrowings under our term loans and convertible note, sales of our products since 2012, and the proceeds from the sale of our common stock in public offerings.

Sale of the miraDry business

As disclosed above under Management's Discussion and Analysis - Recent developments - Sale of the miraDry Business, on May 11, 2021, we entered into a Purchase Agreement, pursuant to which we sold the miraDry business. On June 10, 2021, we received \$11.3 million in cash.

Debt financing – recent developments

On February 5, 2021, we entered into a Second Amended and Restated Credit and Security Agreement (Term Loan), by and among the Company, certain of our subsidiaries (together with Sientra, the "Borrowers"), the lenders party thereto from time to time and MidCap Financial Trust, as administrative agent and collateral agent ("Agent") (the "Restated Term Loan Agreement"). The Restated Term Loan Agreement amends and restates our existing Amended and Restated Credit and Security Agreement (Term Loan), dated as of July 1, 2019.

Also on February 5, 2021, we entered into a Third Amendment to Amended and Restated Credit and Security Agreement (Revolving Loan), by and among the Borrowers, the lenders party thereto from time to time, and the Agent (the "Revolving Loan Amendment"). The Revolving Loan Amendment modified the Net Revenue (as defined therein) requirement in a manner consistent with the modification under the Restated Term Loan Agreement. In addition, the Revolving Loan Amendment made other conforming changes to the Restated Term Loan Agreement.

See Note 7 to the condensed consolidated financial statements for a full description of all of our long-term debt, revolving line of credit, convertible note, and PPP loan.

Equity financing – recent developments

On February 8, 2021, we completed a follow-on public offering of 5,410,628 shares of common stock at \$6.75 per share, as well as 811,594 additional shares of common stock pursuant to the full exercise of the over-allotment option granted to the underwriters. Net proceeds were approximately \$39.2 million after deducting underwriting discounts and commissions of approximately \$2.5 million and offering expenses of approximately \$0.3 million.

As of June 30, 2021, we had \$82.4 million in cash and cash equivalents. Our historical cash outflows have primarily been associated with research and development activities and activities relating to commercialization and increases in working capital. In addition, we have used cash to fund the acquisitions of miraDry, BIOCORNEUM, Vesta, and the tissue expander portfolio.

To fund our ongoing operating and capital needs, we may need to raise additional equity or debt capital. We believe we have sufficient capital resources to continue as a going concern through the next twelve months.

Cash Flows

The following table shows a summary of our cash flows (used in) provided by operating, investing and financing activities from continuing operations, as well as from discontinued operations for the periods indicated (in thousands):

	Six Months Ended June 30,	
	2021	2020
Net cash (used in) provided by:		
Operating activities - continuing operations	\$ (14,839)	\$ (31,514)
Investing activities - continuing operations	(3,170)	(2,115)
Financing activities - continuing operations	34,408	32,985
Net change in cash, cash equivalents and restricted cash from continuing operations	16,399	(644)
Net cash provided by (used in) discontinued operations	11,051	(15,165)
Net change in cash, cash equivalents and restricted cash	\$ 27,450	\$ (15,809)

Cash flow from operating activities of continuing operations

Net cash used in operating activities was \$14.8 million during the six months ended June 30, 2021 as compared to \$31.5 million during the six months ended June 30, 2020. The decrease in cash used in operating activities between the six months ended June 30, 2021 and 2020 was primarily associated with an increase in the fair value of the derivative liability and an increase in working capital, offset by payments related to the miraDry contingent consideration.

Cash flow from investing activities of continuing operations

Net cash used in investing activities was \$3.2 million during the six months ended June 30, 2021 as compared to \$2.1 million used during the six months ended June 30, 2020. The increase in cash used was due to an increase in property and equipment purchases.

Cash flow from financing activities of continuing operations

Net cash provided by financing activities was \$34.4 million during the six months ended June 30, 2021 as compared to \$33.0 million during the six months ended June 30, 2020. The increase in cash provided by financing activities was due to an increase in proceeds from issuance of common stock, increase in borrowings under the Term Loan, and a decrease in deferred financing costs, offset by borrowings under the Convertible Note in the prior period which did not reoccur in the current period and payments related to the miraDry contingent consideration.

Cash flow from discontinued operations

Net cash provided by discontinued operations was \$11.1 million during the six months ended June 30, 2021 as compared to \$15.2 million used during the six months ended June 30, 2020. The change in cash flows was primarily driven by a decrease in cash used from operating activities as a result of the change in miraDry business strategy, in addition to an increase in cash provided by investing activities resulting from the proceeds of the sale of the miraDry business.

Our liquidity position and capital requirements are subject to a number of factors. For example, our cash inflow and outflow may be impacted by the following:

- the ability of our implant manufacturing facility in Franklin, Wisconsin, to meet capacity to meet customer requirements and maintain unit costs that will drive gross margin;
- the ability of our third-party tissue expander manufacturing facility operated by SiMatrix to meet capacity to meet customer requirements;
- net sales generated by our Plastic Surgery segment and any other future products that we may develop and commercialize;
- the scope and duration of the COVID-19 pandemic and its effect on our operations;
- costs associated with expanding our sales force and marketing programs;
- cost associated with developing and commercializing our proposed products or technologies;
- expenses we incur in connection with potential litigation or governmental investigations;
- cost of obtaining and maintaining regulatory clearance or approval for our current or future products;
- cost of ongoing compliance with regulatory requirements, including compliance with Sarbanes-Oxley;

- anticipated or unanticipated capital expenditures; and
- unanticipated G&A expenses.

Our primary short-term capital needs, which are subject to change, include expenditures related to:

- support of our sales and marketing efforts related to our current and future products;
- new product acquisition and development efforts;
- facilities expansion needs; and
- investment in inventory required to meet customer demands.

Although we believe the foregoing items reflect our most likely uses of cash in the short-term, we cannot predict with certainty all of our particular short-term cash uses or the timing or amount of cash used. If cash generated from operations is insufficient to satisfy our working capital and capital expenditure requirements, we may be required to sell additional equity or debt securities or obtain credit facilities. Additional capital, if needed, may not be available on satisfactory terms, if at all. Furthermore, any additional equity financing may be dilutive to stockholders, and debt financing, if available, may include restrictive covenants. For a discussion of other factors that may impact our future liquidity and capital funding requirements, see “Risk Factors — Risks Related to Our Financial Results” in our Annual Report on Form 10-K.

Off-Balance Sheet Arrangements

During the periods presented we did not have, nor do we currently have, any off-balance sheet arrangements as defined under SEC rules.

ITEM 3: QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As of June 30, 2021, we had \$82.4 million in cash and cash equivalents. We generally hold our cash in checking accounts and interest-bearing money market accounts. Our exposure to market risk related to interest rate sensitivity is affected by changes in the general level of U.S. interest rates. Due to the short-term maturities of our cash equivalents and the low risk profile of our investments, an immediate 100 basis point change in interest rates would not have a material effect on the fair market value of our cash equivalents. We have established guidelines regarding approved investments and maturities of investments, which are designed to maintain safety and liquidity.

ITEM 4: CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with U.S. GAAP. We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our periodic and current reports that we file with the SEC is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer, or CEO, and Chief Financial Officer, or CFO, as appropriate, to allow timely decisions regarding required disclosure.

As of June 30, 2021, we carried out an evaluation, under the supervision and with the participation of our management, including our CEO and CFO, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on that evaluation, the CEO and CFO concluded that the Company's disclosure controls and procedures were effective as of such date.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time, we are involved in legal proceedings and regulatory proceedings arising out of our operations. We establish reserves for specific liabilities in connection with legal actions that we deem to be probable and estimable. The ability to predict the ultimate outcome of such matters involves judgments, estimates, and inherent uncertainties. The actual outcome of such matters could differ materially from management's estimates. Information regarding certain legal proceedings is provided in this Quarterly Report in Note 12 of the condensed consolidated financial statements.

ITEM 1A. RISK FACTORS

There have been no material changes from the risk factors disclosed in Part I, Item 1A, of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020, which are incorporated herein by reference.

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

The following exhibits are filed or furnished as part of this report:

<u>Number</u>	<u>Description</u>
10.1+	<u>Employment Agreement, dated July 12, 2021, by and between the Company and Andrew Schmidt (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on July 12, 2021).</u>
10.2	<u>Asset Purchase Agreement, dated May 11, 2021, between the Company, miraDry Acquisition Company, Inc., and, solely for purposes of Section 8.14 of the Purchase Agreement, 1315 Capital II, LP.</u>
10.3	<u>Sublease Agreement, dated May 17, 2021, between miraDry, Inc. and MiraDry Acquisition Company, Inc.</u>
10.4	<u>First Amendment to Second Amended and Restated Credit and Security Agreement (term loan), dated July 14, 2021, between the Company, Mist Holdings, Inc., Mist, Inc., Mist International, Inc, MidCap Financial Trust, and the other lenders party thereto.</u>
10.5	<u>Fourth Amendment to Amended and Restated Credit and Security Agreement (Revolving Loan), dated July 14, 2021, between the Company, Mist Holdings, Inc., Mist, Inc., Mist International, Inc, MidCap Financial Trust, and the other lenders party thereto.</u>
31.1*	<u>Certification of Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.</u>
31.2*	<u>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.</u>
32.1*	<u>Certification of Principal Executive Officer pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u>
32.2*	<u>Certification of Principal Financial Officer pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. Section 1350, as adopted pursuant Section 906 of the Sarbanes-Oxley Act of 2002.</u>
101.INS	Instance Document - the instance document does not appear in the interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith.

+ Management contract of compensatory plan.

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.

SIENTRA, INC.

August 10, 2021

By: /s/ Ronald Menezes
Ronald Menezes
President and Chief Executive Officer

August 10, 2021

By: /s/ Andrew C. Schmidt
Andrew C. Schmidt
Chief Financial Officer and Treasurer

ASSET PURCHASE AGREEMENT

among

MIRADRY, INC.,

MIRADRY HOLDINGS, INC.,

MIRADRY INTERNATIONAL, INC.

MIRADRY ACQUISITION COMPANY, INC.

and

1315 CAPITAL, LLC

(solely for purposes of Section 8.14)

dated as of

May 11, 2021

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”), dated as of May 11, 2021, is entered into by and among (i) miraDry, Inc., a Delaware corporation (“**miraDry**”), (ii) miraDry Holdings, Inc., a Delaware corporation (“**MD Holdings**”), (iii) miraDry International, Inc., a Delaware corporation (“**MD International**”, and collectively with miraDry and MD Holdings, “**Sellers**”), (v) miraDry Acquisition Company, Inc., a Delaware corporation (“**Buyer**”), (vi) Sientra, Inc., a Delaware corporation (“**Owner**”), and, solely for purposes of Section 8.14, 1315 Capital II, LP, a Delaware limited partnership (“**Guarantor**”).

RECITALS

WHEREAS, Owner, directly or indirectly, owns 100% of the issued and outstanding capital stock of each of the Sellers;

WHEREAS, Sellers are engaged in the business of developing, designing, manufacturing, selling and distributing aesthetic products designed to reduce underarm sweat, odor and hair (the “**Business**”);

WHEREAS, Sellers wish to sell and assign to Buyer, and Buyer wishes to purchase and assume from Sellers, the Purchased Assets and the Assumed Liabilities, subject to the terms and conditions set forth herein;

WHEREAS, certain capitalized terms used in this Agreement and not otherwise defined in context shall have the meanings ascribed to such terms in Article VII.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I PURCHASE AND SALE

Section 1.01 Purchase and Sale of Purchased Assets. On the terms and subject to the conditions set forth herein, at the Closing, Sellers shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Sellers, free and clear of any Encumbrances other than Permitted Encumbrances, all of Sellers’ right, title and interest in, to the following assets of the Business (collectively, the “**Purchased Assets**”):

(a) all accounts receivable held by Sellers arising with respect to the Business set forth on Schedule 1.01(a), net of customer deposits (the “**Accounts Receivable**”), and any security, claim, remedy or other right related to the Accounts Receivable;

(b) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories of the Business set forth on Schedule 1.01(b) (“**Inventory**”);

- (c) all Contracts set forth on Schedule 1.01(c) (the “**Assigned Contracts**”);
- (d) all Intellectual Property (including the Intellectual Property Registrations set forth on Schedule 1.01(d)) that is owned by Sellers and exclusively used or held for exclusive use in the conduct of the Business as currently conducted, together with all (i) royalties, fees, income, payments, and other proceeds now or hereafter due or payable to Sellers with respect to such Intellectual Property; and (ii) claims and causes of action with respect to such Intellectual Property, whether accruing on or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal or equitable relief for infringement, misappropriation, or other violation thereof (the “**Intellectual Property Assets**”).
- (e) all manufacturing, equipment, machinery, tools, vehicles, supplies, computers, telephones and other tangible personal property used in the Business and referenced on Schedule 1.01(e) (the “**Manufacturing PPE**”);
- (f) all Permits which are held by Sellers, required for the conduct of the Business and set forth on Schedule 1.01(f) (the “**Assigned Permits**”);
- (g) all rights to any Actions of any nature available to or being pursued by Sellers to the extent related to the Business, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise (provided that the foregoing shall not limit the ability of Sellers or Owner to pursue any Action with respect to the Excluded Assets or the Excluded Liabilities);
- (h) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees relating to the operation of the Business to the extent arising under an Assigned Contract or the Accounts Receivable and set forth on Schedule 1.01(h) (the “**Prepaid Expenses**”);
- (i) all of Sellers’ rights under warranties, indemnities and all similar rights against third parties solely to the extent related to any Purchased Assets or the Assumed Liabilities (but excluding any such rights to the extent related to any Excluded Assets or the Excluded Liabilities);
- (j) originals, or where not available, copies, of the books and records related to the operation of the Business other than the Excluded Books and Records (the “**Books and Records**”); provided, however, the Books and Records shall not include any of Sellers’ or any of Sellers’ Affiliates’ rights or privileges relating to any privileged communications among a Seller, any of a Seller’s Affiliates or their respective legal counsel or any attorney, including any attorney work-product created thereby (“**Privileged Materials**”); and
- (k) all goodwill and the going concern value of the Business.

Section 1.02 Excluded Assets. All assets of Sellers (other than the Purchased Assets) shall constitute “**Excluded Assets.**” For clarity, the Excluded Assets shall include:

- (a) all cash and cash equivalents;
- (b) all Contracts that are not Assigned Contracts (the “**Excluded Contracts**”);
- (c) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Sellers, any Privileged Materials, the email accounts of any employee that is not a Transferred Employee, and any other non-“@miradry.com” email account (the “**Excluded Books and Records**”);
- (d) the Leases and the Leased Real Property;
- (e) all tangible personal property not included in the Manufacturing PPE;
- (f) all Benefit Plans and assets attributable thereto; and
- (g) the rights which accrue or will accrue to Sellers under this Agreement and the Ancillary Documents.

Section 1.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of Sellers (collectively, the “**Assumed Liabilities**”), and no other Liabilities:

- (a) all trade accounts payable of Sellers to third parties in connection with the Business that remain unpaid and that are included in the calculation of Net Asset Value, including the accounts payable set forth on Schedule 1.03(a) (the “**Accounts Payable**”);
- (b) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder (i) are required to be performed after the Closing and (ii) do not arise out of the failure to perform, improper performance, warranty or other breach, default or violation by Sellers prior to the Closing; provided that the Contingent Payment owed under the Foundry Agreement for the fiscal periods ended March 31, 2021 and ending June 30, 2021 shall be allocated between miraDry, on the one hand, and Buyer, on the other hand, based on the relative amount of sales dollars collected by Sellers compared to the Accounts Receivable assigned to Buyer for sales generated during the period commencing January 1, 2021 and ending June 30, 2021. By way of example, if miraDry generated \$1,000,000 in sales during the period from January 1, 2021 through June, 30, 2021 and miraDry collected \$250,000 of such sales prior to the Closing (with Buyer acquiring the remaining \$750,000 in the form of Accounts Receivable), then miraDry would be responsible for 25% of the Contingent Payment owed for the fiscal periods ended March 31, 2021 and ending June 30, 2021, and Buyer would be responsible for 75% of the Contingent Payment owed for the fiscal periods ended March 31, 2021 and ending June 30, 2021..

(c) any Taxes relating to the Purchased Assets or Assumed Liabilities that are attributable to a Post-Closing Tax Period (including any Taxes to be paid by Buyer pursuant to Sections 5.07 and 5.08);

(d) all Liabilities in respect of customer deposits and warranty and servicing obligations, including without limitation claims arising with respect to Business products sold prior to the Closing (the “**Customer Servicing Related Liabilities**”);

(e) any product Liability or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by Sellers, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold, in each case, to the extent relating to a procedure which was performed following the Closing; and

(f) any Liabilities arising as a result of the post-Closing operation of the Business (without prejudice to the Buyer Indemnitees’ rights under Article VI).

Section 1.04 Excluded Liabilities. Notwithstanding the provisions of Section 1.03 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Sellers or any of their respective Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the “**Excluded Liabilities**”). Sellers shall, and shall cause each of their respective Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any Liabilities of Sellers arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the Ancillary Documents and the transactions contemplated hereby and thereby, including, without limitation, all Seller Expenses;

(b) any Liability for (i) any Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities with respect to any Pre-Closing Tax Period; (ii) any Taxes that arise out of the consummation of the transactions contemplated hereby, or (iii) any Transfer Taxes that are the responsibility of Sellers pursuant to Section 5.07, and (iv) any other Taxes of Sellers (or any stockholder or Affiliate of Sellers) of any kind or description (including any Liability for Taxes of Sellers (or any stockholder or Affiliate of Sellers) that becomes a Liability of Buyer under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law);

(c) any Liabilities to the extent arising out of the Excluded Assets and not included in the Assumed Liabilities;

- (d) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets to the extent such Action relates to such operation of the Business on or prior to the Closing Date, other than the Customer Servicing Related Liabilities;
- (e) any product Liability or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by Sellers, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold, in each case, to the extent relating to a procedure which was performed prior to the Closing;
- (f) any Liabilities of Sellers arising under or in connection with any Benefit Plan;
- (g) any Liabilities of Sellers for any present or former employees, officers, directors, retirees, independent contractors or consultants of Sellers, including, without limitation, any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, severance, retention, transaction bonuses, change of control bonuses, termination or other payments;
- (h) any Environmental Claims or Liabilities under Environmental Laws, to the extent arising out of or relating to facts, circumstances or conditions existing on or prior to the Closing; and
- (i) any Liabilities associated with Funded Obligations.

Section 1.05 Purchase Price; Calculation of Estimated Purchase Price.

