UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2023

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 001-36385

BIOLASE, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**87-0442441**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**

27042 Towne Centre Drive, Suite 270
Lake Forest, California 92610
(Address of Principal Executive Offices) (Zip code)

(949) 361-1200
(Registrant's Telephone Number, including Area Code)

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

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

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

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

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

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

The aggregate market value of the Registrant's common stock held by non-affiliates was $7,185,686 based on the last sale price of common stock on June 30, 2023.

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common stock, par value $0.001 per share	BIOL	The Nasdaq Stock Market LLC (Nasdaq Capital Market)

As of March 14, 2024, there were 32,522,593 shares of the registrant's common stock, par value $0.001 per share, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement related to its 2024 Annual Meeting of Stockholders, to be filed with the Securities and Exchange Commission pursuant to Regulation 14A within 120 days after the registrant's fiscal year ended December 31, 2023, are incorporated by reference into Part III of this Annual Report on Form 10-K.

BIOLASE, INC.

ANNUAL REPORT ON FORM 10-K
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2023

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K ("Form 10-K"), particularly in Item 1, "Business," and Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," contain "forward-looking statements." Such forward-looking statements include statements, predictions, or expectations regarding market opportunities, our plans for future products and services and enhancements of existing products and services, future market growth and our anticipated growth strategies, future demand for improved dental care and dental laser equipment, expansion of our international operations, compliance with laws and regulatory requirements, the impact of cost-saving measures and future decreases in expenses, statements regarding the effects of seasonality on revenue, anticipated cash needs, capital requirements and capital expenditures, needs for additional financing, anticipated use of proceeds from debt or equity financing, use of working capital, plans to explore potential collaborations, potential acquisitions of products and technologies, effects of engineering and development efforts, plans to expand our field sales force, the development of distributor relationships, our ability to attract customers, the adequacy of our facilities, products and solutions from competitors, our ability to maintain product quality standards, protection of patents and other technology, the ability of third party payers to pay for costs of our products, limitations on capital expenditures, critical accounting policies and the impact of recent accounting pronouncements, recording tax benefits or other financial items in the future, plans, strategies, expectations, or objectives of management for future operations, our financial condition or prospects, and any other statement that is not historical fact. Forward-looking statements are identified by the use of words such as "may," "might," "will," "intend," "should," "could," "can," "would," "continue," "expect," "believe," "anticipate," "estimate," "predict," "outlook," "potential," "plan," "seek" and similar expressions and variations or the negatives of these terms or other comparable terminology.

Forward-looking statements are based on the expectations, estimates, projections, beliefs and assumptions of our management based on information available to management as of the date on which this Form 10-K was filed with the Securities and Exchange Commission (the "SEC") or as of the date on which the information incorporated by reference was filed with the SEC, as applicable, all of which are subject to change. Forward-looking statements are subject to risks, uncertainties and other factors that are difficult to predict and could cause actual results to differ materially from those stated or implied by our forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to:

- substantial doubt about our ability to continue as a going concern;
- losses that we have experienced for each of the past three years;
- our inability to meet our redemption obligations under the existing convertible redeemable preferred stock;
- our failure to comply or regain compliance with the continued listing requirements of the Nasdaq Capital Market;
- global economic uncertainty and volatility in financial markets;
- inability to raise additional capital on terms acceptable to us;
- our relationships with, and the efforts of, third-party distributors;
- failure in our efforts to train dental practitioners or to overcome the hesitation of dentists and patients to adopt laser technologies;
- inconsistencies between future data and our clinical results;
- competition from other companies, including those with greater resources;
- our inability to successfully develop and commercialize enhanced or new products that remain competitive with products or alternative technologies developed by others;
- the inability of our customers to obtain third-party reimbursement for their use of our products;
- limitations on our ability to use net operating loss carryforwards;
- problems in manufacturing our products;
- warranty obligations if our products are defective;
- adverse publicity regarding our technology or products;

•adverse events to our patients during the use of our products, regardless of whether caused by our products;

•issues with our suppliers, including the failure of our suppliers to supply us with a sufficient amount or adequate quality of materials;

•rapidly changing standards and competing technologies;

•our inability to effectively manage and implement our growth strategies;

•risks associated with operating in international markets, including potential liabilities under the Foreign Corrupt Practices Act (“FCPA”);