- (a) The aggregate purchase price for the Purchased Assets shall be the sum of (i) Ten Million Dollars (\$10,000,000), plus (ii) solely in the event the Net Asset Value is greater than \$13,000,000, the amount, by which the Net Asset Value is greater than \$12,750,000 (the "**NAV Target**"), minus (iii) solely in the event the Net Asset Value is less than \$12,500,000, the amount, by which the Net Asset Value is less than the NAV Target, subject to adjustment pursuant to Section 1.06 hereof (the "**Purchase Price**"), plus the assumption of the Assumed Liabilities. For the avoidance of doubt, in the event the Net Asset Value is greater than or equal to \$11,750,000 but less than or equal to \$12,250,000, then there shall be no adjustment pursuant to clauses (ii) and (iii) above. The Purchase Price shall be paid as provided in Section 2.02.
- (b) For purposes of the Closing, Buyer and Owner shall jointly estimate the Purchase Price ("**Estimated Purchase Price**") and acknowledge the Estimated Purchase Price in a writing (the "**Estimated Statement**") that specifies the estimated Net Asset Value (the "**Estimated Net Asset Value**") as of the Effective Time and attaches Sellers' estimated balance sheet as of the Effective Time. At least five (5) days prior to the Closing

Date, Sellers shall have permitted Buyer and Buyer's accounting firm to have reasonable access upon reasonable notice (and at reasonable times during normal business hours) to Sellers' books and records to verify the estimated Purchase Price and Estimated Net Asset Value. The final Purchase Price shall be determined, and any necessary adjustment payments shall be made, following the Closing in accordance with the provisions of Section 1.06 below.

Section 1.06 Post-Closing Purchase Price Adjustment.

(a) Within ninety (90) days following the Closing Date, Buyer shall cause to be prepared and delivered to Owner a calculation of the Purchase Price, including a calculation of the actual Net Asset Value (including such schedules and data as may be appropriate to support such calculations) as of the Effective Time (the "**Buyer's Report**"). Owner and its accountants and other advisors shall be entitled to reasonable access (upon reasonable notice and at reasonable times during normal business hours) to review the Buyer's Report, and any working papers, trial balances and similar materials in Buyer's possession relating to the Buyer's Report prepared by or on behalf of Buyer and/or its accountants.

(b) Within thirty (30) days after delivery to Owner of the Buyer's Report, Owner may deliver to Buyer a written report (the "**Owner's Report**") advising Buyer either that Owner (i) agrees with the calculation of the Purchase Price reflected in Buyer's Report or (ii) deems that one or more adjustments to such calculation of the Purchase Price are required. If Owner does not submit the Owner's Report within the thirty (30)-day period provided herein, then the calculation of the Purchase Price set forth in the Buyer's Report shall become final and shall not be subject to further review, challenge or adjustment absent fraud or willful misrepresentation.

(c) In the event that Owner submits an Owner's Report deeming that one or more adjustments are required, Buyer and their accountants and other advisors shall be entitled to reasonable access (upon reasonable notice and at reasonable times during normal business hours) to review the Owner's Report and any working papers, trial balances and similar materials in Owner's or Sellers' possession relating to the Owner's Report prepared by or on behalf of Owner and/or its accountants. Within thirty (30) days after delivery to Buyer of the Owner's Report, Buyer may deliver to Owner a written report advising Owner that Buyer (i) agree with the calculation of the Purchase Price reflected in Owner's Report, or (ii) deem that one or more adjustments are required. If Buyer shall not object to the Owner's Report in a writing delivered to Owner within thirty (30) days after Buyer's receipt of the Owner's Report, the calculation of the Purchase Price set forth in the Owner's Report shall become final and shall not be subject to further review, challenge or adjustment absent fraud or willful misrepresentation. In the event that Buyer deems that one or more adjustments are required to Owner's calculation of the Purchase Price and delivers written notice as set forth in this Section 1.06(c), Buyer and Owner shall confer in good faith to attempt to resolve any disagreements between the Buyer's Report and the Owner's Report. If Buyer and Owner are unable to resolve such disagreements within thirty (30) days after the date of Buyer's written notice of objection to the Owner's Report,

then either Buyer or Owners shall be entitled to submit such disagreements to (i) the Los Angeles office of BDO USA, LLP, or (ii) if that accounting firm is unable or unwilling to serve, another recognized firm of independent certified public accountants selected by mutual agreement of Owner and Buyer (the “**Settlement Accountants**”), and the determinations of the Settlement Accountants with respect to the Purchase Price shall be final and shall not be subject to further review, challenge or adjustment absent fraud or willful misrepresentation. The Settlement Accountants shall use their commercially reasonable efforts to reach a determination not more than forty-five (45) days after such referral. In acting under this Agreement, the Settlement Accountants shall rely (and make their determination based) solely on the written submissions of Buyer and Owner and shall not undertake an independent investigation; provided that the Settlement Accountants may make reasonable requests for additional information from Buyer and Owner. Each party will be afforded an opportunity to present to the Settlement Accountants one written presentation to the Settlement Accountants (a copy of which shall be provided to the other party) and one written response to the other party’s presentation. The Settlement Accountants shall act as an expert, and not an arbitrator, in reviewing the submissions of the parties concerning the Purchase Price. The Settlement Accountants will resolve any disagreement with respect to the calculation of the Purchase Price by determining whether Owner’s calculation thereof or Buyer’s calculation thereof is more correct and, based on such determination, adopting either (A) Owner’s final calculation of the Purchase Price, (B) Buyer’s final calculation of the Purchase Price or (C) a value in between Owner’s and Buyer’s respective final calculations of the Purchase Price. The Settlement Accountants shall render a written, reasoned decision with respect to the Purchase Price, which shall include a statement in reasonable detail of the basis for its decision.

(d) Each of Owner and Buyer shall pay its own costs and expenses incurred in connection with this Section 1.06. The costs and expenses of the services of the Settlement Accountants shall be paid by Owner, on the one hand, and Buyer, on the other hand, based on the percentage that the portion of the contested amount not awarded to each party bears to the amount actually contested by such party and such allocation of fees and expenses shall be calculated by the Settlement Accountants and shall be final and binding on the parties. By way of illustration, if the amount in dispute is \$100,000 and the Settlement Accountant’s final determination results in an aggregate net payment of \$75,000 in favor of Sellers, then Buyer and Owner shall pay seventy-five percent (75%) and twenty-five percent (25%), respectively, of such fees and expenses.

(e) If the final Purchase Price as finally determined under this Section 1.06 is less than the Estimated Purchase Price, (such difference, the “**Negative Amount**”), then, within five (5) business days of the date the Purchase Price is final and binding upon the parties in accordance with the terms hereof, Owner shall pay (or cause to be paid) to Buyer an amount in cash equal to the Negative Amount.

(f) If the final Purchase Price as determined under this Section 1.06 is greater than the Estimated Purchase Price (such difference, the “**Positive Amount**”), then within five (5) business days of the date the Purchase Price is final and binding upon the parties in accordance with the terms hereof, Buyer shall pay (or cause to be paid) to Sellers an

amount in cash equal to the Positive Amount, by wire transfer of immediately available funds to the account(s) designated by Owner.

(g) Any payments made pursuant to Section 1.06 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 1.07 Allocation of Purchase Price. Sellers and Buyer agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be allocated first among the Sellers and then among the Purchased Assets for U.S. federal income tax purposes in accordance with Section 1060 of the Code and Treasury Regulations thereunder and the methodology set forth in the allocation schedule attached hereto as Annex A (the “**Allocation Schedule**”). Within ninety (90) days after the final determination of the Purchase Price, Buyer shall provide Sellers with an allocation (the “**Purchase Price Allocation**”) of the Purchase Price and Assumed Liabilities (plus other relevant items) among the Purchased Assets which shall be prepared consistent with the methodology set forth on the Allocation Schedule. Buyer shall permit Sellers to review and comment on the Purchase Price Allocation and shall consider in good faith such revisions as are reasonably requested by Sellers. Buyer and Sellers agree for all Tax reporting purposes to report the transactions contemplated by this Agreement in accordance with the Purchase Price Allocation and to not take any position (or allow any other Person to take any position) during the course of any audit or other Action inconsistent with the Purchase Price Allocation, unless otherwise required by applicable Law.

Section 1.08 Withholding Tax. Notwithstanding anything in this Agreement to the contrary, Buyer, Buyer’s Affiliates and any other applicable payor, shall be entitled to deduct and withhold from any amount payable to any Person pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code, Treasury Regulations or other applicable Law; provided, however, that in the event that the Buyer determines that such withholding is required, the Buyer shall notify Sellers of such determination at least five (5) days prior to such withholding, and shall reasonably cooperate with Sellers to reduce and/or eliminate any such withholding Taxes to the extent permitted by applicable Law. If Buyer, Buyer’s Affiliates or any other applicable payor, as the case may be, so withholds amounts from funds disbursed pursuant to this Agreement and properly remits to the appropriate taxing authority, such amounts shall be treated for all purposes of this Agreement as having been paid to such Person in respect of which Buyer, Buyer’s Affiliates or any other applicable payor, as the case may be, made such deduction and withholding.

Section 1.09 Third Party Consents. To the extent that Sellers’ rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Sellers, at Buyer’s expense and direction, shall use their respective commercially reasonable efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer’s rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Sellers, to the extent permitted by

Law applicable to the Purchased Asset, shall act after the Closing as Buyer's agent in order to obtain for it the benefits thereunder (and subject Buyer to the burden thereunder) and shall cooperate, to the extent permitted by Law applicable to the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer and cause Buyer to assume the burden thereunder.

ARTICLE II CLOSING; TERMINATION

Section 2.01 Closing. The closing of the transactions contemplated hereby ("**Closing**") shall be held telephonically and electronically at 10:00 a.m., EST, on the third (3rd) Business Day following full satisfaction or due waiver of all of the closing conditions set forth in Sections 2.03 and 2.04 below (other than those conditions to be satisfied at Closing) or at such other time or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto (the "**Closing Date**"). The Closing shall be deemed completed as of 12:01 a.m., local time, on the morning of the Closing Date (the "**Effective Time**").

Section 2.02 Closing Deliverables.

- (a) At the Closing, Sellers and Owner shall deliver to Buyer the following:
 - (i) a bill of sale in form and substance reasonably satisfactory to Buyer (the "**Bill of Sale**") and duly executed by Sellers, transferring the tangible personal property included in the Purchased Assets to Buyer;
 - (ii) an assignment and assumption agreement in form and substance reasonably satisfactory to Buyer (the "**Assignment and Assumption Agreement**") and duly executed by Sellers, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;
 - (iii) one or more assignments in form and substance reasonably satisfactory to Buyer (the "**Intellectual Property Assignments**") and duly executed by Sellers, transferring all of Sellers' right, title and interest in and to the Intellectual Property Assets to Buyer;
 - (iv) the Transition Services Agreement in the form of Exhibit A attached hereto (the "**Transition Services Agreement**") and duly executed by Sellers and Owner;
 - (v) the Sublease Agreement in the form of Exhibit B attached hereto (the "**Sublease Agreement**"), duly executed by miraDry and landlord;
 - (vi) the Estimated Statement, pursuant to Section 1.05(b);
 - (vii) a release in form and substance reasonably satisfactory to Buyer with respect to the Funded Obligations set forth on Schedule 2.02(a)(vii);

(viii) an IRS Form W-9 from each Seller;

(ix) evidence of receipt of the third-party consents, if any, set forth on Schedule 2.02(a)(ix) in form and substance reasonably satisfactory to Buyer;

(x) evidence, in form and substance reasonably satisfactory to Buyer, that the Sellers have responded to all outstanding queries as of the Closing from the Notified Body with respect to the Sellers' Medical Device Directive certification; and

(xi) evidence, in form and substance reasonably satisfactory to Buyer, that Sellers have renewed the mark "Conformite Europeenne No. CE 0050 – 252.907" on or prior to May 26, 2021 with no field safety corrective actions required by relevant Governmental Authorities or the National Standards Authority of Ireland.

(b) At the Closing, Buyer shall pay the Estimated Purchase Price to Sellers by wire transfer of immediately available funds to the account(s) designated by Owner by written notice to Buyer prior to the Closing.

(c) At the Closing, Buyer shall deliver to Sellers the following:

(i) the Assignment and Assumption Agreement duly executed by Buyer;

(ii) the Transition Services Agreement duly executed by Buyer; and

(iii) the Sublease Agreement duly executed by Buyer.

Section 2.03 Conditions to Buyer's Obligations. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or Buyer's waiver) of the following conditions as of the Closing Date:

(a) The Fundamental Representations contained in Article III shall be true and correct in all respects at and as of the time of the Closing, as if made on the Closing Date and the Closing Date were substituted for the date of this Agreement throughout such representations and warranties; provided those representations and warranties that address matters as of any other particular date shall be shall have been true and correct as of such particular date and (ii) all of the other representations and warranties set forth in Article III shall be true and correct in all material respects (and in all respects if such representations and warranties are qualified by the word "material" or "Material Adverse Effect") at and as of the time of the Closing, as if made on the Closing Date and the Closing Date were substituted for the date of this Agreement throughout such representations and warranties; provided those representations and warranties that address matters as of the date of this Agreement or any other particular date shall be shall have been true and correct as of such particular date;

(b) Sellers and Owner shall have performed in all material respects all of the covenants and agreements required to be performed by them under this Agreement at or prior to the Closing;

(c) no temporary restraining order, preliminary or permanent injunction or other judgment or order issued by a court or agency of competent jurisdiction or other Law shall be in effect which prohibits, restrains or renders illegal the consummation of the transactions contemplated hereby or would cause such transactions to be rescinded;

(d) Owner shall have delivered to Buyer a certificate, dated the Closing Date, stating that the preconditions specified in Sections 2.03(a) and 2.03(b), as they relate to Sellers and Owner, have been satisfied;

(e) Sellers and Owner, as applicable, shall have deliver or cause to be delivered to Buyer the deliverables set forth in Section 2.02(a) above.

Section 2.04 Conditions to Sellers' Obligations. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by Owner on behalf of Sellers) of the following conditions as of the Closing Date:

(a) (i) the Fundamental Representations contained in Article IV shall be true and correct in all respects at and as of the time of the Closing, as if made on the Closing Date and the Closing Date were substituted for the date of this Agreement throughout such representations and warranties, except for those representations and warranties that address matters as of any other particular date (in which case such representations and warranties shall have been true and correct in all respects as of such particular date) and (ii) all of the other representations and warranties contained in Article IV shall be true and correct in all material respects (and in all respects if such representations and warranties are qualified by the word "material" or "material adverse effect") at and as of the time of the Closing, as if made on the Closing Date and the Closing Date were substituted for the date of this Agreement, except for those representations and warranties that address matters only as of the date of this Agreement or any other particular date (in which case such representations and warranties shall have been true and correct in all material respects (and in all respects if such representations and warranties are qualified by the word "material" or "material adverse effect") as of such particular date);

(b) Buyer shall have performed in all material respects all of the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing;

(c) no temporary restraining order, preliminary or permanent injunction or other judgment or order issued by a court or agency of competent jurisdiction or other Law shall be in effect which prohibits, restrains or renders illegal the consummation of the transactions contemplated hereby or would cause such transactions to be rescinded;

(d) Buyer shall have delivered to Sellers a certificate of Buyer, dated the Closing Date, stating that the conditions specified in Sections 2.04(a) and 2.04(b), as they relate to Buyer, have been satisfied; and

(e) Buyer shall have delivered to Sellers the deliverables set forth in Section 2.02(c).

Section 2.05 Termination.

(a) This Agreement may be terminated at any time prior to the Closing:

(i) by the mutual written consent of Buyer and Owner;

(ii) by Buyer (if it is not in material breach of its representations, warranties or covenants under this Agreement so as to cause any of the conditions in Section 2.04 not to be satisfied), if there has been a material breach by Sellers or Owner of any representation, warranty, covenant or other agreement contained herein which has prevented the satisfaction of any condition to the obligations of Buyer in Section 2.03 and such breach has not been waived by Buyer or cured by Sellers or Owner, as applicable within 10 business days after Owner's receipt of written notice thereof from Buyer;

(iii) by Owner (if none of Owner or Sellers is in material breach of their respective representations, warranties or covenants under this Agreement so as to cause any of the conditions in Section 2.03 not to be satisfied), if there has been a material breach Buyer of any representation, warranty, covenant or other agreement contained herein which has prevented the satisfaction of any condition to the obligations of Sellers in Section 2.04 and such breach has not been waived by Owner or cured by Buyer within 10 business days after Buyer's receipt of written notice thereof from Owner;

(iv) by Buyer or Owner, if the transactions contemplated hereby have not been consummated on or before July 10, 2021, unless the failure of the transaction to be consummated by such date is the primary result of, or primarily caused by, the failure of the party seeking to exercise such termination right to perform or observe any of the covenants or agreements of such party set forth in this Agreement; or

(v) if a court of competent jurisdiction or other Governmental Authority shall have issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated under this Agreement and such order or action shall have become final and nonappealable.

(b) The party desiring to terminate this Agreement pursuant to clauses (ii), (iii), or (iv) of Section 2.05(a) shall give written notice of such termination to the other parties hereto.

(c) In the event this Agreement is terminated by either Buyer or Owner as provided in Section 2.05(a), the provisions of this Agreement shall immediately become void and of no further force and effect (other than Section 5.04 (Public Announcements), and Article VIII, each of which shall survive the termination of this Agreement in accordance with their respective terms), and there shall be no liability on the part of Buyer, Sellers or Owner to any other party hereto, except for breaches of this Agreement prior to the time of such termination by Buyer, Sellers or Owner or in the event of a willful breach or fraud.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLERS AND OWNER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, each of Sellers and Owner, jointly and severally, represents and warrants to Buyer that the statements contained in this Article III are true and correct as of the date hereof. The Disclosure Schedules will be arranged in sections corresponding to the numbered sections and lettered subsections contained in this Article III, and the disclosure in any such section or subsection of the Disclosure Schedules shall qualify the corresponding representation or warranty in this Article III and any other such representation or warranty to which it is reasonably apparent on the face of such disclosure that such disclosure should apply.

Section 3.01 Organization and Qualification of Sellers. Each Seller is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and has full corporate/company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted. Section 3.01 of the Disclosure Schedules sets forth each jurisdiction in which each Seller is licensed or qualified to do business, and Sellers are duly licensed or qualified to do business and are in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary, except where the failure to be in good standing would not be material to the Business.

Section 3.02 Authority of Sellers and Owners.

(a) Each Seller has full corporate or similar power and authority to enter into this Agreement and the Ancillary Documents to which such Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each Seller of this Agreement and any Ancillary Document to which such Seller is a party, the performance by such Seller of its obligations hereunder and thereunder and the consummation by such Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate or similar action on the part of such Seller. This Agreement has been duly executed and delivered by Sellers, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Sellers enforceable against Sellers in accordance with its terms, except that such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally, and is subject to general principles of equity. When

each Ancillary Document to which each Seller is or will be a party has been duly executed and delivered by such Seller (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of such Seller enforceable against it in accordance with its terms, except that such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally, and is subject to general principles of equity.

(b) Owner has full power and authority to enter into this Agreement and the Ancillary Documents to which Owner is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Owner, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms, except that such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally, and is subject to general principles of equity. When each Ancillary Document to which Owner is or will be a party has been duly executed and delivered by Owner (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Owner enforceable against it in accordance with its terms, except that such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally, and is subject to general principles of equity.

Section 3.03 No Conflicts; Consents. The execution, delivery and performance by Sellers and Owner of this Agreement and the Ancillary Documents to which each is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Sellers; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Sellers, Owner the Business or the Purchased Assets, which would negatively affect, in a material respect, the Business or the Purchased Assets or the ability of Sellers or the Owner to consummate the transactions contemplated by this Agreement or any Ancillary Document; (c) except as set forth in Section 3.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any (i) Assigned Contract, (ii) Assumed Permit or (iii) any other Contract or Permit to which Sellers or Owner is a party or by which Sellers, Owner or the Business is bound or to which any of the Purchased Assets are subject, which, in the case of this clause (iii) would have Material Adverse Effect; or (d) result in the creation or imposition of any material Encumbrance other than Permitted Encumbrances on the Purchased Assets. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Sellers or Owner in connection with the execution and delivery of this Agreement or any of the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, which, if not obtained or made, would negatively affect, in a material respect, the Business or the

Purchased Assets or the ability of Sellers or the Owner to consummate the transactions contemplated by this Agreement or any Ancillary Document.

Section 3.04 Financial Statements. Section 3.04 of the Disclosure Schedules contains complete copies of (a) the unaudited internal balance sheets, statements of income and statements of cash flows of the Business as of and for the fiscal years ended December 31, 2019 and December 31, 2020 (the “**Year-End Financial Statements**”), and (b) the unaudited internal balance sheet, statements of income and statements of cash flows of the Business as of and for the two (2)-month period ended on February 28, 2021 (the “**Interim Financial Statements**” and together with the Year-End Financial Statements, the “**Financial Statements**”). Except as set forth on Section 3.04 of the Disclosure Schedules, the Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Year-End Financial Statements). The Financial Statements are based on the books and records of the Business, and fairly present in all material respects the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated. The balance sheet of the Business as of December 31, 2020 included in the Year-End Financial Statements is referred to herein as the “**Balance Sheet**” and the date thereof as the “**Balance Sheet Date**” and the balance sheet of the Business as of February 28, 2021 included in the Interim Financial Statements is referred to herein as the “**Interim Balance Sheet**” and the date thereof as the “**Interim Balance Sheet Date**”.

Section 3.05 [Reserved]

Section 3.06 Absence of Certain Changes, Events and Conditions. Except as set forth on Section 3.06 of the Disclosure Schedules, since the Balance Sheet Date and through the date of this Agreement, (a) there has not been any event, occurrence or development that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (b) there has not been any:

- (i) material change in any method of accounting or accounting practice for the Business;
- (ii) material change in cash management practices and policies, practices and procedures with respect to collection of Accounts Receivable, establishment of reserves for uncollectible Accounts Receivable, accrual of Accounts Receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;
- (iii) entry into any Contract that would constitute a Material Contract;
- (iv) incurrence, assumption or guarantee of any indebtedness for borrowed money in connection with the Business except unsecured current

obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(v) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Balance Sheet, except for the sale of Inventory in the ordinary course of business;

(vi) material waiver of any rights constituting Purchased Assets;

(vii) transfer or assignment of or grant of any license or sublicense under or with respect to any material Intellectual Property Assets or Intellectual Property Agreements (except non-exclusive licenses or sublicenses granted in the ordinary course of business consistent with past practice);

(viii) abandonment or lapse of or failure to maintain in full force and effect any material Intellectual Property Registration included in the Intellectual Property Assets;

(ix) material damage, destruction or loss, or any material interruption in use, of the Purchased Assets (as a whole), whether or not covered by insurance;

(x) acceleration, termination, material modification to or cancellation of any Assigned Contract or Assigned Permit (including and material change in the regulatory status of the Business);

(xi) material capital expenditures obligations which would constitute an Assumed Liability;

(xii) imposition of any material Encumbrance upon any of the Purchased Assets (other than a Permitted Encumbrance);

(xiii) adoption by a Seller of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(xiv) purchase, lease or other acquisition of the right to own, use or lease any property or assets in connection with the Business, except for purchases of supplies in the ordinary course of business consistent with past practice; or

(xv) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 3.07 Material Contracts.

(a) Section 3.07(a) of the Disclosure Schedules lists each of the following Contracts to which any Seller is a party or by which it is bound in connection with the

Business or the Purchased Assets (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Leased Real Property (including without limitation, brokerage contracts) listed or otherwise disclosed in Section 3.10(a) of the Disclosure Schedules and all Intellectual Property Agreements set forth in Section 3.11(b) of the Disclosure Schedules, being “**Material Contracts**”):

- (i) all Contracts with respect to the Business which involved payments to or from the Sellers in an amount in excess of \$200,000 for the calendar year 2020 and which, in each case, cannot be cancelled without penalty or without more than sixty (60) days’ notice;a
- (ii) all Contracts entered into with a Material Customer or Material Supplier;
- (iii) all Contracts entered after the Miramar Closing Date that relate to the acquisition or disposition of any business, a material amount of stock or assets of any third party (whether by merger, sale of stock, sale of assets or otherwise), in each case which relate to the Business or the Purchased Assets;
- (iv) all Contracts that require any Seller to purchase or sell a stated portion of the requirements or outputs of the Business or that contain “take or pay” provisions;
- (v) all broker, distributor, dealer, manufacturer’s representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts with respect to the Business or the Purchased Assets;
- (vi) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) and which are not cancellable without material penalty or without more than thirty (30) days’ notice, excluding any offer letters providing for at-will employment without any severance obligations, offer letters that are terminable on the statutory minimum amount of notice required under applicable law, and any employee invention assignment agreement on the form of employee invention assignment agreement provided to Buyer prior to the date hereof;
- (vii) except for Contracts relating to trade receivables, all Contracts relating to indebtedness (including, without limitation, guarantees) that create an Encumbrance on the Purchased Assets (other than a Permitted Encumbrance);
- (viii) all Contracts with any Governmental Authority with respect to the Business;
- (ix) all Contracts that relate to the Business that limit or purport to limit the ability of any Seller to compete in any line of business or with any Person or in any geographic area or during any period of time;

- (x) all joint venture or similar Contracts with respect to the Business;
- (xi) all Contracts that grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Purchased Assets;
- (xii) all powers of attorney with respect to the Business or any Purchased Asset;
- (xiii) all collective bargaining agreements or Contracts with any union affecting the employees of a Seller;
- (xiv) any Contract for capital expenditures or the acquisition or construction of fixed assets with respect to the Business having a value greater than \$200,000;
- (xv) any Contract entered into in the past three years related to the settlement by a Seller of any Proceeding having a value greater than \$200,000; and
- (xvi) any other Contract not otherwise constituting a Material Contract that would reasonably be expected to be material to the Business if breached by a Seller in such a manner as would (A) permit any other party to cancel or terminate the same (with or without notice of passage of time); (B) provide a basis for any other party to claim money damages (either individually or in the aggregate with all other such claims under that contract) with respect to the Business; or (C) give rise to a right of acceleration of any material obligation or loss of any material benefit under such Contract.

(b) Each Assigned Contract is valid and binding on the applicable Seller(s) in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally, and general principles of equity) and is in full force and effect. None of Sellers or, to Sellers' Knowledge, any other party thereto is in breach of or default under (or, to Sellers' Knowledge, is alleged to be in breach of or default under) in any material respect, or has provided or received any written notice to terminate, any Assigned Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Assigned Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer. There are no material disputes pending or, to Sellers' Knowledge, threatened in writing under any Assigned Contract.

Section 3.08 Title to Purchased Assets. Sellers have good and valid title to all of the Purchased Assets. All such Purchased Assets are free and clear of Encumbrances except for the following (collectively referred to as “**Permitted Encumbrances**”):

- (a) liens for Taxes not yet due and payable or the validity of which are being contested in good faith;
- (b) mechanics’, carriers’, workmen’s, repairmen’s or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business or the Purchased Assets;
- (c) easements, rights of way, zoning ordinances and other similar encumbrances affecting Leased Real Property which are not, individually or in the aggregate, material to the Business or the Purchased Assets, which do not prohibit or interfere with the current operation of any Leased Real Property and which do not render title to any Leased Real Property unmarketable; or
- (d) nonexclusive licenses entered into in the ordinary course of business.

Section 3.09 Condition of Assets; Sufficiency.

- (a) Except as set forth in Section 3.09(a) of the Disclosure Schedules, the furniture, fixtures, machinery, equipment and other items of tangible personal property included in the Purchased Assets are structurally sound, are in good operating condition and repair, subject to ordinary course wear and tear.
- (b) Except as set forth on Section 3.09(b) of the Disclosure Schedules, the Purchased Assets, together with the services being provided under the TSA, are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted by the Sellers immediately prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as conducted by Sellers immediately prior to Closing. For clarity, the representations and warranties in this Section 3.09(b) do not address Intellectual Property matters, which are addressed exclusively in Section 3.11.

Section 3.10 Real Property.

- (a) The Sellers do not own in fee any real property.
- (b) Section 3.10(b) of the Disclosure Schedules sets forth each parcel of real property leased by any Seller and primarily used in the conduct of the Business as currently conducted (together with all rights, title and interest of Sellers in and to leasehold improvements relating thereto, including, but not limited to, security deposits, reserves or prepaid rents paid in connection therewith, collectively, the “**Leased Real Property**”), and a true and complete list of all leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and

other agreements with respect thereto, pursuant to which Sellers holds any Leased Real Property (collectively, the “Leases”). Sellers have delivered to Buyer a true and complete copy of each Lease. With respect to each Lease:

(i) such Lease is valid, binding, enforceable and in full force and effect (except as may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors’ rights generally, and general principles of equity);

(ii) No Seller is in material breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and Sellers have paid all rent due and payable under such Lease;

(iii) Sellers have not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by any Seller under any of the Leases and, to the Knowledge of Sellers, no other party is in default thereof, and no party to any Lease has exercised any termination rights with respect thereto;

(iv) No Seller has subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(v) No Seller has pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in any Leased Real Property.

(c) No Seller has received any written notice of (i) violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Leased Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Leased Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to adversely affect the ability to operate the Leased Real Property as currently operated. Neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or other casualty.

Section 3.11 Intellectual Property.

(a) Section 3.11(a) of the Disclosure Schedules contains a correct, current and complete list of: (i) all Intellectual Property Registrations owned Sellers and exclusively used or held for exclusive use in the Business, specifying as to each, as applicable: the title, mark, or design; the jurisdiction by or in which it has been issued, registered or filed; the patent, registration or application serial number; the issue, registration or filing date; and the current status; (ii) all unregistered Trademarks included in the Intellectual Property Assets; and (iii) all proprietary Software exclusively used in the Business.

(b) Section 3.11(b) of the Disclosure Schedules contains a correct, current and complete list of all Intellectual Property Agreements: (i) under which any Seller is a licensor or otherwise grants to any Person any right or interest relating to any Intellectual Property Asset, other than non-exclusive licenses with customer and distributors; (ii) under which any Seller is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person; and (iii) which is material to any Seller's ownership or use of any Intellectual Property in the conduct of the Business as currently conducted. Sellers have provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all such Intellectual Property Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. To the Sellers' Knowledge, each Intellectual Property Agreement is valid and binding on Sellers in accordance with its terms and is in full force and effect. Neither Sellers nor, to the Sellers' Knowledge, any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Intellectual Property Agreement.

(c) Except as set forth in Section 3.11(c) of the Disclosure Schedules, Sellers are the sole and exclusive legal and beneficial, and with respect to the Intellectual Property Registrations included in the Intellectual Property Assets, record, owners of all right, title and interest in and to the Intellectual Property Assets, and, to the Sellers' Knowledge, have the valid and enforceable right to use all other Intellectual Property used or held for use in or necessary for the conduct of the Business as currently conducted, in each case, free and clear of Encumbrances other than Permitted Encumbrances. To the Sellers' Knowledge, the Intellectual Property Assets and Licensed Intellectual Property are all of the Intellectual Property owned or controlled by Sellers necessary to operate the Business as presently conducted by Sellers immediately prior to the Closing. Since the Miramar Closing Date, to the Sellers' Knowledge, Sellers have entered into binding, valid and enforceable written Contracts with each current and former employee and independent contractor who, since the Miramar Closing Date, is or was involved in or has contributed to the invention, creation, or development of any Intellectual Property Assets during the course of employment or engagement with Sellers whereby such employee or independent contractor grants to Sellers a present, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Intellectual Property Assets.

(d) Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of or payment of any additional amounts with respect to, or require the consent of any other Person in respect of, the Buyer's right to own or use any Intellectual Property Assets or Licensed Intellectual Property in the conduct of the Business as currently conducted. Immediately following the Closing, all Intellectual Property Assets will be owned or available for use by Buyer on substantially similar terms as they were owned or available for use by Sellers immediately prior to the Closing.

(e) To the Sellers' Knowledge, all of the Intellectual Property Assets and Licensed Intellectual Property are valid and enforceable (except as may be limited by

bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally, and general principles of equity), and all Intellectual Property Registrations included in the Intellectual Property Assets are subsisting and in full force and effect. Since the Miramar Closing Date, Sellers have taken all reasonable and necessary steps to maintain and enforce the Intellectual Property Assets and Licensed Intellectual Property and to preserve the confidentiality of all Trade Secrets included in the Intellectual Property Assets, including by requiring all Persons who, to the Sellers' Knowledge, had access thereto to execute binding, written non-disclosure agreements. Since the Miramar Closing Date, all required filings and fees related to the Intellectual Property Registrations included in the Intellectual Property Assets have been timely submitted with and paid to the relevant Governmental Authorities and authorized registrars.

(f) Since the Miramar Closing Date, to the Sellers' Knowledge, the conduct of the Business, including the use of the Intellectual Property Assets and Licensed Intellectual Property in connection therewith, and the products, processes, and services of the Business have not infringed, misappropriated, or otherwise violated the Intellectual Property or other rights of any Person. To the Sellers' Knowledge, since the Miramar Closing Date, no Person has infringed, misappropriated, or otherwise violated any Intellectual Property Assets or Licensed Intellectual Property.

(g) Since the Miramar Closing Date, there have been no Actions (including any opposition, cancellation, revocation, review, or other proceeding), whether settled, pending or, to the Sellers' Knowledge, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation of the Intellectual Property of any Person by any Seller in the conduct of the Business; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Intellectual Property Assets or Licensed Intellectual Property; or (iii) by any Seller or any other Person alleging any infringement, misappropriation, or other violation by any Person of any Intellectual Property Assets. No Seller is subject to any outstanding Governmental Order (including any motion or petition therefor) that does or would reasonably be expected to restrict or impair the use of any Intellectual Property Assets or Licensed Intellectual Property.

(h) Section 3.11(h) of the Disclosure Schedules contains a correct, current, and complete list of all social media accounts used by Sellers in the conduct of the Business. To the Sellers' Knowledge, since the Miramar Closing Date, Sellers have complied with all terms of use, terms of service, and other Contracts and all associated policies and guidelines relating to its use of any social media platforms, sites, or services in the conduct of the Business (collectively, "**Platform Agreements**"). There are no Actions settled, pending, or, to the Sellers' Knowledge, threatened alleging (i) any breach or other violation of any Platform Agreement by Sellers; or (ii) defamation, any violation of publicity rights of any Person, or any other violation by Sellers in connection with its use of social media in the conduct of the Business.

(i) All Business IT Systems are in good working condition. In the past three (3) years, there has been no malfunction, failure, continued substandard performance, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of the Business IT Systems that has resulted in material disruption or damage to the Business and that has not been remedied. Sellers have taken commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of the Business IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and Software and hardware support arrangements.

(j) Since the Miramar Closing Date, Sellers have complied in all material respects with all applicable Laws and all internal or publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the Business. In the past three (3) years no Seller has (i) to the Sellers' Knowledge, experienced any actual or suspected data breach or other security incident involving personal information in its possession or control or (ii) received any written notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning the Sellers' collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, in each case in connection with the conduct of the Business.

Section 3.12 Inventory. All Inventory included in the Purchased Assets consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established, and for the avoidance of doubt except to the extent that updates may be required to labeling under Healthcare Laws to reflect Buyer's regulatory responsibilities following Closing. All Inventory is owned by Sellers free and clear of all Encumbrances (other than Permitted Encumbrances), and no Inventory is held on a consignment basis.

Section 3.13 Accounts Receivable. All Accounts Receivable included in the Purchased Assets (a) have arisen from bona fide transactions entered into by Sellers involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; and (b) constitute valid claims of Sellers that, to the Sellers' Knowledge, are not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice or as otherwise accrued on the Balance Sheet prepared in connection with the calculation of the Net Asset Value. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to Accounts Receivable arising after the Interim Balance Sheet Date, on the accounting records of the Business have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

Section 3.14 Customers and Suppliers. Section 3.14(a) of the Disclosure Schedules sets forth (a) the twenty-five (25) largest customers (measured by revenue on a consolidated basis) of the Sellers with respect to the Business during each of the fiscal years ended December 31, 2019 and 2020, together with the aggregate revenue from each such customer during such periods

(collectively, the “**Material Customers**”) and (b) the ten (10) largest suppliers (measured by dollar volume on a consolidated basis) of the Sellers with respect to such Business during each of the fiscal years ended December 31, 2019, and 2020, together with the aggregate purchases from each such supplier during such periods (collectively, the “**Material Suppliers**”). Other than as set forth on Section 3.14 of the Disclosure Schedules, as applicable, none of the Material Customers or Material Suppliers has canceled, terminated or declined to renew its commercial relationship with the Sellers or the Business, or, to the Sellers’ Knowledge, has provided written notice of its intent or consideration to do the same. The Sellers are not involved in any material claim or dispute with any such Material Customer or Material Supplier.

Section 3.15 Insurance. Section 3.15 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers’ compensation, vehicular, fiduciary liability and other casualty and property insurance maintained by Sellers or its Affiliates and relating to the Business, the Purchased Assets or the Assumed Liabilities.

Section 3.16 Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 3.16(a) of the Disclosure Schedules, there are no Actions pending or, to Sellers’ Knowledge, threatened against or by any Seller (i) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (ii) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

(b) Except as set forth in Section 3.16(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business. Sellers are in compliance with the terms of each Governmental Order set forth in Section 3.16(b) of the Disclosure Schedules.

Section 3.17 Compliance With Laws; Permits.

(a) Each Seller has since the Miramar Closing Date complied and is now in material compliance with all Laws applicable to the conduct of the Business or the ownership and use of the Purchased Assets.