•breaches of our information technology systems;

•seasonality;

•litigation, including the failure of our insurance policies to cover certain expenses relating to litigation and our inability to reach a final settlement related to certain litigation;

•disruptions to our operations at our primary manufacturing facility;

•loss of our key management personnel or our inability to attract or retain qualified personnel;

•risks and uncertainties relating to acquisitions, including difficulties integrating acquired businesses successfully into our existing operations and risks of discovering previously undisclosed liabilities;

•failure to meet covenants in the Credit Agreement, dated as of November 9, 2018 (as amended from time to time, the “Credit Agreement”), by and between BIOLASE and SWK Funding LLC ("SWK") and related risks of foreclosure triggered by an event of default under the Credit Agreement;

•interest rate risk, which could result in higher expense in the event of interest rate increases;

•obligations to make debt payments under the Credit Agreement;

•risks of foreclosure triggered by an event of default under the Credit Agreement;

•failure to comply with the reporting obligations of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and Section 404 of the Sarbanes-Oxley Act of 2002, as amended (the “Sarbanes-Oxley Act”) or maintain adequate internal control over financial reporting;

•climate change initiatives;

•failure of our intellectual property rights to adequately protect our technologies and potential third-party claims that our products infringe their intellectual property rights;

•changes in government regulation or the inability to obtain or maintain necessary governmental approvals;

•our failure to comply with existing or new laws and regulations, including fraud and abuse and health information privacy and securities laws;

•changes in the regulatory requirements of the Food and Drug Administration (“FDA”) applicable to laser products, dental devices, or both;

•recall or other regulatory action concerning our products after receiving FDA clearance or approval; and

•risks relating to ownership of our common stock, including high volatility and dilution.

Further information about factors that could materially affect the Company, including our results of operations, financial condition and stock price, is contained under the heading “Risk Factors” in Item 1A in this Form 10-K. Except as required by law, we undertake no obligation to revise or update any forward-looking statements to reflect changed assumptions, the occurrence of anticipated or unanticipated events, new information, or changes to future results over time or otherwise.

PART I

Item 1. *Business*

Overview

BIOLASE, Inc. ("BIOLASE" and, together with its consolidated subsidiaries, the "Company," "we," "our" or "us") is a leading provider of advanced laser systems for the dental industry. We develop, manufacture, market, and sell laser systems that provide significant benefits for dental practitioners and their patients. Our proprietary systems allow dentists, periodontists, endodontists, pediatric dentists, oral surgeons, and other dental specialists to perform a broad range of minimally invasive dental procedures, including cosmetic, restorative, and complex surgical applications. Our laser systems are designed to provide clinically superior results for many types of dental procedures compared to those achieved with drills, scalpels, and other conventional instruments. Potential patient benefits include less pain, fewer shots, faster healing, decreased fear and anxiety, and fewer appointments. Potential practitioner benefits include improved patient care and the ability to perform a higher volume, and wider variety of procedures.

We offer two categories of laser system products: Waterlase (all-tissue) systems and diode (soft-tissue) systems. Our flagship brand, the Waterlase, uses a patented combination of water and laser energy and is FDA cleared for over 80 clinical indications to perform most procedures currently performed using drills, scalpels, and other traditional dental instruments for cutting soft and hard tissue. For example, Waterlase safely debrides implants without damaging or significantly affecting surface temperature and is an effective, safe solution for preserving sick implants. In addition, Waterlase disinfects root canals more efficiently than some traditional chemical methods. We offer our diode laser systems to perform soft tissue, pain therapy, and cosmetic procedures, including teeth whitening. As of December 31, 2023, we maintained approximately 241 active and 21 pending United States and international patents, with the majority relating to our Waterlase technology. Our patent portfolio is regularly evaluated, and we strategically prioritize our core patents to ensure optimal intellectual property coverage while minimizing annual maintenance fees. From 1998 through December 31, 2023, we have sold over 47,700 laser systems in over 80 countries around the world, and we believe that Waterlase iPlus is the world's best-selling all-tissue dental laser. Since 1998, we have been the global leading innovator, manufacturer, and marketer of dental laser systems.