(b) All material Permits required for Sellers to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Sellers and are valid and in full force and effect. All fees and charges with respect to such material Permits as of the date hereof have been paid in full. Section 3.17(b) of the Disclosure Schedules lists all current Permits issued to Sellers which are related to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any material Permit set forth in Section 3.17(b) of the Disclosure Schedules.

(c) Without limiting the generality of the foregoing:

(i) Since the Miramar Closing Date, each Seller: (A) is and has been in compliance in all material respects with all Healthcare Laws applicable to it, its assets or the Business; (B) has all material and required or necessary permits, licenses, certificates, accreditations and other approvals or authorizations, as applicable, under Healthcare Laws to own, lease or operate the Business as presently conducted (collectively, “Healthcare Permits”); and (C) all such Healthcare Permits are in full force and effect and there exists no material default under, or material violation of, any such Healthcare Permit. To the Knowledge of Sellers, no circumstance or event exists, or has existed or occurred since the Miramar Closing Date, which would reasonably be anticipated to result in the suspension, revocation, termination, material restriction, limitation, modification or non-renewal of any Healthcare Permit. Since the Miramar Closing Date, there has been no written notice of an action, demand, requirement, investigation or other Action by any Governmental Authority, and no Action by any other Person is pending or, to the Knowledge of any Seller, threatened in writing.

(ii) Since the Miramar Closing Date, each product sold by the Business (a “Company Product”) is being or has been tested, researched, developed, manufactured, labeled, stored, and/or distributed in compliance in all material respects with all applicable requirements under the Federal Food, Drug and Cosmetic Act (“FFDCA”), and its implementing regulations and similar foreign, state and local Laws and regulations. No Seller has received any written notice or to the Sellers’ Knowledge, any other communication from the FDA or any other Governmental Authority alleging any material violation of any Laws or judgments applicable to any Company Product. The Sellers have filed, with the FDA or other appropriate Governmental Authority all material required notices under Healthcare Laws, including any Product Medical Device Reports under 21 CFR Part 803 and the Sellers have made copies of such notices available for Buyer.

Section 3.18 [Reserved].

Section 3.19 **Employee Benefit Matters.**

(a) Section 3.19(a) of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, employment, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off (PTO), medical, vision, dental, disability, welfare, Code Section 125 cafeteria, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by Sellers for the benefit of any Transferred Employee or any spouse or dependent of such Transferred

Employee (as listed on Section 3.19(a) of the Disclosure Schedules, each, a “**Benefit Plan**”). Sellers have provided to Buyer accurate summaries of the Benefit Plans.

(b) Except as set forth in Section 3.19(b) of the Disclosure Schedules, neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor or consultant of the Business to severance pay or any change of control payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation (including stock-based compensation) due to any such individual; (iii) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (iv) result in “excess parachute payments” within the meaning of Section 280G(b) of the Code; or (v) require a “gross-up” or other payment to any “disqualified individual” within the meaning of Section 280G(c) of the Code.

Section 3.20 Employment Matters.

(a) Section 3.20(a) of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Business as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) a unique employee identifier; (ii) title or position (including whether full-time or part-time); (iii) hire or retention date; (iv) current annual base compensation rate or contract fee; and (v) commission, bonus or other incentive-based compensation. As of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Business for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of Sellers with respect to any compensation, commissions, bonuses or fees.

(b) Sellers are and have been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to the Business Employees, including all applicable Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers’ compensation, leaves of absence, paid sick leave and unemployment insurance. Sellers are in material compliance with and have complied in all material respects with all immigration laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations with respect to the Business Employees. Sellers (i) have taken reasonable steps to properly classify and treat all of the Business Employees as “employees” and independent contractors as “independent contractors”; and (ii) have taken reasonable steps to properly classify and treat all of the Business Employees as “exempt” or “nonexempt” from overtime requirements under applicable law.

(c) To Sellers' Knowledge, (i) no employee or independent contractor of the Business is in material violation of any material term of any employment contract, consulting contract, non-disclosure agreement, common law non-disclosure obligation, non-competition agreement, non-solicitation agreement, proprietary information agreement or any other agreement relating to confidential or proprietary information, intellectual property, competition, or related matters; and (ii) the continued employment by each Seller of its respective employees engaged in the Business, and the performance of the contracts with each Seller by its respective independent contractors, will not result in any such violation. To the Seller's Knowledge, no Seller has received any notice alleging that any such violation has occurred within the past three (3) years.

(d) Within the past three (3) years, no Seller has effectuated (i) a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of Sellers; or (ii) a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of any Seller; Sellers have not been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state or local law. Except as set forth in Section 3.20(d) of the Disclosure Schedule, no employee of any Seller has suffered an "employment loss" (as defined in the WARN Act) within the past six (6) months.

Section 3.21 Taxes. Except as set forth in Section 3.21 of the Disclosure Schedules:

(a) All income and other material Tax Returns with respect to the Business required to be filed by Sellers have been timely filed and have been prepared in substantial compliance with applicable Law. Such Tax Returns are true, complete and correct in all material respects. All Taxes due and owing by Sellers for a tax period ending on or prior to the Closing Date (whether or not shown on any Tax Return) have been timely paid.

(b) Sellers have withheld and each paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, customer, shareholder or other party, and have complied in all material respects with all information reporting and backup withholding provisions of applicable Law.

(c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of Sellers and no request for any such waiver or extension is currently pending.

(d) No Seller (i) has received written notice from a taxing authority that such Seller is or may be subject to taxation in a jurisdiction in which it does not file a Tax Return, (ii) except as set forth on Section 3.21(d) of the Disclosure Schedule, has, and has never had, a branch, office, agency or permanent establishment in any jurisdiction outside of the jurisdiction in which such Seller was formed, (iii) has ever been a member of an affiliated, consolidated, combined, unitary or similar Tax group, and (iv) has no liability for any

unpaid Taxes of any other Person as a transferee or successor, by contract, or otherwise (excluding, in each case, contracts with a primary purpose unrelated to Tax).

(e) All deficiencies asserted, or assessments made, against Sellers as a result of any examinations by any taxing authority have been fully paid.

(f) No Seller is a party to any Action by any taxing authority. To the Knowledge of the Sellers, there are no pending or threatened Actions by any taxing authority.

(g) There are no Encumbrances for Taxes upon any of the Purchased Assets nor, to Sellers' Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable).

(h) No Seller is a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

(i) Sellers are not, and have not participated in a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

Section 3.22 Brokers. Except as set forth in Section 3.22 of the Disclosure Schedules, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Sellers or Owner.

Section 3.23 Related Parties Transactions. Except as set forth on Section 3.23 of the Disclosure Schedules, none of the Assigned Contracts is with any of Sellers' current or former managers or officers or their respective Affiliates or members of their families.

Section 3.24 Product Warranty; Product Liability.

(a) During the past three (3) years, all of the products manufactured, sold, leased, and delivered by Sellers in connection with the Business have conformed in all material respects with all applicable contractual commitments and all express and implied warranties, and to Sellers' Knowledge, Sellers do not have any material liability for replacement or repair thereof or other damages in connection therewith, subject only to the reserve for product warranty claims set forth on the face of the Interim Balance Sheet as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of Sellers.

(b) To Sellers' Knowledge, Sellers do not have any material liability arising out of any injury to individuals or property as a result of the ownership, possession, or use of any product manufactured, sold, leased, or delivered by the Business.

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Sellers and Owner that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.01 Organization of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware.

Section 4.02 Authority of Buyer. Buyer has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any Ancillary Document to which Buyer are a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Sellers) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each Ancillary Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

Section 4.03 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

Section 4.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Buyer.

Section 4.05 Sufficiency of Funds. Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

Section 4.06 Legal Proceedings. There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to

prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

Section 4.07 No Other Representations.

(a) Buyer acknowledges that the representations and warranties made by Owner and Sellers that are expressly set forth in Article III are the sole and exclusive representations and warranties of Owner and Sellers to Buyer in connection with the transactions contemplated by this Agreement and the Ancillary Documents and Buyer understands, acknowledges and agrees that, unless set forth in Article III, all other representations and warranties express or implied, including any representation or warranty as to merchantability, habitability, workmanship, profitability, future performance, fitness for a particular purpose or the accuracy or completeness of any information, whether or not contained in any other document or other communication, provided or otherwise made available by any Person to Buyer or any Person acting on behalf of Buyer during the course of due diligence or otherwise (including in any management presentation, information or offering memorandum, supplemental information, data room, estimate, projection, forecast, plan, budget or other forward-looking information or other materials or information with respect to any of the above) are specifically disclaimed by Owner and Sellers, and Buyer has not and will not rely on any such information other than the information provided pursuant to the representations and warranties set forth in Article III.

(b) In connection with Buyer's investigation of the Business and the Purchased Assets, Buyer or its Representatives have received from or on behalf of Owner and Sellers certain projections for subsequent calendar years and certain business plan information for such succeeding calendar years. Buyer acknowledges that (i) there are uncertainties inherent in attempting to make such projections, forecasts and plans, (ii) it is familiar with such uncertainties and has made its own evaluation of the adequacy and accuracy of all projections, forecasts and plans so furnished to it and (iii) it acknowledges that such projections and other forecasts and plans do not by themselves constitute representations or warranties.

**ARTICLE V
COVENANTS**

Section 5.01 Employees and Employee Benefits.

(a) Buyer or its Affiliates shall offer employment on an "at will" basis to the employees of the Business set forth on Schedule 5.01(a) who are actively employed as of the Closing Date ("**Business Employees**") in accordance with applicable Law with effect from the Closing Date. Sellers shall take any necessary steps to terminate employment of each such Business Employee who accepts employment with Buyer or its Affiliates. Any such terminated employees who become employees of Buyer shall be referred to herein as the "**Transferred Employees**."

(b) Buyer shall cause its employee compensation and benefits plans and arrangements to recognize each Transferred Employee's years of service and level of seniority prior to the Closing with the respective Seller for purposes of terms of employment, eligibility, vesting and benefit accruals under such plans (except for benefit accruals under any defined benefit pension plan), including vacation, sick or other paid leave accrual rates and employer contribution rates under retirement plans.

(c) Sellers shall be solely responsible, and Buyer shall have no obligations whatsoever for, any compensation, benefits or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of the Business, including, without limitation, hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Sellers at any time and, with respect to any Transferred Employees, relating to any service with Sellers on or prior to the Closing Date, and Sellers shall pay all such amounts to all Transferred Employees on or prior to the Closing Date.

(d) Sellers shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health accident or disability benefits brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring at any time and, with respect to Transferred Employees, with respect to claims that relate to events occurring prior to the Closing. Sellers also shall remain solely responsible for all worker's compensation claims of any current or former employees, officers, directors, independent contractors or consultants of the Business which relate to events occurring at any time and, with respect to Transferred Employees, with respect to claims that relate to events occurring prior to the Closing. Sellers shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.

(e) Buyer and Sellers acknowledge and agree that all provisions contained in this Section 5.01 are included for their sole benefit, and that nothing contained herein, express or implied, (i) is intended to confer any third party beneficiary or other rights (including any right to continued employment for any period, to any particular term or condition of employment or to continued receipt of any specific employee benefit), or (ii) shall constitute an establishment, amendment to or any other modification of any Buyer employee benefit plan, or shall limit the right of Buyer or any of its Affiliates to amend, terminate or otherwise modify any Buyer employee benefit plan following the Closing Date.

Section 5.02 Confidentiality. From and after the Closing, Sellers and Owner shall, and shall cause their respective Affiliates to, hold, and shall use their respective reasonable efforts to cause its or their respective Representatives to hold, in confidence any and all confidential or proprietary information, concerning or included in the Purchased Assets, except to the extent that such information (a) is generally available to and known by the public through no fault of Sellers and/or Owner, any of their respective Affiliates or their respective Representatives; (b) is lawfully acquired by Sellers and/or Owner, any of their respective Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing

such information by a legal, contractual or fiduciary obligation; or (c) is being disclosed in connection with Sellers' or Owner's enforcement of its rights (or in response to a claim) under this Agreement or any Ancillary Document. If Sellers, Owner or any of their respective Affiliates or their respective Representatives are required to disclose any information by judicial or administrative process or by other requirements of Law or listing requirement, Sellers and/or Owner shall, to the extent permitted, promptly notify Buyer in writing and shall disclose only that portion of such information which Sellers or Owner is required to be disclosed, *provided that* Sellers and Owner shall, at Buyer's cost and expense, use reasonable efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 5.03 Non-Competition; Non-Solicitation.

(a) For the period commencing on the Closing Date and ending on the earlier of (x) a change of control of Owner and (y) the fourth anniversary of the Closing Date (the "**Restricted Period**"), Owner shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, (i) engage in or knowingly assist others in engaging in the Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Business in the Territory in any capacity, including as a partner, shareholder, member, agent, trustee or consultant; or (iii) cause or knowingly induce any material actual client, customer, supplier or licensor of the Business (including any existing or former client or customer of Sellers and any Person that becomes a client or customer of the Business after the Closing), or any other Person who has a material business relationship with the Business, to terminate or adversely modify any such actual relationship with the Business.

(b) During the Restricted Period, Owner shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, hire or solicit any Transferred Employee or knowingly encourage any such Transferred Employee to leave such employment or hire any such Transferred Employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such Transferred Employees.

(c) Owner acknowledges that a breach or threatened breach of this Section 5.03 would give rise to irreparable harm to Buyer, for which monetary damages may not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by any Owner of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(d) Owner acknowledges that the restrictions contained in this Section 5.03 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 5.03 should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any court

is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this Section 5.03 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

Section 5.04 Public Announcements. Unless otherwise required by applicable Law or securities exchange requirement, no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement. Notwithstanding the foregoing, Buyer and its Affiliates shall not be restricted from disclosing information to any of its direct and indirect investors, stockholders, limited partners, prospective limited partners and investors, counsel, accountants, consultants and other advisors so long as, in each case, such disclosure has a valid business purpose and is effected in a manner consistent with customary practices. In addition, nothing in this Agreement shall prevent a party from timely making any public announcement or other disclosure as may be required by applicable Law or any applicable securities exchange requirement.

Section 5.05 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of Sellers to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction which would not otherwise constitute Assumed Liabilities shall be treated as Excluded Liabilities.

Section 5.06 Receivables. From and after the Closing, (a) if Sellers or any of their respective Affiliates receives or collects any funds relating to any Accounts Receivable or any other Purchased Asset, Sellers or their respective Affiliates shall remit such funds to Buyer within thirty (30) days after its receipt thereof, and (b) if Buyer or any of its Affiliates receives or collects any funds related to any Excluded Assets, Buyer or such Affiliate shall remit such funds to Owner or its designee within thirty (30) days after its receipt thereof.

Section 5.07 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be borne 50% by Sellers and 50% by Buyer when due. Each party, shall at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and each party shall cooperate with respect thereto as necessary). To the extent permitted under applicable Law, each of the parties shall cooperate as reasonably requested by the other party in order to minimize or eliminate Transfer Taxes arising out of the transactions contemplated by this Agreement.

Section 5.08 Straddle Period Taxes. All Taxes for any Straddle Period, whether imposed or assessed before or after the Closing Date, shall be prorated between Sellers and the Buyer. The amount of Tax that relates to the portion of such Straddle Period ending on the Closing Date shall: (a) in the case of Taxes based on sales, receipts, gross income or net income, be deemed equal to the amount which would be payable if the Straddle Period ended on the Closing Date and (b) in the case of all other Taxes, shall be deemed to be the amount of such Taxes for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period. If any Taxes subject to proration are paid by the Buyer, on the one hand, or Sellers, on the other hand, the proportionate amount of such Taxes paid shall be paid promptly by (or to) the other after the payment of such Taxes.

Section 5.09 Further Assurances.

(a) Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the Ancillary Documents.

(b) Without limiting the foregoing, following the Closing, Buyer shall use commercially reasonable efforts to promptly and timely make such filings, information updates, notifications, and applications necessary to reflect Buyer as the regulatory marketing authorization holder or registered/permitted entity, as applicable, with respect to the relevant Governmental Authorities, for the products and activities of the Business. Buyer shall further ensure that to the extent required for compliance with applicable Healthcare Laws, labeling for Inventory is updated to reflect Buyer as the owner of record for the products and activities of the Business.

(c) For a period of six (6) months following the Closing, Sellers and Owner shall use commercially reasonable efforts to assist and cooperate with Buyer in completing the Medical Device Directive recertification process, including with respect to responding to any follow-up requests or inquiries from the applicable Governmental Authorities.

(d) In the event that any asset (including Intellectual Property) owned by Sellers (or their Affiliates) which Owner and Buyer reasonably agree was exclusively used or held for exclusive use in the conduct of the Business prior to Closing is identified following Closing to not have been included in the Purchased Assets which were transferred to Buyer at Closing, Sellers and Owner shall use commercially reasonable efforts to promptly transfer, convey and deliver such asset to Buyer.

Section 5.10 Conduct of the Business. During the period from the date of this Agreement and continuing until the earlier of the Closing and the termination of this Agreement in accordance with its terms (the “**Pre-Closing Period**”), each of Sellers and Owner agrees that, except (i) as expressly contemplated or permitted by this Agreement, (ii) as required by applicable

Law, or (iii) to the extent that Buyer shall otherwise consent in writing, which consent shall not be unreasonably withheld, conditioned or delayed:

(a) Sellers and Owner shall use their respective commercially reasonable efforts to carry on the Business in the usual, regular and ordinary course in all material respects, in substantially the same manner as heretofore conducted, and, without limiting the generality or effect of the foregoing: (i) use commercially reasonable efforts to keep available the services of the Business Employees; (ii) continue in full force and effect without material modification all insurance policies except for those modifications that may be required by the insurer in connection with the renewal of such policies; (iii) pay its indebtedness and trade and other accounts payable related to the Business generally when and as the same will become due (except for those amounts which may be subject to a good faith dispute) and pay and perform and observe, in all material respects, its obligations under all Assigned Contracts; and (iv) use commercially reasonable efforts to maintain its relationships (contractual or otherwise) with and goodwill with suppliers, distributors, manufacturers, customers, landlords, agents and others having business relationships with it; and

(b) Sellers and Owner shall not take any of the actions that would have been required to be disclosed on Section 3.06(b) of the Disclosure Schedules if such action had been taken after the Balance Sheet Date and before the date of this Agreement.

Section 5.11 Access. During the Pre-Closing Period, Sellers and Owner will give Buyer, its counsel, financial advisors, auditors and other authorized representatives reasonable access to the offices, properties, and books and records of Sellers and the Business; provided that any such access (a) shall be during normal business hours on reasonable prior written notice; and (b) shall not otherwise unreasonably interfere with the conduct of the Business; provided further that nothing herein shall require Sellers or Owner to provide access to, or to disclose any information to, Buyer if such access or disclosure would be in violation of applicable Laws (including the antitrust Laws) or waive any attorney-client privilege.

Section 5.12 Subsequent Actions. After the date hereof, but not later than three (3) Business Days prior to the Closing, Sellers and Owner shall deliver to Buyer from time to time supplements to the Disclosure Schedules (such updated schedules to be referred to herein collectively as the “**Updated Schedules**”) to reflect any fact or condition occurring after the date hereof that would cause a material breach of a representation and warranty of Sellers or Owner had such representation or warranty been made on the Closing Date; provided, however, the Updated Schedules *shall not* be deemed to have cured any breach of any representation or warranty made in this Agreement for purposes of determining whether or not the conditions set forth in Section 2.03 have been satisfied, or for purposes of the indemnification provided for in Article VI. In addition, prior to the Closing, Owner shall prepare in good faith and deliver to Buyer (a) an updated Schedule 1.01(a), which shall constitute the Accounts Receivable to be included in the Purchased Assets, (b) an updated Schedule 1.01(b), which shall constitute the Inventory to be included in the Purchased Assets, (c) an updated Schedule 1.01(h), which shall constitute the Prepaid Expenses to be included in the Purchased Assets, and (d) an updated Schedule 1.03(a), which shall constitute the Accounts Payable to be included in the Assumed Liabilities.

Section 5.13 Exclusivity. During the Pre-Closing Period, Sellers and Owner shall not, and shall cause their respective Affiliates, officers, directors, employees, representatives and agents (including any investment banker, financial advisor, attorney or accountant retained by Sellers or Owner) not to, directly or indirectly, (a) solicit, initiate, engage, knowingly encourage or participate in discussions or negotiations with any Person (other than Buyer and its Affiliates and representatives) with respect to, enter into any agreement or accept any offer to consummate, or knowingly take any other action to facilitate, any inquiry or the making of any proposal which constitutes, or would reasonably be expected to lead to any (i) merger or consolidation involving Sellers or the Business, (ii) sale of substantially all of the assets of Sellers or the Business, (iii) sale of the equity securities of Sellers (or any rights to acquire securities convertible into or exchangeable for, equity securities) or (iv) similar transactions or business combinations for the acquisition of Sellers or the Business or (b) furnish any non-public information with respect to, assist or participate in or knowingly facilitate in any other manner any effort or attempt by any Person (other than Buyer and its Affiliates and representatives) to do or seek to do any of the foregoing; provided that the foregoing restrictions shall not apply to any potential change in control of Owner not specifically focused on the Business or the Purchased Assets.

Section 5.14 Alternate Procedure. Sellers and Buyer hereby agree to follow the “alternate procedure” for U.S. federal employment tax reporting as provided in Section 5 of Rev. Proc. 2004-53, 2004-34 I.R.B. 320 for each applicable U.S. Transferred Employee and to cooperate with each other in furtherance thereof, including Seller timely providing to Buyer all relevant information, including a Form W-4 for each U.S. Transferred Employee. Buyer (and not Seller) shall furnish a Form W-2 to each Transferred Employee, disclosing all wages and other compensation paid for such calendar year, and taxes withheld therefrom.

Section 5.15 Remotely Transferred Assets. At or promptly following the Closing, the applicable Seller shall transfer electronically to the Buyer all of the Purchased Assets that can be transmitted to such Buyer electronically (collectively, the “**Remotely Transferred Assets**”) and shall not deliver any Remotely Transferred Assets to Buyer on any tangible medium unless so requested in writing by Buyer. Promptly following any electronic transmission, each applicable Seller shall notify Buyer in writing with respect to: (i) the date of transmission; (ii) the time transmission was commenced and concluded; and (iii) a general description of the nature of the items transmitted sufficient to distinguish the transmission from other transmissions.

Section 5.16 Privileged Communications. Notwithstanding the inclusion of any Privileged Materials in any Purchased Assets delivered to Buyer in connection with this Agreement or the transactions contemplated hereby (including any Intellectual Property Assets or Books and Records), such inclusion or delivery shall not be deemed to be a waiver of attorney-client privilege with respect to such Privileged Materials, Sellers, Owner and or their respective Affiliate shall retain the right to assert any privileges with respect thereto, and Buyer and its Affiliates shall refrain from using or relying on any Privileged Materials.

Section 5.17 Cooperation; Records and Documents.

(a) In the event and for so long as a Seller or Owner, on the one hand, or Buyer, on the other hand (such party, the “**Contesting Party**”) is actively contesting, defending

against, or undertaking any activity or internal investigation in preparation for or that may be expected to result in any Action in connection with or related to any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction on or prior to the Closing involving the Business and not involving or expected to involve an indemnification claim under Article VI, the other party shall, at the Contesting Party's expense, (i) cooperate with the Contesting Party and its counsel in the contest, defense, or internal investigation, (ii) make available its personnel, and (iii) provide such testimony and access to its books and records, in each case as may be reasonably necessary in connection with the contest, defense, or investigation, at the sole cost and expense of the Contesting Party. The provisions of this Section 5.17(a) shall not be applicable in the case of any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction expected to result in any Action by Owner or a Seller (or an Affiliate thereof) against Buyer (or its Affiliate), or by Buyer (or its Affiliate) against Owner or a Seller (or an Affiliate thereof), or if the application of such provisions would unreasonably and adversely affect the business of the party otherwise required to comply therewith.

(b) Following the Closing Date until the three (3) year anniversary of the Closing, Owner shall provide to Buyer and its Representatives, at Buyer's reasonable request (subject to applicable Laws and any limitations that are reasonably required to preserve any applicable privilege or third party confidentiality obligation), with copies, or, if required by applicable Law, originals, of those records and documents in Owner's possession related to the Business, the Purchased Assets or the Assumed Liabilities (to the extent not included in the Business Records or otherwise not transferred to Buyer) as may be reasonably necessary for Buyer's operation of the Business after the Closing. Following the Closing Date until the three (3) year anniversary of the date of this Agreement, Buyer shall provide to Owner and its Representatives, at Owner's reasonable request (subject to applicable Law and any imitations that are reasonably required to preserve any applicable privilege or third party confidentiality obligation), with copies, or, if required by applicable Law, originals, of those records and documents covering any period prior to the Closing related to the Business, the Purchased Assets, the Excluded Assets or the Excluded Liabilities as may be reasonably necessary for litigation, preparation of financial statements, tax returns and audits or other valid business purposes. If so requested by either Owner or Buyer, the other party shall enter into a customary joint defense agreement with Owner or Buyer with respect to any information to be provided to such party pursuant to this Section 5.17(b).

Section 5.18 Use of "miraDry" Name; Corporate Name. Neither the Sellers, Owner or any of their respective Affiliates will directly or indirectly use (a) the name "miraDry" or any derivative thereof, or (ii) any corporate name with the term "miraDry" included therein, in connection with business activities of the Sellers, Owner or their respective Affiliates following the Closing. Promptly, and in any case within five (5) days following the Closing, Owner shall cause each of the Sellers and any other subsidiary of Owner that includes "miraDry" in its corporate name, to change its corporate name such that it no longer includes "miraDry" or any derivative thereof; *provided that* for so long as Miradry International Sweden AB is in the process of being wound down and/or dissolved, such entity shall not be required to change its name.

ARTICLE VI INDEMNIFICATION

Section 6.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is twelve (12) months from the Closing Date; *provided, that* the Fundamental Representations shall survive for five (5) years after the Closing. Each party's pre-Closing covenants herein shall survive the Closing for twelve (12) months, and all post-Closing covenants shall survive the Closing until performed in accordance with the terms hereof (and any claim with respect to a breach of a post-Closing covenant shall survive until the expiration of the applicable statute of limitations). Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 6.02 Indemnification By Sellers. Subject to the other terms and conditions of this Article VI, from and after the Closing, Sellers and Owner (jointly and severally) shall indemnify each of Buyer and its Affiliates and their respective Representatives (collectively, the "**Buyer Indemnitees**") against any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Sellers and Owner contained in Article III;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Sellers or Owner pursuant to this Agreement; or
- (c) any Excluded Liability.

Section 6.03 Indemnification By Buyer. Subject to the other terms and conditions of this Article VI, from and after the Closing, Buyer shall indemnify each of Owner, Sellers and their respective Affiliates and their respective Representatives (collectively, the "**Sellers Indemnitees**") against any and all Losses incurred or sustained by, or imposed upon, the Sellers Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in Article IV;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or
- (c) any Assumed Liability.

Section 6.04 Certain Limitations. The indemnification provided for in Section 6.02 and Section 6.03 shall be subject to the following limitations:

(a) Sellers and Owner shall not be liable to the Buyer Indemnitees for indemnification under Section 6.02(a) until the aggregate amount of all Losses in respect of indemnification under Section 6.02(a) exceeds \$250,000 (the “**Basket**”), in which event Sellers shall be required to pay or be liable for all such Losses in excess of the Basket. The aggregate amount of all Losses for which Sellers and Owner shall be liable pursuant to Section 6.02(a) shall not exceed \$1,000,000 (the “**Cap**”). Notwithstanding the foregoing, the limitations set forth in this Section 6.04(a) shall not apply to Losses based upon, arising out of, with respect to or by reason of (i) intentional misrepresentation or fraud, or (ii) any inaccuracy in or breach of any Fundamental Representations. In addition, subject to Section 6.04(d), the Basket shall not apply to Losses based on, arising out of, or with respect to or by reason of any inaccuracy in or breach of the representations and warranties of Sellers and the Company in Section 3.09(b) (such a claim, a “**Sufficiency Claim**”).

(b) For purposes of this Article VI, any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to a representation or warranty shall be disregarded and not taken into account in determining both (i) whether a breach of such representation or warranty exists and (ii) the amount of Losses payable to an Indemnified Party with respect to such breach.

(c) Losses that may be recovered from an Indemnifying Party shall take account of and be reduced by (i) any amounts actually recovered by the Indemnified Party or its Affiliate pursuant to any indemnification by or indemnification agreement with any third party (net of any costs or expenses incurred in connection with such recovery), (ii) the amount of any insurance proceeds, contribution payments or reimbursements actually received by the Indemnified Party or its Affiliate in respect thereof (net of any costs or expenses incurred in connection with such recovery) and (iii) an amount equal to the amount of any Tax benefit actually received by the Indemnified Party or its Affiliate in connection with such Losses in the same Tax year as the Loss was incurred (each Person named and source identified in clauses (i), (ii) and (iii), a “**Collateral Source**”). An Indemnified Party shall use commercially reasonable efforts to seek recovery from all Collateral Sources. If the amount to be netted hereunder from any payment required under this Section 6.04(c) is determined after payment by the Indemnifying Party of any amount otherwise required to be paid to an Indemnified Party under this Article VI, the Indemnified Party shall repay to the Indemnifying Party, promptly after such determination, any amount that the Indemnifying Party would not have had to pay pursuant to this Section 6.04(c) had such determination been made at the time of such payment. In addition, the amount indemnifiable by Sellers or Owner hereunder on account of Losses shall be reduced to the extent any indemnifiable amount was reflected as a liability in the calculation of the final Purchase Price as determined pursuant to Section 1.06.

(d) Notwithstanding any provision herein to the contrary, no Buyer Indemnitee may make a Sufficiency Claim without first giving Owner sixty (60) days to cure the

applicable inaccuracy or breach, whether by transferring the applicable asset, providing a replacement or otherwise.

Section 6.05 Indemnification Procedures. The party making a claim under this Article VI is referred to as the “**Indemnified Party**”, and the party against whom such claims are asserted under this Article VI is referred to as the “**Indemnifying Party**”.

(a) If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail (based on the information available to the Indemnified Party at the time), shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is Sellers/Owner, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim (i) that seeks an injunction or other equitable relief against the Indemnified Party, (ii) that relates to or arises in connection with any criminal or quasi criminal proceeding, action, indictment, allegation or investigation, or (iii) if the Indemnifying Party failed or is failing to prosecute or defend such claim in good faith. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to this Section 6.05(a), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party; provided, that (x) if the Losses arising with respect to such Third Party Claim are indemnifiable by the Indemnifying Party and (y) in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing

of its election to defend as provided in this Agreement, or fails to prosecute the defense of such Third Party Claim in good faith, the Indemnified Party may, subject to this Section 6.05(a), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim (provided that any settlement or other resolution of such Third Party Claim by the Indemnified Party shall not be dispositive with respect to whether the Losses thereunder are indemnifiable). Sellers and Buyer shall cooperate with each other in all commercially reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 5.02 and any restrictions necessary to preserve attorney client privilege) records relating to such Third Party Claim. Notwithstanding any other provision of this Agreement, neither the Indemnifying Party nor the Indemnified Party shall enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party or the Indemnifying Party, as applicable (such consent not to be unreasonably conditioned, withheld or delayed).

(b) Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail (based on the information available to the Indemnified Party at the time), shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including reasonable access to the Indemnified Party’s premises and personnel (during normal business hours upon reasonable advanced notice) and the right to examine any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request, subject to any restrictions necessary to preserve attorney-client privilege. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 6.06 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article VI, the Indemnifying Party shall satisfy its obligations within ten (10) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds.

Section 6.07 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 6.08 [Reserved].

Section 6.09 Exclusive Remedies. Subject to Section 1.06, Section 5.03 and Section 8.11, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud or criminal activity on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VI. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VI. Nothing in this Section 6.09 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent or criminal misconduct.

ARTICLE VII DEFINITIONS

The following terms have the meanings specified or referred to in this Article VII:

“**Accounts Receivable**” has the meaning set forth in Section 1.01(a).

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation or summons, whether civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Allocation Schedule**” has the meaning set forth in Section 1.07.

“**Ancillary Documents**” means the Bill of Sale, the Assignment and Assumption Agreement, Intellectual Property Assignments, the Transition Services Agreement, the Sublease Agreement and the other agreements, instruments and documents required to be delivered at the Closing.

“**Assigned Contracts**” has the meaning set forth in Section 1.01(c).

“**Assigned Permits**” has the meaning set forth in Section 1.01(f).

“**Assignment and Assumption Agreement**” has the meaning set forth in Section 2.02(a)(iii).

“**Assumed Liabilities**” has the meaning set forth in Section 1.03.

“**Balance Sheet**” has the meaning set forth in Section 3.04.

“**Balance Sheet Date**” has the meaning set forth in Section 3.04.

“**Basket**” has the meaning set forth in Section 6.04(a).

“**Benefit Plan**” has the meaning set forth in Section 3.19(a).

“**Bill of Sale**” has the meaning set forth in Section 2.02(a)(i).

“**Books and Records**” has the meaning set forth in Section 1.01(j).

“**Business**” has the meaning set forth in the recitals.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in New York, New York or Santa Barbara, California are authorized or required by Law to be closed for business.

“**Business Employees**” has the meaning set forth in Section 5.01(a).

“**Business IT Systems**” means all Software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data, and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) in the conduct of the Business and included in the Purchased Assets.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer Adjustment Payment**” has the meaning set forth in Section 8.14.

“**Buyer Indemnitees**” has the meaning set forth in Section 6.02.

“**Buyer’s Report**” has the meaning set forth in Section 1.06(a).

“**Closing**” has the meaning set forth in Section 2.01.

“**Closing Date**” has the meaning set forth in Section 2.01.

“**Closing Payment**” has the meaning set forth in Section 8.14.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collateral Source**” has the meaning set forth in Section 6.04(c).

“**Contesting Party**” has the meaning set forth in Section 5.17(a).

“**Contracts**” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“**Customer Servicing Related Liabilities**” has the meaning set forth in Section 1.03(d).

“**Direct Claim**” has the meaning set forth in Section 6.05(b).

“**Disclosure Schedules**” means the Disclosure Schedules delivered by Sellers and Buyer concurrently with the execution and delivery of this Agreement.

“**Dollars or \$**” means the lawful currency of the United States.

“**Effective Time**” has the meaning set forth in Section 2.01.

“**Encumbrance**” means any charge, claim, pledge, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way or right of first refusal, or any similar type of encumbrance.

“**Environmental Claim**” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, release of, or exposure to, any Hazardous Materials prior to the Closing; or (b) any actual or alleged non-compliance with or obligation under any Environmental Law prior to the Closing.

“**Environmental Law**” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601

et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; and the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“**ERISA Affiliate**” means all employers (whether or not incorporated) that would be treated together with the Sellers or any of its Affiliates as a “single employer” within the meaning of Section 414 of the Code or Section 4001(b)(1) of ERISA.

“**Estimated Net Asset Value**” has the meaning set forth in Section 1.05(b).

“**Estimated Purchase Price**” has the meaning set forth in Section 1.05(b).

“**Estimated Statement**” has the meaning set forth in Section 1.05(b).

“**Excluded Assets**” has the meaning set forth in Section 1.02.

“**Excluded Books and Records**” has the meaning set forth in Section 1.03(c).

“**Excluded Contracts**” has the meaning set forth in Section 1.02(a).

“**Excluded Liabilities**” has the meaning set forth in Section 1.04.

“**Financial Statements**” has the meaning set forth in Section 3.04.

“**Foundry Agreement**” means the Assignment and License Agreement, dated December 31, 2008, between miraDry (as successor to Miramar Labs, Inc.) and The Foundry, Inc.

“**Fundamental Representations**” means the representations and warranties in Section 3.01, Section 3.02, Section 3.08, Section 3.22, Section 4.01, Section 4.02 and Section 4.04.

“**Funded Obligations**” means any of the following indebtedness or liabilities of Sellers: (a) the aggregate principal amount of, and accrued interest and prepayment penalties, premiums or breakage fees with respect to, all indebtedness for borrowed money; (b) outstanding obligations with respect to capitalized leases; (c) all obligations in respect of outstanding letters of credit, acceptances or similar obligations and any reimbursement agreements with respect thereto; (d) all obligations under interest rate cap agreements, interest rate swap agreements, foreign currency exchange contracts or other hedging contracts (including breakage costs with respect thereto); (e) all obligations that are evidenced by a note, bond, debenture or similar instrument; (f) obligations in respect of any declared but unpaid dividends or distributions; (g) purchase money indebtedness,

(h) mortgages and other interest-bearing Liabilities, (i) obligations for the deferred purchase price of property or services, including any “earnout” or similar contingent purchase price obligations owing to any Person, and (j) credit card payables.

“**GAAP**” means United States generally accepted accounting principles in effect from time to time.