We also manufacture and sell consumable products and accessories for our laser systems. Our Waterlase and diode systems use disposable laser tips of differing sizes and shapes depending on the procedure being performed. We also market flexible fibers and hand pieces that dental practitioners replace at some point after initially purchasing laser systems. For our Epic line of diode laser systems, we sell teeth whitening gel kits. During the year ended December 31, 2023, the sale of lasers accounted for approximately 61% of our total sales, and consumables, accessories, and services accounted for approximately 39% of our total sales.

We currently operate in a single reportable business segment. We had net revenues of $49.2 million, $48.5 million, and $39.2 million, in 2023, 2022, and 2021, respectively, and we had net losses of $20.6 million, $28.6 million, and $16.2 million for the same periods, respectively. We had total assets of $35.1 million and $38.2 million as of December 31, 2023 and 2022, respectively.

Recent Developments

Other Recent Developments

The disclosure set forth under Part II, Item 7 — Management's Discussion and Analysis of Financial Condition and Results of Operations – Recent Developments is hereby incorporated herein by reference.

Industry Background

General

Dental procedures, including medical and cosmetic treatment, are performed on hard tissue, such as bone and teeth, and soft tissue, such as gums and other oral tissues.

An estimated one-third of the worldwide population avoids going to the dentist because of "dental anxiety or fear," according to DentaVox. Such anxiety causes dental conditions, such as gum disease, to go under-diagnosed, under-treated, and under-managed. Due to the limitations associated with traditional and alternative dental instruments, we believe there is a large market opportunity for all-tissue dental laser systems that provide superior clinical outcomes, reduce the need to use anesthesia, help reduce trauma, pain, and discomfort associated with dental procedures, and increase patient acceptance for treatment protocols. We also believe there is a growing awareness among consumers globally of the value and importance of oral health and its connections to overall systemic health and wellness. The American Academy of Periodontology estimates that over 60 million people in the U.S. alone have periodontitis, an advanced stage of gum disease, and studies indicate a link between periodontitis and other health conditions such as heart disease, diabetes, and stroke.

As of 2021, according to the American Dental Association, there were approximately 202,000 professionally active dentists in the U.S. In 2022, a study published by Grandview Research estimated the global dental equipment market to be $10.6 billion and projected it to grow at a compound annual rate of 6.2% through 2030. Factors cited contributing to the growth include rising demand for dental procedures, prevalence of dental disorders, a rising geriatric population, and demand for preventive, restorative, and surgical services. The study also highlighted that dental laser equipment is expected to be the fastest growing segment over the forecast period. We believe that all-tissue laser systems have penetrated only 7-8% of U.S. dental practices and less than 2% worldwide, and we estimate a market opportunity in excess of $50 billion.

Traditional Dental Instruments

Dentists and other specialists utilize a variety of instruments depending on the tissue involved and the type of procedure. Most procedures require the use of multiple instruments to achieve desired results. Many of the instruments available today are based on decades-old practices. Examples are as follows:

High-Speed Drills. Most dentists use conventional high-speed drills for hard tissue procedures, such as removing decay and preparing teeth for filling, gaining access for performing root canals, and shaving or contouring oral bone tissue. Potentially adverse effects associated with drills include thermal heat transfer, vibration, pressure and noise. The cutting and grinding action of high-speed drills can cause damage, such as microfractures, to the patient's teeth. The trauma can lead to longer recovery times and the need for future crowns and root canals. Additionally, this grinding action of high-speed drills may weaken the tooth's underlying structure, leading to fractures and broken cusps. Procedures involving high-speed drills typically require anesthesia and are often the source of patient anxiety and fear. Because many dentists do not recommend anesthetizing more than one or two sections of the mouth in a single appointment, patients may need to return several times to complete their treatment plan.

Cutting Instruments. Soft tissue procedures are typically performed by dentists using scalpels, scissors, and other surgical tools. Due to the pain, bleeding, post-operative swelling, and discomfort associated with these instruments, most soft tissue procedures require the use of local anesthetic which may result in numbness and longer recovery time, and often require stitches. Bleeding can impair the practitioner's visibility during the procedure, thereby reducing efficiency and is a particular problem for patients with immune deficiencies or blood disorders and for patients taking blood-thinning medications.

Alternative Dental Instruments

Alternative technologies have been developed over the years to address the problems associated with traditional methods used in dentistry. However, most alternatives have addressed either hard or soft tissue applications but not both, or have other limitations.

Electrosurge Systems. Electrosurge systems use an electrical current to heat a shaped tip that simultaneously cuts and cauterizes soft tissue, resulting in less bleeding than occurs with scalpels. However, electrosurge systems are generally less precise than lasers and can damage surrounding tissue. Electrosurge systems are also not suitable for hard tissue procedures and, due to the depth of penetration, generally require anesthesia and a lengthy healing process. Electrosurge systems generally cannot be used in areas near metal fillings and dental implants. Finally, electrosurge systems generally cannot be used to treat patients with implanted pacemakers and defibrillators.

Traditional Laser Systems. More recently, lasers have gained acceptance for use in general and cosmetic dentistry. Most lasers used in dentistry have been adapted from other medical applications, such as general surgery and dermatology, but are not optimally designed to perform common dental procedures. Most traditional dental lasers use thermal energy to cut tissue and are used primarily for soft tissue procedures.

Our Products

Our laser systems can provide dental professionals with enhanced capabilities for minimally invasive treatment. Our product offering consists of the following:

Waterlase all-tissue laser systems. Our all-tissue Waterlase dental laser systems currently consist of our flagship Waterlase iPlus, Waterlase Express, and Waterlase MDX. Each of these systems features a proprietary laser crystal that produces electromagnetic energy with absorption and tissue interaction characteristics specifically designed for dental procedures. They are minimally invasive and can precisely cut hard tissue, such as bone and teeth, and soft tissue, such as gums and skin, without the heat, vibration, bleeding, or pressure associated with traditional dental treatments. By combining the laser light and water, our Waterlase systems can eliminate the need for anesthesia in most cases and result in faster healing times compared to traditional methods of treatment, both of which could lead to improved patient-reported outcomes. The all-tissue Waterlase is especially effective for treating all types of dental cavities for both children and adults, moderate and advanced periodontal and peri-implant disease, root canals, and esthetic procedures for gummy smiles.

The Waterlase systems incorporate an ergonomic hand-piece and a user-friendly digital interface with presets for a wide range of clinical applications that control a combination of laser energy, air, and water settings, as well as the pulse rate for clinical efficiency and patient comfort. Each system also has been designed to be easily moved from operatory to operatory within a practice. We developed the Waterlase systems using internally developed intellectual property, as well as intellectual property obtained through various acquisitions. The Waterlase systems are FDA-cleared in the United States, CE mark-approved in Europe, and approved for sale in more than 80 other countries for dental uses. In the United States, we also have regulatory clearance for dermatological, aesthetic, and other general surgery uses.

Diode soft-tissue laser systems. Our soft tissue diode laser systems currently consist of the Epic X, Epic Hygiene, Epic Q, and Epic 10 diode lasers that perform soft tissue, hygiene, cosmetic procedures, teeth whitening, and provide temporary pain relief. Epic X, and Epic 10 systems feature our proprietary 940 nanometer wavelength with patented pulse technology called ComfortPulse, which is designed for added patient comfort. Epic Hygiene was introduced in December 2019 as the Company's latest innovation in proven Epic laser technology, which is designed to manage non-surgical periodontitis and increase clinical production. The system includes proven clinical protocols, including pocket therapy and perio debridement, to facilitate implementation. The Epic Hygiene is the only hygiene specific diode laser with FDA 510 (k) clearance for Laser Bacterial Reduction (LBR), a preventive periodontal procedure conducted in conjunction with routine cleaning. Epic Hygiene, which utilizes a 980 nanometer wavelength, gives dental hygienists the ability to offer dental laser technology to their patients, including minimally invasive and less painful treatments that are designed to allow for quicker procedures and faster recovery times.

Epic 10 is a portable, powerful diode laser that facilitates clinical versatility with surgical, pain therapy, and whitening capabilities and provides an exceptional laser with an attractive value proposition. In December 2014, we introduced the Epic X diode laser, an enhanced soft tissue laser system featuring upgrades and improvements from our Epic 10. The Epic X, Epic10, and Epic Hygiene are FDA-cleared in the United States, CE mark-approved in Europe, and approved for sale in more than 80 other countries for dental uses. In the United States, we also have regulatory clearance for ears, nose and throat, dermatological, aesthetic, and other general surgery uses. In 2023, the Epic Q, an entry level model in the Epic diode laser family was introduced internationally to address the need for a more affordable laser for emerging markets.