“**Governmental Authority**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Hazardous Materials**” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“**Healthcare Laws**” means all federal and state Laws, rules or regulations relating to the regulation, provision or administration of, or payment for, healthcare products or services, including, but not limited to (a) the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)), the federal Physician Self-Referral Law (commonly known as the “Stark Law”) (42 U.S.C. §§1395nn and 1396b(s)), the federal False Claims Act (31 U.S.C. §3729 et seq.), the federal Criminal False Claims Act (18 U.S.C. § 287), the False Statements Relating to Health Care Matters law (18 U.S.C. § 1035), the federal Civil Monetary Penalties Law (42 U.S.C. §§ 1320a-7a and 1320a-8), the federal Beneficiary Anti-Inducement Statute (42 U.S.C. § 1320a-7a(a)(5)), the HIPAA (as defined below) All Payor Fraud Statute (18 U.S.C. § 1347), the federal Exclusion Laws (42 U.S.C. § 1320a-7), the Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812), or any regulations promulgated pursuant to such statutes, or similar state or local statutes or regulations, (b) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) (“**HIPAA**”), as amended by the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”), any regulations promulgated thereunder, and similar state or local statutes or regulations governing the privacy or security of patient information, (c) the Medicare statute (Title XVIII of the Social Security Act) and the regulations promulgated thereunder, (d) the Medicaid statute (Title XIX of the Social Security Act) and the regulations promulgated thereunder as well as comparable state Medicaid statutes and regulations, (e) the Children’s Health Insurance Program (CHIP) statute (Title XXI of the Social Security Act) and the regulations promulgated thereunder, (f) TRICARE (10 U.S.C. Section 1071 et seq.) and the regulations promulgated thereunder, (g) the U.S. Department of Veterans Affairs (including without limitation, 38 U.S.C. § 1701 *et seq.*), and the regulations promulgated thereunder, (h) federal or state Laws relating to

billing, or claims for, reimbursement of items or services submitted to any Third Party Payor Program, employer or similar entity, or patient, (i) any other federal or state Laws relating to fraudulent, abusive or unlawful practices connected in any way with the provision or marketing of health care items or services, (j) quality and safety laws, rules or regulations relating to the regulation, storage, provision or administration of, or payment for, healthcare products or services, including optical goods, prescription products and controlled substances, or the conducting of clinical research (e.g., Federal Food, Drug & Cosmetics Act (21 U.S.C. §§ 301 et seq.), the Controlled Substances Act (21 U.S.C. §§ 801 et seq.) and the Public Health Service Act, (42 U.S.C. §§ 201 et seq.)), (k) laws governing the provision of services to employees with workers compensation coverage or licensure or certification as a healthcare organization to provide such services, and (l) licensure laws, rules or regulations relating to the regulation, provision or administration of, or payment for, healthcare items, services or goods and the ownership or operation of medical equipment, supplies or accessories, including laws relating the so-called “corporate practice of medicine”, and fee splitting, each of (a) through (l) as amended from time to time.

“**Indemnified Party**” has the meaning set forth in Section 6.05.

“**Indemnifying Party**” has the meaning set forth in Section 6.05.

“**Intellectual Property**” means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) (“**Patents**”); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing (“**Trademarks**”); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing (“**Copyrights**”); (d) internet domain names and social media account or user names (including “handles”), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media sites and pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) industrial designs, and all Patents, registrations, applications for registration, and renewals thereof; (f) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques, and other confidential and proprietary information and all rights therein (“**Trade Secrets**”); (g) computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof (“**Software**”); and (h) all other intellectual or industrial property and proprietary rights.

“**Intellectual Property Agreements**” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to any Intellectual Property that

is used or held for use in the conduct of the Business as currently conducted to which Sellers are a party, beneficiary or otherwise bound.

“**Intellectual Property Assets**” has the meaning set forth in Section 1.01(d).

“**Intellectual Property Assignments**” has the meaning set forth in Section 2.02(a)(iv).

“**Intellectual Property Registrations**” means Intellectual Property that is subject to any issuance, registration, or application by or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued Patents, registered Trademarks, domain names and Copyrights, and pending applications for any of the foregoing.

“**Interim Balance Sheet**” has the meaning set forth in Section 3.04.

“**Interim Balance Sheet Date**” has the meaning set forth in Section 3.04.

“**Interim Financial Statements**” has the meaning set forth in Section 3.04.

“**Inventory**” has the meaning set forth in Section 1.01(b).

“**Knowledge of Sellers or Sellers’ Knowledge**” or any other similar knowledge qualification, means the actual knowledge of any individual set forth on Schedule 7.01, after reasonable inquiry.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Leased Real Property**” has the meaning set forth in Section 3.10(b).

“**Leases**” has the meaning set forth in Section 3.10(b).

“**Liabilities**” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“**Licensed Intellectual Property**” means all Intellectual Property in which any Seller holds any rights or interests granted by other Persons, including any of Sellers’ Affiliates, that is used or held for use in the conduct of the Business as currently conducted.

“**Losses**” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, Taxes, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that “Losses” shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

“**Lower Cap**” has the meaning set forth in Section 6.04(a).

“**Manufacturing PPE**” has the meaning set forth in Section 1.01(e).

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that has, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (a) the business, results of operations, condition (financial or otherwise) of the Business and the Purchased Assets, taken as a whole, or (b) the ability of Sellers to consummate the transactions contemplated hereby on a timely basis, other than, in each case, any event, occurrence, fact, condition or change that results from or is related to: (i) any change in the financial, banking, currency or capital markets in the United States or any general shutdown of the United States government; (ii) changes in law, GAAP or other applicable accounting standards or the interpretations thereof; (iii) acts of God or other calamities, national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof, and whether or not pursuant to the declaration of a national emergency or war, or the occurrence or threatened occurrence of any military or terrorist attack; (iv) any pandemic, including COVID-19 or similar event, (v) any actions taken, or failures to take action, or such other changes or events, in each case, to which Buyer has consented; (vi) the announcement or pendency of, or the taking of any action contemplated by or the compliance with the terms of, this Agreement and the Ancillary Documents, including by reason of the identity of Buyer or any communication by Buyer regarding the plans or intentions of Buyer with respect to the conduct of the Business and including the resignation or termination of any employee following the announcement of the transactions contemplated hereby; or (vii) any item or items set forth in the Disclosure Schedules, in the case of clauses (i), (ii), (iii) and (iv), other than to extent such changes, events, developments or effects disproportionately impact Sellers or the Business in a negative manner relative to the other companies in the industry in which Sellers operate.

“**Material Contracts**” has the meaning set forth in Section 3.07(a).

“**Material Customers**” has the meaning set forth in Section 3.14.

“**Material Suppliers**” has the meaning set forth in Section 3.14.

“**Medical Device Directive**” means Directive 93/42/EEC of 14 June 1993 concerning medical devices.

“**Miramar Closing Date**” means July 26, 2017.

“**NAV Target**” has the meaning set forth in Section 1.05(a).

“**Negative Amount**” has the meaning set forth in Section 1.06(e).

“**Net Asset Value**” means, without duplication, the sum of (i) the Accounts Receivable, Inventory (excluding any Inventory attributable to the purchase orders or other Contracts set forth on Schedule 7.02), the Prepaid Expenses and the book value of the Manufacturing PPE, minus (ii) the Accounts Payable (excluding any amounts owed with respect to the purchase orders or other Contracts set forth on Schedule 7.02) the and Customer Servicing Related Liabilities, in each case

calculated as of the Effective Time in accordance with GAAP, applied consistently with past practice.

“**Owner’s Report**” has the meaning set forth in Section 1.06(b).

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“**Permitted Encumbrances**” has the meaning set forth in Section 3.08(a).

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Platform Agreements**” has the meaning set forth in Section 3.11(h).

“**Positive Amount**” has the meaning set forth in Section 1.06(f).

“**Post-Closing Tax Period**” means any Tax period beginning after the Closing Date and the post-closing portion of any Straddle Period.

“**Pre-Closing Period**” has the meaning set forth in Section 5.10.

“**Pre-Closing Tax Period**” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“**Prepaid Expenses**” has the meaning set forth in Section 1.01(h).

“**Privileged Materials**” has the meaning set forth in Section 1.01(j).

“**Purchase Price**” has the meaning set forth in Section 1.05(a).

“**Purchased Assets**” has the meaning set forth in Section 1.01.

“**Remotely Transferred Employees**” has the meaning set forth in Section 5.15.

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Restricted Period**” has the meaning set forth in Section 5.03(a).

“**Sellers**” has the meaning set forth in the preamble.

“**Seller Expenses**” means all of the expenses, fees or charges incurred by Sellers in the preparation, negotiation, execution and delivery of this Agreement and the other Ancillary Documents and/or any offering or marketing materials and the consummation of the Closing, including without limitation: (a) all attorneys’, accountants’, consultants’, professionals’,

investment bankers' and other advisors' fees and expenses; (b) any transaction bonus, phantom equity payment, change in control payment, severance payment or any similar amounts payable by Sellers to any current or former director, officer, employee or consultant, in connection with the consummation of the transactions contemplated by this Agreement only to the extent of any amounts that remain unpaid as of the Closing, and (c) the employer portion of the payroll Taxes associated with item (b) of this sentence.

“**Sellers Indemnitees**” has the meaning set forth in Section 6.03.

“**Settlement Accountants**” has the meaning set forth in Section 1.06(a).

“**Straddle Period**” means any taxable period commencing on or prior to the Closing Date and ending after the Closing Date.

“**Sublease Agreement**” has the meaning set forth in Section 2.02(a)(v).

“**Taxes**” means all federal, state, local, foreign and other income, corporation, capital gains, excise, gross receipts, ad valorem, sales, goods and services, harmonized sales, use, employment, franchise, profits, gains, property, transfer, escheat, unclaimed property, payroll, social security contributions, intangibles and other taxes, fees, stamp taxes, duties, charges, levies or assessments of any kind whatsoever (whether payable directly or by withholding), together with any interest, any penalties, any fines, additions to tax or additional amounts imposed by any Governmental Authority with respect thereto whether or not disputed and the term “**Tax**” means any one of the foregoing Taxes.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes filed or required to be filed with any taxing authority, including any schedule or attachment thereto, and including any amendment thereof.

“**Territory**” means North America, Central America, Europe, Japan, South Africa, Israel, Australia, China, Hong Kong, India, Korea, Philippines, Singapore, Thailand, Taiwan, Vietnam, New Zealand and any other country worldwide where Sellers have operated the Business at any time prior to the Closing.

“**Third Party Claim**” has the meaning set forth in Section 6.05(a).

“**Transferred Employees**” has the meaning set forth in Section 5.01(a).

“**Transition Services Agreement**” has the meaning set forth in Section 2.02(a)(v).

“**Updated Schedules**” has the meaning set forth in Section 5.12.

“**WARN Act**” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

“**Year-End Financial Statements**” has the meaning set forth in Section 3.04.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 8.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 8.02):

If to Sellers:

Sientra, Inc.
420 South Fairview Avenue, Suite 200
Santa Barbara CA, 93117
E-mail: legal@sientra.com
Attention: General Counsel

with a copy to:

DLA Piper LLP (US)
4365 Executive Drive, Suite 1100
San Diego, California 92121
Attention: Michael Kagnoff
Jon Olsen
Email: Michael.Kagnoff@us.dlapiper.com
Jon.Olsen@us.dlapiper.com

If to Buyer:

c/o 1315 Capital Management, LLC
2929 Walnut Street, #1240
Philadelphia, Pennsylvania 19104
Attention: Adele Oliva
E-mail: adele.oliva@1315capital.com

with a copy to:

Greenberg Traurig, P.A.
401 East Las Olas Blvd., Suite 2000
Fort Lauderdale, Florida 33301
Attention: Matthew Miller
E-mail: millerma@gtlaw.com

Section 8.03 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

Section 8.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.05 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby are not affected in any manner materially adverse to any Party. Any such term or provision held invalid, illegal or incapable of being enforced only in part or degree will remain in full force and effect to the extent not held invalid, illegal or incapable of being enforced. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, such term or provision is hereby deemed modified to give effect to the original written intent of the Parties to the greatest extent consistent with being valid and enforceable under applicable Law.

Section 8.06 Entire Agreement. This Agreement, the Ancillary Documents and the Confidentiality Agreement, dated January 7, 2021, between Owner and 1315 Capital LLC (which shall continue in full force and effect) constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 8.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 8.08 No Third-party Beneficiaries. Except as provided in Article VI, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person

or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE IN EACH CASE LOCATED IN THE CITY OF WILMINGTON AND COUNTY OF NEW CASTLE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT

CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.10(C).

Section 8.11 Specific Performance. The parties agree that irreparable damage may occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to seek specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 8.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 8.13 Prevailing Party. In the event that any party institutes any Action against the other party arising out of or relating to this Agreement and the transactions contemplated hereby, the prevailing party in such Action shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.

Section 8.14 Guarantee. Guarantor hereby irrevocably guarantees the timely payment performance of Buyer's obligations under the provisions of this Agreement (including Buyer's payment obligations under Section 2.02(b) (the "**Closing Payment**") and Section 1.06(f) (if any, a "**Buyer Adjustment Payment**"). This is a guarantee of Buyer's payment obligations, and not of collection. Guarantor hereby waives, for the benefit of Owner and each Seller, (a) any right to require such Person as a condition of Guarantor's performance of this guarantee to proceed against Buyer or pursue any other remedies whatsoever and (b) to the fullest extent permitted by applicable Law, any defenses or benefits that may be derived from or afforded by applicable Law that limit the liability of or exonerate guarantors or sureties, except to the extent that any such defense is available to Buyer. Guarantor understands that Owner and Sellers are relying on this guarantee in entering into this Agreement. Notwithstanding anything to the contrary contained herein, this Section 8.14 and Guarantor's obligations hereunder shall terminate upon payment of the Closing Payment and the Buyer Adjustment Payment (or the final determination that no Buyer Adjustment Payment is required as provided in Section 1.06).

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

MIRADRY, INC.

By: /s/ Ronald Menezes
Name: Ronald Menezes
Title: Chief Executive Officer

MIRADRY HOLDINGS, INC.

By: /s/ Ronald Menezes
Name: Ronald Menezes
Title: Chief Executive Officer

MIRADRY INTERNATIONAL, INC.

By: /s/ Ronald Menezes
Name: Ronald Menezes
Title: Chief Executive Officer

SIENTRA, INC.

By: /s/ Ronald Menezes
Name: Ronald Menezes
Title: Chief Executive Officer

[Signature page – Project Mist APA]

MIRADRY ACQUISITION COMPANY, INC.

By: /s/ Matthew Reber

Name: Matthew Reber

Title: Vice President

1315 CAPITAL II, LP

(solely for purposes of Section 8.14)

By: /s/ Matthew Reber

Name: Matthew Reber

Title: Partner

[Signature page – Project Mist APA]

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT dated as of May 17, 2021 (this “**Sublease**”), is made and entered into by and between **MIRADRY, INC.**, a Delaware corporation (“**Sublandlord**”), and **MIRADRY ACQUISITION COMPANY, INC.**, a Delaware corporation (“**Subtenant**”), with reference to the following facts and understandings:

WHEREAS, IPX Walsh Bowers Investors, L.P., a Delaware limited liability company (“**Landlord**”), as landlord, and Sublandlord, as tenant, are parties to that certain Lease dated as of December 16, 2013 (the “**Original Master Lease**”), as amended by that certain First Amendment to Lease dated as of October 9, 2018 (the “**First Amendment**”; the Original Master Lease, as amended by the First Amendment, is hereinafter referred to as the “**Master Lease**”), under which Landlord leases to Sublandlord certain premises consisting of approximately 29,256 rentable square feet (the “**Premises**”) of the building (the “**Building**”) located at 2845 and 2855 Bowers Avenue and 2790 Walsh Avenue, Santa Clara, California, as more particularly described in the Master Lease, upon the terms and conditions contained therein. Capitalized terms used but not defined herein have the meanings ascribed to them in the Master Lease. A copy of the Master Lease is attached hereto as Exhibit A and made a part hereof;

WHEREAS, Sublandlord and Subtenant are parties to that certain Asset Purchase Agreement dated as of May 11, 2021 (“**Purchase Agreement**”), pursuant to which Subtenant is purchasing the business of Sublandlord conducted at the Premises; and

WHEREAS, Sublandlord and Subtenant wish to enter into a sublease of all of the Premises (the “**Sublease Premises**”) on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. Demise. Sublandlord hereby subleases and demises to Subtenant and Subtenant hereby hires and subleases from Sublandlord the Sublease Premises (which the parties stipulate contain 29,256 rentable square feet), upon and subject to the terms, covenants and conditions hereinafter set forth.

2. Lease Term; Option to Extend.

(a) **Lease Term.** The term of this Sublease (the “**Term**”) shall commence on the closing date under the Purchase Agreement (the “**Sublease Commencement Date**”) and ending, unless sooner terminated as provided herein or as extended as provided in Section 2(b), at midnight on the day before the six (6) month anniversary of the Sublease Commencement Date (“**Sublease Expiration Date**”); provided that in no event shall the Term extend past the date that is two (2) years after the Sublease Commencement Date (the “**End Date**”).

(b) **Option to Extend.**

(i) **Option Periods.**

(A) Subtenant shall have one (1) option to extend the Term for an additional six (6) month period (the “**Initial Option Period**”), which may be exercised by Subtenant’s written notice to Sublandlord and Landlord at least sixty (60) days prior to the Sublease Expiration Date.

(B) After the Initial Option Period, Subtenant may continue to extend the Term by additional three (3) month periods (each, a “**Additional Option Period**”) through the End Date by providing written notice to Sublandlord and Landlord at least sixty (60) days prior to the end of the Term as previously extended.

(C) Notwithstanding the foregoing, upon at least sixty (60) days’ written notice to Sublandlord and Landlord prior to the end of the applicable Term (as previously extended), Subtenant may elect to extend the Term through the End Date (such period, the “**Extended Option Period**”).

(D) For clarity, if Subtenant fails to provide Sublandlord and Landlord with a written extension notice as provided in clause (A), (B) or (C) by the deadline set forth in such clause, then this Sublease shall terminate on the last day of the Term as previously extended via timely delivered extension notices. In addition, if Subtenant extends the Term as provided in this Section 2(b)(i), Subtenant’s sublease for the Option Period, the Additional Option Period or the Extended Option Period shall be on all the terms and conditions of this Sublease, except that the monthly Base Rent shall be as provided in Section 4 below.

(ii) **Documentation.** Sublandlord and Subtenant shall execute and deliver appropriate documentation to evidence any renewal of the Sublease and the terms and conditions of the Sublease during the Option Period, as applicable.

3. Use. The Sublease Premises shall be used and occupied by Subtenant for the uses permitted under and in compliance with the Master Lease and for no other purpose. Subtenant shall, at its sole cost and expense, promptly obtain any and all permits, licenses, and other approvals (the “**Permits**”) required to conduct Subtenant’s business in the Sublease Premises. Within five (5) business days after the request of Landlord or Sublandlord, Tenant shall furnish to the requesting party copies of the Permits and other relevant documentation.

4. Rent.

(a) **Base Rent.**

(i) During the Term (as the same may be extended in accordance herewith), Subtenant shall pay to Sublandlord (or if requested by Landlord, directly to Landlord) the monthly amount of \$77,594.23 (“**Base Monthly Rent**”). The first (1st) monthly installment of Base Rent shall be paid by Subtenant upon the execution of this Sublease.

(ii) Notwithstanding the foregoing, in the event Subtenant elects to extend the Term for the Extended Option Period as provided under Section 2(b)(i)(C), the Base Rent during the twelve (12) month period commencing on the date that is one (1) year after the Sublease Commencement Date shall be \$39,495.60.

(iii) Base Rent and additional rent (including without limitation, late fees) shall hereinafter be collectively referred to as "**Rent.**"

(b) **Prorations.** If the Sublease Commencement Date is not the first (1st) day of a month, or if the Sublease Expiration Date is not the last day of a month, a prorated installment of monthly Base Rent based on a thirty (30) day month shall be paid for the fractional month during which the Term commenced or terminated.

(c) **Additional Rent for Utilities, Other Charges.** Beginning with the Sublease Commencement Date and continuing until the Sublease Expiration Date, Subtenant shall pay to Sublandlord (or if requested by Landlord, directly to Landlord) as additional rent for this subletting all special or after-hours cleaning, heating, ventilating, air-conditioning, elevator and other Building charges incurred at the request of, or on behalf of, Subtenant, or with respect to the Sublease Premises and all other additional expenses, costs and charges payable to Landlord in connection with Master Lease or Subtenant's use of the Sublease Premises.

(d) **Additional Rent for Operating Expenses.** Beginning with the Sublease Commencement Date and thereafter during the Term of this Sublease, Subtenant shall pay to Sublandlord (or if requested by Landlord, directly to Landlord) as additional rent for this subletting all amounts that Sublandlord, as Tenant, is required to pay Landlord, as Tenant's share of Operating Expenses under the Master Lease.

(e) **Payment of Rent.** All Rent shall be payable in lawful money without demand, and without offset, counterclaim, or setoff in monthly installments, in advance, on the first day of each and every month during the Term of this Sublease. All of said Rent is to be paid to Landlord pursuant to the terms and conditions of the Master Lease. Any additional rent payable on account of items which are not payable monthly by Sublandlord to Landlord under the Master Lease is to be paid to Landlord as and when such items are payable by Sublandlord to Landlord under the Master Lease unless a different time for payment is elsewhere stated herein. Upon written request therefor, Sublandlord agrees to provide Subtenant with copies of any statements or invoices received by Sublandlord from Landlord pursuant to the terms of the Master Lease.

(f) **Late Charge.** If Subtenant fails to pay any Rent or any other amounts required to be paid by Subtenant under this Sublease as and when due, such unpaid Rent or other amounts shall be subject to the late charges payable under the terms and conditions of the Master Lease.

5. **Security Deposit.** Concurrently with the execution of this Sublease, Subtenant shall deposit with Sublandlord \$_____ (the "**Deposit**"), which shall be held by Sublandlord as security for the full and faithful performance by Subtenant of its covenants and obligations under this Sublease. The Deposit is not an advance Rent deposit, an advance payment of any

other kind, or a measure of Sublandlord's damage in case of Subtenant's default. If Subtenant defaults in the full and timely performance of any or all of Subtenant's covenants and obligations set forth in this Sublease, then Sublandlord may, from time to time, without waiving any other remedy available to Sublandlord, use the Deposit, or any portion of it, to the extent necessary to cure or remedy the default or to compensate Sublandlord for all or a part of the damages sustained by Sublandlord resulting from Subtenant's default. Subtenant shall immediately pay to Sublandlord within five (5) days following demand, the amount so applied in order to restore the Deposit to its original amount, and Subtenant's failure to immediately do so shall constitute a default under this Sublease. If Subtenant is not in default with respect to the covenants and obligations set forth in this Sublease at the expiration or earlier termination of the Sublease, Sublandlord shall return the Deposit to Subtenant after the expiration or earlier termination of this Sublease. Sublandlord's obligations with respect to the Deposit are those of a debtor and not a trustee. Sublandlord shall not be required to maintain the Deposit separate and apart from Sublandlord's general or other funds and Sublandlord may commingle the Deposit with any of Sublandlord's general or other funds. Subtenant shall not at any time be entitled to interest on the Deposit.

6. Incorporation of Terms of Master Lease.

(a) This Sublease is subject and subordinate to the Master Lease. Subject to the modifications set forth in this Sublease, the terms of the Master Lease are incorporated herein by reference, and shall, as between Sublandlord and Subtenant (as if they were Landlord and Tenant, respectively, under the Master Lease), constitute the terms of this Sublease except to the extent that they are inapplicable to, inconsistent with, or modified by, the terms of this Sublease. In the event of any inconsistencies between the terms and provisions of the Master Lease and the terms and provisions of this Sublease, the terms and provisions of this Sublease shall govern. Subtenant acknowledges that it has reviewed the Master Lease and is familiar with the terms and conditions thereof.

(b) For the purposes of incorporation herein, the terms of the Master Lease are subject to the following additional modifications:

(i) Under all provisions of the Master Lease (under the terms thereof and without regard to modifications thereof for purposes of incorporation into this Sublease) requiring the approval or consent of Landlord, Subtenant shall be required to obtain the approval or consent of both Sublandlord and Landlord, such consent not to be unreasonably withheld, conditioned or delayed.

(ii) Under all provisions of the Master Lease requiring Tenant to submit, exhibit to, supply or provide Landlord with evidence, certificates, or any other matter or thing, Subtenant shall be required to submit, exhibit to, supply or provide, as the case may be, the same to both Landlord and Sublandlord. In any such instance, Sublandlord shall determine if such evidence, certificate or other matter or thing shall be satisfactory.

(iii) Sublandlord shall have no obligation to restore or rebuild any portion of the Sublease Premises after any destruction or taking by eminent domain.

7. **Subtenant's Obligations.** Subtenant covenants and agrees that all obligations of Sublandlord under the Master Lease shall be observed and performed by Subtenant with respect to the Sublease Premises and Subtenant's obligations shall run to Sublandlord and Landlord as Sublandlord may determine to be appropriate or be required by the respective interests of Sublandlord and Landlord. Subtenant agrees to indemnify, defend and hold Sublandlord harmless from and against any and all claims, damages, losses, expenses and liabilities (including reasonable attorneys' fees and costs) incurred as a result of the non-performance, non-observance or non-payment of any of Sublandlord's obligations under the Master Lease which, as a result of this Sublease, are an obligation of Subtenant. Subtenant shall not do, nor permit to be done, any act or thing which is, or with notice or the passage of time would be, a default under this Sublease or the Master Lease.

8. **Sublandlord's Obligations.** Sublandlord agrees that Subtenant shall be entitled to receive all services and rights to be provided by Landlord to Sublandlord under the Master Lease. Notwithstanding the foregoing or anything else to the contrary contained in this Sublease, Subtenant shall look solely to Landlord for all such rights and services and shall not, under any circumstances, seek nor require Sublandlord to perform any of such services, nor shall Subtenant make any claim upon Sublandlord for any damages which may arise by reason of Landlord's default under the Master Lease. Any condition resulting from a default by Landlord shall not constitute as between Sublandlord and Subtenant an eviction, actual or constructive, of Subtenant and no such default shall excuse Subtenant from the performance or observance of any of its obligations to be performed or observed under this Sublease, or entitle Subtenant to receive any reduction in or abatement of the Rent provided for in this Sublease. In furtherance of the foregoing, Subtenant does hereby waive any cause of action and any right to bring any action against Sublandlord by reason of any act or omission of Landlord under the Master Lease. Sublandlord covenants and agrees with Subtenant that Sublandlord will pay all fixed rent and additional rent payable by Sublandlord pursuant to the Master Lease to the extent that failure to perform the same would adversely affect Subtenant's use or occupancy of the Sublease Premises. Sublandlord shall cooperate in all reasonable respects in requesting Landlord performance of its obligations, including filing suit as necessary, provided Subtenant indemnifies Sublandlord for any associated liability or expense.

9. **Default by Subtenant.** In the event Subtenant shall be in default of any covenant of, or shall fail to honor any obligation under this Sublease, Sublandlord shall have available to it against Subtenant all of the remedies available (a) to Landlord under the Master Lease in the event of a similar default on the part of Sublandlord thereunder or (b) at law and/or in equity.

10. **Notices.** Anything contained in any provision of this Sublease to the contrary notwithstanding, Subtenant agrees, with respect to the Sublease Premises, to comply with and remedy any default in this Sublease or the Master Lease which is Subtenant's obligation to cure, within the period allowed to Sublandlord under the Master Lease, even if such time period is shorter than the period otherwise allowed therein due to the fact that notice of default from Sublandlord to Subtenant is given after the corresponding notice of default from Landlord to Sublandlord. Sublandlord agrees to forward to Subtenant, promptly upon receipt thereof by Sublandlord, a copy of each notice of default received by Sublandlord in its capacity as Tenant under the Master Lease. Subtenant agrees to forward to Sublandlord, promptly upon receipt thereof, copies of any notices received by Subtenant from Landlord or from any governmental

authorities. All notices, demands and requests shall be in writing and shall be sent either by hand delivery or by a nationally recognized overnight courier service (e.g., Federal Express), in either case return receipt requested, to the address of the appropriate party. Notices, demands and requests so sent shall be deemed given when the same are received.

Notices to Sublandlord shall be sent to the attention of:

Sientra, Inc. 420 S. Fairview Avenue
Suite 200
Santa Barbara, CA 93117
ATT: General Counsel

Notices to Subtenant shall be sent to the attention of:

miraDry Acquisition Company, Inc.
2929 Walnut Street, Suite 1240
Philadelphia, PA 19104
ATTN: Ian Li

11. Broker. Sublandlord and Subtenant represent and warrant to each other that no brokers were involved in connection with the negotiation or consummation of this Sublease. Each party agrees to indemnify the other, and hold it harmless, from and against any and all claims, damages, losses, expenses and liabilities (including reasonable attorneys' fees) incurred by said party as a result of a breach of this representation and warranty by the other party.

12. Condition of Premises. Subtenant acknowledges that it is subleasing the Sublease Premises "AS-IS" and that Sublandlord is not making any representation or warranty concerning the condition of the Sublease Premises and that Sublandlord is not obligated to perform any work to prepare the Sublease Premises for Subtenant's occupancy. Subtenant acknowledges that it is not authorized to make or do any alterations or improvements in or to the Sublease Premises except as permitted by the provisions of this Sublease and the Master Lease and that it shall deliver the Sublease Premises to Sublandlord on the Sublease Expiration Date in the condition required by the Master Lease.

13. Consent of Landlord. The Master Lease requires Sublandlord to obtain the written consent of Landlord to this Sublease. Sublandlord shall solicit Landlord's consent to this Sublease promptly following the execution and delivery of this Sublease by Sublandlord and Subtenant. In the event Landlord's written consent to this Sublease has not been obtained within [thirty (30)] days after the execution hereof, then this Sublease may be terminated by either party hereto upon notice to the other, and upon such termination neither party hereto shall have any further rights against or obligations to the other party hereto.

14. Termination of the Lease. If for any reason the term of the Master Lease shall terminate prior to the Sublease Expiration Date, this Sublease shall automatically be terminated and Sublandlord shall not be liable to Subtenant by reason thereof unless said termination shall have been caused by the default of Sublandlord under the Master Lease, and said Sublandlord

default was not as a result of a Subtenant default hereunder. For the avoidance of doubt, in the event the closing under the Purchase Agreement does not occur and the Purchase Agreement is terminated in accordance with its terms, this Sublease shall automatically be terminated.

15. OFAC List Representation. Subtenant hereby represents and warrants to Sublandlord and Landlord that neither Subtenant nor any of its officers, directors, shareholders, partners, members or affiliates is or will be an entity or person: (i) that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order 13224 issued on September 24, 2001 (“**EO 13224**”); (ii) whose name appears on the United States Treasury Department’s Office of Foreign Assets Control (“**OFAC**”) most current list of “Specifically Designated National and Blocked Persons” (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>); (iii) who commits, threatens to commit or supports “terrorism,” as that term is defined in EO 13224; or (iv) who is otherwise affiliated with any entity or person listed above.

16. Limitation of Estate. Subtenant’s estate shall in all respects be limited to, and be construed in a fashion consistent with, the estate granted to Sublandlord by Landlord. Subtenant shall stand in the place of Sublandlord and shall defend, indemnify, defend and hold Sublandlord harmless with respect to all covenants, warranties, obligations, and payments made by Sublandlord under or required of Sublandlord by the Master Lease with respect to the Subleased Premises. In the event Sublandlord is prevented from performing any of its obligations under this Sublease by a breach by Landlord of a term of the Master Lease, then Sublandlord’s sole obligation in regard to its obligation under this Sublease shall be to use reasonable efforts in diligently pursuing the correction or cure by Landlord of Landlord’s breach.

17. Attorneys’ Fees. In the event of any action or proceeding brought by either party against the other party to interpret or enforce this Sublease, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or proceeding, including reasonable attorney’s fees and costs.

18. Execution in Counterparts; Facsimile/Email Signature. This Sublease may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Executed copies hereof may be delivered by facsimile or email and, upon receipt, shall be deemed originals and binding upon the parties hereto.

19. Entire Agreement. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Sublease and this Sublease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Sublandlord to Subtenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Sublease. This Sublease, and any exhibits and schedules attached hereto, contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Sublease Premises and shall be considered to be the only agreements between the parties hereto and their representatives and agents. None of the terms, covenants, conditions or provisions of this Sublease can be modified, deleted or added to except

in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Sublease.

[Signatures on Next Page]

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

SUBLANDLORD:

MIRADRY, INC., a Delaware corporation

By: /s/ Oliver Bennett
Name: Oliver Bennett
Title: Director & Corporate Secretary

SUBTENANT:

MIRADRY ACQUISITION COMPANY, INC.,
a Delaware corporation

By: /s/ Arash Khazei
Name: Arash Khazei
Title: Chief Executive Officer

EXHIBIT A

COPY OF MASTER LEASE

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ACTIVE 56637286v2

FIRST AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (TERM LOAN)

This FIRST AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (TERM LOAN) (this “**Agreement**”) is made as of July 14, 2021, by and among **SIENTRA, INC.**, a Delaware corporation, **MIST HOLDINGS, INC.**, a Delaware corporation (formerly known as Miramar Labs, Inc. and MiraDry Holdings, Inc.), **MIST, INC.**, a Delaware corporation (formerly known as Miramar Technologies, Inc. and MiraDry, Inc.), **MIST INTERNATIONAL, INC.**, a Delaware corporation (formerly known as MiraDry International, Inc.), **MIDCAP FINANCIAL TRUST**, as Agent (in such capacity, together with its successors and assigns, “**Agent**”), and the other financial institutions or other entities from time to time parties to the Credit Agreement referenced below, each as a Lender.

RECITALS

A. Agent, Lenders and Borrowers have entered into that certain Second Amended and Restated Credit and Security Agreement (Term Loan), dated as of February 5, 2021 (as supplemented by that certain Limited Consent to Second Amended and Restated Credit and Security Agreement (Term Loan), dated as of June 10, 2021 and as further amended, modified, or supplemented prior to the date hereof, the “**Existing Credit Agreement**”, and as the same is supplemented hereby and as it may be further amended, modified, supplemented and restated from time to time, the “**Credit Agreement**”), pursuant to which the Lenders have agreed to extend certain financial accommodations to Borrowers in the amounts and manner set forth in the Credit Agreement.

B. Borrowers have requested that Agent and the Required Lenders amend certain terms of the Existing Credit Agreement to, among other things, revise the definition of Excluded Accounts and, on and subject to the terms and conditions set forth herein, Agent and Lenders have agreed to so amend the Existing Credit Agreement as more fully set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Lenders and Borrowers hereby agree as follows:

1. **Recitals.** This Agreement shall constitute a Financing Document and the Recitals and each reference to the Credit Agreement, unless otherwise expressly noted, will be deemed to reference the Credit Agreement as amended hereby. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement (including those capitalized terms used in the Recitals hereto).

2. **Amendments to Existing Credit Agreement.** Subject to the terms and conditions of this Agreement, including, without limitation, the conditions to effectiveness set forth in Section 5 hereof, the Existing Credit Agreement is hereby amended as follows:

- (a) The definition of “**Excluded Account**” appearing in Article 1 of the Existing Credit Agreement is hereby amended by:
- (i) deleting the “and” at the end of clause (c) thereof;
 - (ii) deleting the “.” at the end of clause (d) thereof and replacing it with “, and”; and

(iii) adding the following new clause (e):

“(e) during the MiraDry Transition Services Period, the MiraDry Excluded Account; *provided* that only the amounts required to be collected and maintained by the Borrowers for the benefit of MiraDry Buyer pursuant to and in accordance with the MiraDry Transition Services Agreement shall be held in such MiraDry Excluded Account and no other funds of Borrowers shall be commingled therewith.”

(b) Article 1 of the Existing Credit Agreement is hereby amended by adding the defined terms “**MiraDry Buyer**”, “**MiraDry Excluded Account**”, “**MiraDry Transition Services Agreement**”, “**MiraDry Transition Services Effective Date**” and “**MiraDry Transition Services Period**” in the appropriate alphabetical order therein as follows:

“**MiraDry Buyer**” means miraDry Acquisition Company, Inc., a Delaware corporation.

“**MiraDry Excluded Account**” means account number 3301479981 maintained by MiraDry with Silicon Valley Bank.

“**MiraDry Transition Services Agreement**” means that certain Transition Services Agreement, dated as of the MiraDry Transition Services Effective Date, by and between Sientra and MiraDry Borrower.

“**MiraDry Transition Services Effective Date**” means July __, 2021.

“**MiraDry Transition Services Period**” means the period commencing on the MiraDry Transition Services Effective Date and ending on the last day that the Borrowers are required to collect and maintain funds for MiraDry Buyer pursuant to and in accordance with the MiraDry Transition Services Agreement.

3. **Representations and Warranties; Reaffirmation of Security Interest.** To induce Agent and Lenders to enter into this Agreement, each Borrower does hereby represent warrant, represent and covenant to Agent and Lenders that (i) each representation and warranty set forth in the Financing Documents to which such Borrower is a party is hereby restated and reaffirmed as true, correct and complete in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) on and as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date, (ii) no Default or Event of Default has occurred and is continuing as of the date hereof, (iii) Agent has and shall continue to have valid, enforceable and perfected first-priority liens, subject to Permitted Liens, on and security interests in the Collateral and all other collateral heretofore granted by Borrowers to Agent, for the benefit of Agent and each Lender, pursuant to the Financing Documents or otherwise granted to or held by Agent, for the benefit of Agent and each Lender and (iv) each Borrower has the power and is duly authorized to enter into, deliver and perform this Agreement and this Agreement is the legal, valid and binding obligation of such Borrower enforceable against such Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditor’s rights generally or by general equitable principles. Nothing herein is intended to impair or limit the validity, priority or extent of Agent’s security interests in and Liens on the Collateral.