In 2021, BIOLASE designed, developed, received FDA clearance for and began production of a laser using BIOLASE's proprietary Er,Cr:YSGG laser technology (the "EdgePro") in partnership with EdgeEndo, a leading endodontic company. The EdgePro is a state-of-the-art microfluidic irrigation device designed to clean and disinfect root canals. The partnership with EdgeEndo is BIOLASE's first exclusive Original Equipment Manufacturer ("OEM") agreement.

Related Accessories and Consumable Products

In addition to sales of our laser systems, we manufacture and sell consumable products and accessories for our laser systems. Our Waterlase and diode systems use disposable laser tips of differing sizes and shapes depending on the procedure being performed. We also market flexible fibers and hand pieces that dental practitioners replace at some point after initially purchasing laser systems. In 2023, we introduced a fractional handpiece accessory for the Waterlase iPlus with FDA clearance for skin resurfacing, a popular esthetic procedure. We provide esthetic clinical training through the American Academy of Facial Esthetics. For our Epic systems, we also sell teeth whitening gel kits.

Our Laser Solutions

Due to the limitations associated with traditional and alternative dental instruments, we believe there is a large market opportunity for all-tissue dental laser systems that provide superior clinical outcomes, reduce the need to use anesthesia, help reduce trauma, pain, and discomfort associated with dental procedures, and increase patient acceptance for treatment protocols.

Our Waterlase systems precisely cut hard tissue, bone, and soft tissue with minimal or no damage to surrounding tissue and dental structures. Our diode systems are designed to complement our Waterlase systems, and are used only in soft tissue procedures, pain therapy, hygiene, and cosmetic applications, including teeth whitening. The diode systems, together with our Waterlase systems, offer practitioners a broad product line with a range of features and price points.

Benefits to Dental Professionals

•*Expanded range of procedures*. Our laser systems allow general dentists to perform additional surgical and cosmetic procedures that they are unable or unwilling to perform using conventional methods and that would typically be referred to a specialist. Our laser systems and clinical education programs allow dentists to perform these procedures easily and efficiently, increasing their range of skills, professional and patient satisfaction levels, patient retention rates, and new patient attraction rates.

•*Additional procedures through increased information and efficiency*. Our laser systems can shorten and reduce the number of patient visits, providing dental professionals with the ability to service more patients. For hard tissue procedures, our Waterlase systems can reduce the need for anesthesia, which enables the dental practitioner to perform multiple procedures in one visit. The Waterlase and diode systems cut soft tissue more precisely and with minimal bleeding when compared to traditional tools such as scalpels and electrosurge systems. We have FDA clearance for treatment indications supporting REPAIR Perio and REPAIR Implant, our proprietary periodontal protocols for subgingival calculus removal and debridement of root surfaces and implant surfaces using the Waterlase system and patented Radial and Side Firing Perio Tips. This is a minimally invasive treatment for moderate to advanced gum and peri-implant diseases, which are among the leading causes of dental health conditions for adults over age 35 and conditions that impact more than half of Americans over the age of 55. In addition, our Epic system can be used to quickly perform in-office teeth whitening with our proprietary whitening gel and to provide temporary pain relief.

•*Greater case acceptance and patient reported outcomes*. We believe the improved patient comfort and convenience offered by our laser systems, along with the reduction in chair time helps improve both the patient experience and patient acceptance of dental treatment plans.

•*Improved clinical outcomes*. Our laser systems can be used for dozens of clinical indications with reduced trauma, swelling, and general discomfort of the patient, resulting in improved clinical outcomes and less follow-up treatment. Our products are designed to collectively improve clinical outcomes, making it possible for practitioners to devote time to new cases, rather than managing or treating complications.

•*Less Aerosols.* Waterlase all-tissue laser systems create 98% less aerosols than traditional dental handpieces, meeting the American Dental Association's recommendation of reduced aerosol production. Epic soft-tissue lasers do not use water, and meet guidance from the Center for Disease Control, which recommends avoiding aerosol generating procedures whenever possible, including the use of high-speed dental handpieces, air/water syringes, and ultrasonic scalers. Ultrasonic scalers create a visible water spray that can contain particle droplets of water, saliva, blood, microorganisms, and other debris, which can serve as a conduit to spread the virus. In contrast, Epic technology allows dentists and hygienists to perform gentler, highly effective treatments without using water.

Benefits to Patients

•*Comfort.* Our Waterlase systems allow dentists to perform minimally invasive dental procedures without anesthesia in many cases, and patients recover more comfortably, faster, and with less pain than when treated with conventional instruments. The heat, vibration, microfractures, trauma, or pressure associated with traditional dental methods are largely avoided.

•*Convenience and efficiency*. Procedures utilizing our Waterlase systems do not require anesthesia in many cases, which allows dental practitioners to perform multiple procedures in one appointment and saves patients time.

•*Reduced trauma*. Waterlase systems allow for a faster and more pleasant patient recovery with less swelling, bleeding, and general discomfort than when treated with conventional instruments.

Business Strategy

Our business strategy includes the following key elements:

•*Increasing awareness of our products among dental practitioners*. We intend to increase awareness of our products among dental practitioners by educating dental practitioners and patients about the clinical benefits of our product suite. We plan to continue participation in key industry trade shows, the World Clinical Laser Institute ("WCLI") (which we founded in 2002), dental schools, and other educational forums. We also plan on continuing to expand our Waterlase and Epic Diode academies that we started toward the end of 2020. Our products are also used for clinical research, which often leads to published articles that can enhance awareness among dental practitioners.

•*Increasing awareness and education in laser dentistry.* During 2023, we hosted 20 webinars, 147 seminars, and attended 41 tradeshows. We plan to continue these educational opportunities in 2024. We believe the Waterlase Trial Program that we are continuing in 2024, which allows dentists to explore how our Waterlase technology improves patient outcomes during a trial period, also helps in increasing the awareness of the benefits of laser dentistry.

•*Increasing awareness of and demand for our laser systems among patients.* We also intend to increase demand for our products by educating patients about the clinical benefits of the Waterlase and diode systems. We believe that patients will understand the clinical benefits, which, in turn, will result in increased awareness of our systems from dental practitioners. During 2024, we expect to distribute a docuseries "Talk Dental to Me" that will focus on the benefits of our technology for the patient.

•*Strengthening customer training and clinical education.* We provide introductory, advanced, and specialized training on our products for dental practitioners to increase their proficiency and to certify them. Our goal is to provide our customers world class training that is accessible and can be performed with practical techniques. To further enhance our capabilities in this area, in 2023 we opened a world-class training facility at our corporate office location in Lake Forest, California along with our first-ever dental office adjacent to the training facility ("Laser Smiles").

•*Strengthening sales and distribution capabilities.* In the U.S., we have primarily distributed our products directly to dental practitioners via our field and in-house sales forces. Sales representatives and lead generators work in partnership with the field sales team to maximize effectiveness in engaging and servicing customers. In addition to our field sales force in the U.S., we also use various independent distributors to sell and support our products throughout Canada, Europe, the Middle East, Latin America, and Asia-Pacific regions. We plan to continue to build out the infrastructure to support our customers and to drive revenue and profit growth, both domestically and internationally. This includes expanding our sales presence with respect to the rapidly growing group practices, group purchasing organizations, and government channels.

•*Improving product quality*. We strive to achieve the industry's highest rate of defect-free delivery of products, maintain high quality standards, and address and timely resolve customer complaints. In the U.S., we provide maintenance and support services to customers through our support hotline and dedicated staff of in-house and field service personnel. Outside the U.S., we maintain a network of factory-certified service technicians to provide maintenance and support services to customers. During 2023 we ramped up certain internal manufacturing capabilities for some of our key laser components that improved our overall product quality.

•*Strengthening and defending technology leadership*. We plan to continue protecting our intellectual property rights by expanding our existing patent portfolio in the United States and internationally. We strategically enforce our intellectual property rights worldwide.

•*Expanding our product portfolio to dental practitioners.* We plan to continue to evaluate how to optimize the manner in which we market and sell additional products to supplement our core Waterlase and Epic franchises.

•*Creating value through innovation and leveraging existing technologies into adjacent medical applications.* We plan to expand our product line and clinical applications by developing enhancements and transformational innovations, including new clinical solutions for dental applications and for other adjacent medical applications. In particular, we believe that our existing technologies can provide significant improvements over existing standards of care in fields, including ophthalmology, otolaryngology, orthopedics, podiatry, pain management, aesthetics/dermatology, veterinary, and consumer products. We plan to continue to explore potential collaborations to bring our proprietary laser technologies with expanded FDA-cleared indications for other medical applications in the future. In addition, we may acquire complementary products and technologies. We also aim to increase our consumables revenue by selling more single-use accessories used by dental practitioners when performing procedures using our dental laser systems.