4. **Costs and Fees.** Borrowers agree to promptly pay, or reimburse upon demand for, all reasonable and documented costs and expenses of Agent (including, without limitation, the reasonable

and documented fees, costs and expenses of counsel to Agent) in connection with the preparation, negotiation, execution and delivery of this Agreement and any other Financing Documents or other agreements prepared, negotiated, executed or delivered in connection with this Agreement or transactions contemplated hereby, in accordance with Section 12.14 of the Credit Agreement.

5. **Conditions to Effectiveness.** This Agreement shall become effective as of the date on which each of the following conditions has been satisfied, as determined by Agent in its sole discretion:

(a) Agent shall have received (including by way of facsimile or other electronic transmission) a duly authorized, executed and delivered counterparty of the signature page to this Agreement from each Borrower, the Agent and the Lenders;

(b) Agent shall have received a fully executed copy of an amendment to the Affiliated Credit Agreement, in form and substance reasonably satisfactory to Agent;

(c) all representations and warranties of Borrowers contained herein shall be true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof); and

(d) prior to and after giving effect to the agreements set forth herein, no Default or Event of Default shall exist under any of the Financing Documents.

6. **Post-Closing Covenants.** Borrowers shall, by the date that is [ten (10) Business Days] after the end of the MiraDry Transition Services Period (or such later date as Agent may agree, in its sole discretion), close the MiraDry Excluded Account. Borrowers hereby agree that failure to comply with the requirements set forth in this Section 6 shall constitute an immediate and automatic Event of Default.

7. **Lender Release.** In consideration of the agreements of Agent and Required Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Borrower, voluntarily, knowingly, unconditionally and irrevocably, with specific and express intent, for and on behalf of itself and all of its respective parents, subsidiaries, affiliates, members, managers, predecessors, successors, and assigns, and each of its respective current and former directors, officers, shareholders, agents, and employees, and each of its respective predecessors, successors, heirs, and assigns (individually and collectively, the "Releasing Parties") does hereby fully and completely release, acquit and forever discharge each of Agent, Lenders, and each their respective parents, subsidiaries, affiliates, members, managers, shareholders, directors, officers and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "Released Parties"), of and from any and all actions, causes of action, suits, debts, disputes, damages, claims, obligations, liabilities, costs, expenses and demands of any kind whatsoever, at law or in equity, whether matured or unmatured, liquidated or unliquidated, vested or contingent, choate or inchoate, known or unknown that the Releasing Parties (or any of them) has against the Released Parties or any of them (whether directly or indirectly), based in whole or in part on facts, whether or not now known, existing on or before the date hereof or arising out of this Agreement, that relate to, arise out of or otherwise are in connection with: (i) any or all of the Financing Documents or transactions contemplated thereby or any actions or omissions in connection therewith or (ii) any aspect of the dealings or relationships between or among such Borrower, on the one hand, and any or all of the Released Parties, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof. Each Borrower acknowledges that the foregoing release is a

material inducement to Agent's and Required Lender's decision to enter into this Agreement and agree to the modifications contemplated hereunder, and has been relied upon by Agent and Required Lenders in connection therewith.

8. **No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided in this Agreement, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or the other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. Agent and Lenders confirm that Agent has not made any determination as of the date hereof that any breach of the Existing Credit Agreement exists as of the date hereof. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

9. **Affirmation.** Except as specifically amended pursuant to the terms hereof, each Borrower hereby acknowledges and agrees that the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by such Borrower. Each Borrower covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement and the Financing Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

10. **Miscellaneous.**

(a) **Reference to the Effect on the Credit Agreement.** Upon the effectiveness of this Agreement, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Agreement. Except as specifically amended above, the Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by each Borrower.

(b) **GOVERNING LAW.** THIS AGREEMENT AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(c) **JURY TRIAL.** EACH BORROWER, AGENT AND THE REQUIRED LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH REQUIRED LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH REQUIRED LENDER WARRANTS AND REPRESENTS THAT

IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS

(d) Incorporation of Credit Agreement Provisions. The provisions contained in Section 11.6 (Indemnification), Section 12.7 (Waiver of Consequential and Other Damages), Section 12.8 (Governing Law; Submission to Jurisdiction) and Section 12.9 (Waiver of Jury Trial) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(e) Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(f) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or by electronic mail delivery of an electronic version (e.g., .pdf or .tif file) of an executed signature page shall be effective as delivery of an original executed counterpart hereof and shall bind the parties hereto. The words “execution,” “signed,” “signature,” and words of like import with respect to this shall in each case be deemed to include electronic signatures, signatures exchanged by electronic transmission, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(g) Entire Agreement. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

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

(i) Successors/Assigns. This Agreement shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the parties hereto, subject to the provisions of the Credit Agreement and the other Financing Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this document constitute an agreement executed under seal, the undersigned have executed this Agreement under seal as of the day and year first hereinabove set forth.

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem (SEAL)
Name: Maurice Amsellem
Title: Authorized Signatory

LENDER:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem (SEAL)
Name: Maurice Amsellem
Title: Authorized Signatory

LENDER:

ELM 2020-3 TRUST

By: Midcap Financial Services Capital Management,
LLC, as Servicer

By: /s/ John O'Dea (SEAL)
Name: John O'Dea
Title: Authorized Signatory

ELM 2020-4 TRUST

By: Midcap Financial Services Capital Management,
LLC, as Servicer

By: /s/ John O'Dea (SEAL)
Name: John O'Dea
Title: Authorized Signatory

LENDER:

SILICON VALLEY BANK

By: /s/ Milo Bissin (SEAL)
Name: Milo Bissin
Title: Director

MidCap / Sientra / First Amendment to Second Amended and Restated Credit Agreement (Term Loan)
\\DC - 036639/000049 - 16245991 v2

BORROWER:

SIENTRA, INC.

By: /s/ Ronald Menezes (SEAL)

Name: Ronald Menezes

Title: Chief Executive Officer

MIST HOLDINGS, INC.

By: /s/ Oliver Bennett (SEAL)

Name: Oliver Bennett

Title: Corporate Secretary

MIST, INC.

By: /s/ Oliver Bennett (SEAL)

Name: Oliver Bennett

Title: Corporate Secretary

MIST INTERNATIONAL, INC.

By: /s/ Oliver Bennett (SEAL)

Name: Oliver Bennett

Title: Corporate Secretary

FOURTH AMENDMENT TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN)

This FOURTH AMENDMENT TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN) (this “**Agreement**”) is made as July 14, 2021, by and among **SIENTRA, INC.**, a Delaware corporation, **MIST HOLDINGS, INC.**, a Delaware corporation (formerly known as Miramar Labs, Inc. and MiraDry Holdings, Inc.), **MIST, INC.**, a Delaware corporation (formerly known as Miramar Technologies, Inc. and MiraDry, Inc.), **MIST INTERNATIONAL, INC.**, a Delaware corporation (formerly known as MiraDry International, Inc.), **MIDCAP FUNDING IV TRUST**, as Agent (in such capacity, together with its successors and assigns, “**Agent**”), and the other financial institutions or other entities from time to time parties to the Credit Agreement referenced below, each as a Lender.

RECITALS

A. Agent, Lenders and Borrowers have entered into that certain Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of July 1, 2019 (as amended by that certain Limited Consent and First Amendment to Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of November 7, 2019, as amended by that certain Second Amendment to Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of May 11, 2020, as amended by that certain Third Amendment to Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of February 5, 2021, as supplemented by that certain Limited Consent to Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of June 10, 2021 and as further amended, modified, supplemented prior to the date hereof, the “**Existing Credit Agreement**”, and as the same is supplemented hereby and as it may be further amended, modified, supplemented and restated from time to time, the “**Credit Agreement**”), pursuant to which the Lenders have agreed to extend certain financial accommodations to Borrowers in the amounts and manner set forth in the Credit Agreement.

B. Borrowers have requested that Agent and the Required Lenders amend certain terms of the Existing Credit Agreement to, among other things, revise the definition of Excluded Accounts and, on and subject to the terms and conditions set forth herein, Agent and Lenders have agreed to so amend the Existing Credit Agreement as more fully set forth herein

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Lenders and Borrowers hereby agree as follows:

1. **Recitals.** This Agreement shall constitute a Financing Document and the Recitals and each reference to the Credit Agreement, unless otherwise expressly noted, will be deemed to reference the Credit Agreement as amended hereby. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement (including those capitalized terms used in the Recitals hereto).

2. **Amendments to Existing Credit Agreement.** Subject to the terms and conditions of this Agreement, including, without limitation, the conditions to effectiveness set forth in Section 5 hereof, the Existing Credit Agreement is hereby amended as follows:

(a) The definition of “**Excluded Account**” appearing in Article 1 of the Existing Credit Agreement is hereby amended by:

- (i) deleting the “and” at the end of clause (c) thereof;
- (ii) deleting the “.” at the end of clause (d) thereof and replacing it with “, and”; and
- (iii) adding the following new clause (e):

“(e) during the MiraDry Transition Services Period, the MiraDry Excluded Account; *provided* that only the amounts required to be collected and maintained by the Borrowers for the benefit of MiraDry Buyer pursuant to and in accordance with the MiraDry Transition Services Agreement shall be held in such MiraDry Excluded Account and no other funds of Borrowers shall be commingled therewith.”

(b) Article 1 of the Existing Credit Agreement is hereby amended by adding the defined terms “**MiraDry Buyer**”, “**MiraDry Excluded Account**”, “**MiraDry Transition Services Agreement**”, “**MiraDry Transition Services Effective Date**” and “**MiraDry Transition Services Period**” in the appropriate alphabetical order therein as follows:

“**MiraDry Buyer**” means miraDry Acquisition Company, Inc., a Delaware corporation.

“**MiraDry Excluded Account**” means account number 3301479981 maintained by MiraDry with Silicon Valley Bank.

“**MiraDry Transition Services Agreement**” means that certain Transition Services Agreement, dated as of the MiraDry Transition Services Effective Date, by and between Sientra and MiraDry Borrower.

“**MiraDry Transition Services Effective Date**” means July __, 2021.

“**MiraDry Transition Services Period**” means the period commencing on the MiraDry Transition Services Effective Date and ending on the last day that the Borrowers are required to collect and maintain funds for MiraDry Buyer pursuant to and in accordance with the MiraDry Transition Services Agreement.

3. **Representations and Warranties; Reaffirmation of Security Interest.** To induce Agent and Lenders to enter into this Agreement, each Borrower does hereby represent warrant, represent and covenant to Agent and Lenders that (i) each representation and warranty set forth in the Financing Documents to which such Borrower is a party is hereby restated and reaffirmed as true, correct and complete in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) on and as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date, (ii) no Default or Event of Default has occurred and is continuing as of the date hereof, (iii) Agent has and shall continue to have valid, enforceable and perfected first-priority liens,

subject to Permitted Liens, on and security interests in the Collateral and all other collateral heretofore granted by Borrowers to Agent, for the benefit of Agent and each Lender, pursuant to the Financing Documents or otherwise granted to or held by Agent, for the benefit of Agent and each Lender and (iv) each Borrower has the power and is duly authorized to enter into, deliver and perform this Agreement and this Agreement is the legal, valid and binding obligation of such Borrower enforceable against such Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditor's rights generally or by general equitable principles. Nothing herein is intended to impair or limit the validity, priority or extent of Agent's security interests in and Liens on the Collateral.

4. **Costs and Fees.** Borrowers agree to promptly pay, or reimburse upon demand for, all reasonable and documented costs and expenses of Agent (including, without limitation, the reasonable and documented fees, costs and expenses of counsel to Agent) in connection with the preparation, negotiation, execution and delivery of this Agreement and any other Financing Documents or other agreements prepared, negotiated, executed or delivered in connection with this Agreement or transactions contemplated hereby, in accordance with Section 12.14 of the Credit Agreement.

5. **Conditions to Effectiveness.** This Agreement shall become effective as of the date on which each of the following conditions has been satisfied, as determined by Agent in its sole discretion:

(a) Agent shall have received (including by way of facsimile or other electronic transmission) a duly authorized, executed and delivered counterparty of the signature page to this Agreement from each Borrower, the Agent and the Lenders;

(b) Agent shall have received a fully executed copy of an amendment to the Affiliated Credit Agreement, in form and substance reasonably satisfactory to Agent;

(c) all representations and warranties of Borrowers contained herein shall be true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof); and

(d) prior to and after giving effect to the agreements set forth herein, no Default or Event of Default shall exist under any of the Financing Documents.

6. **Post-Closing Covenants.** Borrowers shall, by the date that is [ten (10) Business Days] after the end of the MiraDry Transition Services Period (or such later date as Agent may agree, in its sole discretion), close the MiraDry Excluded Account. Borrowers hereby agree that failure to comply with the requirements set forth in this Section 6 shall constitute an immediate and automatic Event of Default.

7. **Lender Release.** In consideration of the agreements of Agent and Required Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Borrower, voluntarily, knowingly, unconditionally and irrevocably, with specific and express intent, for and on behalf of itself and all of its respective parents, subsidiaries, affiliates, members, managers, predecessors, successors, and assigns, and each of its respective current and former directors, officers, shareholders, agents, and employees, and each of its respective predecessors, successors, heirs, and assigns (individually and collectively, the "Releasing Parties") does hereby fully and completely release, acquit and forever discharge each of Agent, Lenders, and each their respective parents, subsidiaries, affiliates, members, managers, shareholders, directors, officers and

employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the “Released Parties”), of and from any and all actions, causes of action, suits, debts, disputes, damages, claims, obligations, liabilities, costs, expenses and demands of any kind whatsoever, at law or in equity, whether matured or unmatured, liquidated or unliquidated, vested or contingent, choate or inchoate, known or unknown that the Releasing Parties (or any of them) has against the Released Parties or any of them (whether directly or indirectly), based in whole or in part on facts, whether or not now known, existing on or before the date hereof or arising out of this Agreement, that relate to, arise out of or otherwise are in connection with: (i) any or all of the Financing Documents or transactions contemplated thereby or any actions or omissions in connection therewith or (ii) any aspect of the dealings or relationships between or among such Borrower, on the one hand, and any or all of the Released Parties, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof. Each Borrower acknowledges that the foregoing release is a material inducement to Agent’s and Required Lender’s decision to enter into this Agreement and agree to the modifications contemplated hereunder, and has been relied upon by Agent and Required Lenders in connection therewith.

8. **No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided in this Agreement, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or the other Financing Documents or any of Agent’s rights and remedies in respect of such Defaults or Events of Default. Agent and Lenders confirm that Agent has not made any determination as of the date hereof that any breach of the Existing Credit Agreement exists as of the date hereof. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

9. **Affirmation.** Except as specifically amended pursuant to the terms hereof, each Borrower hereby acknowledges and agrees that the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by such Borrower. Each Borrower covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement and the Financing Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent’s or any Lender’s part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

10. **Miscellaneous.**

(a) **Reference to the Effect on the Credit Agreement.** Upon the effectiveness of this Agreement, each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof,” “herein,” or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Agreement. Except as specifically amended above, the Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by each Borrower.

(b) **GOVERNING LAW.** THIS AGREEMENT AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(c) JURY TRIAL. EACH BORROWER, AGENT AND THE REQUIRED LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH REQUIRED LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH REQUIRED LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS

(d) Incorporation of Credit Agreement Provisions. The provisions contained in Section 11.6 (Indemnification), Section 12.7 (Waiver of Consequential and Other Damages), Section 12.8 (Governing Law; Submission to Jurisdiction) and Section 12.9 (Waiver of Jury Trial) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(e) Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(f) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or by electronic mail delivery of an electronic version (e.g., .pdf or .tif file) of an executed signature page shall be effective as delivery of an original executed counterpart hereof and shall bind the parties hereto. The words “execution,” “signed,” “signature,” and words of like import with respect to this shall in each case be deemed to include electronic signatures, signatures exchanged by electronic transmission, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(g) Entire Agreement. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

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

(i) Successors/Assigns. This Agreement shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the parties hereto, subject to the provisions of the Credit Agreement and the other Financing Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this document constitute an agreement executed under seal, the undersigned have executed this Agreement under seal as of the day and year first hereinabove set forth.

AGENT: **MIDCAP FUNDING IV TRUST,**

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem (SEAL)
Name: Maurice Amsellem
Title: Authorized Signatory

LENDER: **MIDCAP FUNDING IV TRUST,**

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem (SEAL)
Name: Maurice Amsellem
Title: Authorized Signatory

LENDER:

SILICON VALLEY BANK

By: /s/ Milo Bissin (SEAL)

Name: Milo Bissin

Title: Director

MidCap / Sientra / Fourth Amendment to Amended and Restated Credit Agreement (Revolving Loan)
\\DC - 036639/000049 - 16245341 v2

BORROWER:

SIENTRA, INC.

By: /s/ Ronald Menezes (SEAL)

Name: Ronald Menezes

Title: Chief Executive Officer

MIST HOLDINGS, INC.

By: /s/ Oliver Bennett (SEAL)

Name: Oliver Bennett

Title: Corporate Secretary

MIST, INC.

By: /s/ Oliver Bennett (SEAL)

Name: Oliver Bennett

Title: Corporate Secretary

MIST INTERNATIONAL, INC.

By: /s/ Oliver Bennett (SEAL)

Name: Oliver Bennett

Title: Corporate Secretary

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Ronald Menezes, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Sientra, 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. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13(a)-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2021

/s/ Ronald Menezes

Ronald Menezes

President and Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER

PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Andrew C. Schmidt, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Sientra, 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. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13(a)-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2021

/s/ Andrew C. Schmidt

Andrew C. Schmidt

Chief Financial Officer and Treasurer

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

PURSUANT TO 18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

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. §1350), Ronald Menezes, Chief Executive Officer of Sientra, Inc. (the "Company"), hereby certifies that to the best of his knowledge:

- (1) The Company's Quarterly Report on Form 10Q for the period ended June 30, 2021, to which this Certification is attached as Exhibit 32.1 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 10, 2021

/s/ Ronald Menezes

Ronald Menezes

President and Chief Executive Officer

This certification accompanies the 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 Sientra, Inc. 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 Form 10-Q), irrespective of any general incorporation language contained in such filing.

CERTIFICATION OF CHIEF FINANCIAL OFFICER

PURSUANT TO 18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

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. §1350), Andrew C. Schmidt, Chief Financial Officer and Treasurer of Sientra, Inc. (the "Company"), hereby certifies that to the best of his knowledge:

- (1) The Company's Quarterly Report on Form 10Q for the period ended June 30, 2021, to which this Certification is attached as Exhibit 32.2 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 10, 2021

/s/ Andrew C. Schmidt

Andrew C. Schmidt

Chief Financial Officer and Treasurer

This certification accompanies the 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 Sientra, Inc. 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 Form 10-Q), irrespective of any general incorporation language contained in such filing.