•*Generating revenue through OEM partnerships.* In addition to our partnership with EdgeEndo, we plan to continue to explore potential collaborations to bring our proprietary laser technologies with expanded FDA-cleared indications for other medical applications in the future.

Warranties

Our Waterlase laser systems sold domestically are covered by a warranty against defects in material and workmanship for a period of up to one year from the date of sale to the end-user by us or a distributor. Our diode systems sold domestically are covered by a warranty against defects in material and workmanship for a period of up to two years from the date of sale to the end-user by us or a distributor. Waterlase systems and diode systems sold internationally are covered by a warranty against defects in material and workmanship for a period of up to 24 months from date of sale to the international distributor. Our laser systems warranty covers parts and service for sales in our North American territories and parts only for international distributor sales. In North America and select international locations, we sell extended warranty contracts to our laser systems end users that cover the period after the expiration of our standard warranty coverage for our laser systems. Extended warranty coverage provided under our service contracts varies by the type of system and the level of service desired by the customer. Products or accessories remanufactured, refurbished, or sold by unauthorized parties, voids all warranties in place for such products and exempts us from liability issues relating to the use of such products.

Manufacturing

Our strategy is to manufacture products in-house when it is efficient for us to do so. We currently manufacture, assemble, and test all of our laser systems at our 26,000 square foot manufacturing facility in Corona, California. This facility is dedicated to manufacturing and warehousing. The facility is ISO 13485 certified. ISO 13485 certification signifies a comprehensive quality management system associated with the design, manufacture, installation, and servicing of our products. In addition, our U.S. facility is registered with the FDA and complies in all material respects with the FDA's Quality System Regulation.

We use an integrated approach to manufacturing, including the assembly of tips, laser hand pieces, fiber assemblies, laser heads, electro-mechanical subassembly, final assembly, and testing. We obtain components and subassemblies for our products from third-party suppliers, the majority of which are located in the United States. We generally purchase components and subassemblies from a limited group of suppliers through purchase orders. In general, we rely on these purchase orders and do not have written supply contracts with many of our key suppliers. Three key components used in our Waterlase system (power suppliers, laser crystals, and fiber components) are each supplied by separate single-source suppliers. In recent years, we have not experienced material delays from the suppliers of these three key components. However, an unexpected interruption from a single-source supplier could cause manufacturing delays, re-engineering, significant costs, and sales disruptions, any of which could have a material adverse effect on our operations. We regularly seek to identify and qualify alternate source suppliers for our key components, including but not limited to those noted above. There can be no assurance, however, that we will successfully identify and qualify an alternate source supplier for any of our key components or that we could enter into an agreement with any such alternate source supplier on terms acceptable to us.

As discussed below, we are subject to periodic inspections by the FDA as well as other state and foreign agencies, as a manufacturer of medical devices. Such inspections can cover manufacturing, design, production, reporting, recordkeeping, and other processes and can lead to FDA observations requiring corrective action, which can disrupt normal processes.

Marketing and Sales

Marketing

We market our laser systems worldwide. Our marketing efforts are focused on driving brand awareness for our laser solutions with dental practitioners. We also continue to test methods to increase awareness of our brands' benefits by marketing directly to patients.

Dental Practitioners. We market our laser systems to dental practitioners through regional, national, and international educational events, seminars, industry tradeshows, trade publications, digital/social media, field sales forces, and agents and distributors. We also use social media, sales materials, direct communications, public relations, and other promotional tools and materials.

Our primary marketing message to dental practitioners emphasizes the capability of our lasers to address dental challenges effectively, leading to enhanced patient-reported outcomes and, as a result, improved cash flow. BIOLASE Education is a leader in educating and training dental practitioners in laser dentistry. We believe that, as the community of dental practitioners that use our products expands, the BIOLASE Education will continue to deliver innovative and valued educational opportunities by utilizing the latest in learning methodologies and platforms. In addition, the World Clinical Laser Institute conducts and sponsors educational programs internationally on the use of lasers in dentistry. These are intended for dental practitioners, researchers and academicians and include both seminars and hands-on training sessions. BIOLASE has also developed a "Waterlase Academy" for Endodontists, Periodontists, Pediatric specialists and general practitioners, and an Epic Diode Academy for both dental hygienists and dentists. These academies are designed to foster peer-to-peer learning on the appropriate and effective use of our products.

We believe the Waterlase Trial Program that we are continuing in 2024, which allows dentists to evaluate our Waterlase technology during a trial period, also helps in increasing the awareness of the benefits of laser dentistry. We have also developed relationships with research institutions, dental schools, and dental laboratories that use our products for clinical research and in-clinical training, and believe these relationships will continue to increase awareness of and demand for our products.

Patients. We believe that making patients aware of our laser systems and their benefits will motivate them to be proactive in requesting from dental practitioners laser procedures and their outcomes. During 2024, we expect to distribute a docuseries "Talk Dental to Me" that will focus on the benefits of our technology for the patient. We can be found online at www.biolase.com, and on Facebook, Twitter, LinkedIn, YouTube, and Instagram. Unless specifically stated otherwise, none of the information contained on any of these sites online is incorporated in this Form 10-K by reference.

Sales

We sell our products primarily to dentists in general practice through our field sales force and our distributor network. We expect our laser systems to continue to gain acceptance among periodontists, endodontists, oral surgeons, pediatric dentists, and other dental specialists as they become aware of the clinical benefits and minimally invasive treatment options available by using our laser systems.

The following table summarizes our net revenues by category ($ in thousands):

	Years Ended December 31,					
	2023		2022		2021	
Laser systems	$ 30,043	61.1 %	$ 31,443	64.8 %	$ 25,023	63.9 %
Consumables and other	13,596	27.7 %	11,322	23.4 %	9,456	24.1 %
Services	5,525	11.2 %	5,697	11.8 %	4,709	12.0 %
Net revenue	$ 49,164	100.0 %	$ 48,462	100.0 %	$ 39,188	100.0 %

Net revenue by geographic location based on the location of customers was as follows (in thousands):

	Years Ended December 31,					
	2023		2022		2021	
United States	$ 33,883	68.9 %	$ 33,876	69.9 %	$ 25,384	64.8 %
International	15,281	31.1 %	14,586	30.1 %	13,804	35.2 %
Net revenue	$ 49,164	100.0 %	$ 48,462	100.0 %	$ 39,188	100.0 %

International revenue accounts for a significant portion of our total revenue and accounted for approximately 31%, 30%, and 35% of our net revenue in 2023, 2022, and 2021, respectively. No individual country outside the United States represented more than 10% of our net revenue during the years ended December 31, 2023, 2022, and 2021.

For financial information about our long-lived assets, refer to *Note 3 – Supplementary Balance Sheet Information*, *Note 4 – Intangible Assets and Goodwill*, and *Note 9 – Segment Information*.

United States Sales. In the United States, we primarily sell our products directly to dental practitioners utilizing a field sales force consisting of laser sales representatives and regional managers. We also have an in-house sales force, which is comprised of sales representatives and lead generators who work in partnership with the field sales team to maximize sales by leveraging the existing installed customer base.

International Sales. Our distributors purchase laser systems and disposables from us at wholesale dealer prices and resell them to dentists in their sales territories. All sales to distributors are final, and we can terminate our arrangements with dealers, agents, and distributors for cause or non-performance. We have granted certain distributors the right to be our exclusive distributor in select territories. These distributors are generally required to satisfy certain minimum purchase requirements to maintain their exclusivity. We have sold our products directly to end users in Germany since 2011 and directly to end users in India and neighboring countries since 2012.

Customer Concentration. We sell our products through our field sales force, agents, and distributors. For the years ended December 31, 2023, 2022, and 2021, sales to our largest distributor worldwide accounted for approximately 5%, 4%, and 5%, respectively, of our net revenue. As of December 31, 2023, accounts receivable from one customer totaled approximately 11% of total gross accounts receivable. The entire balance is outstanding for less than 180 days and deemed collectible. As of December 31, 2022, accounts receivable from one customer totaled approximately 12% of total gross accounts receivable. The entire balance was received in 2023.

Customer Service. We provide high quality maintenance and support services in the United States through our support hotline and dedicated staff of in-house and field service personnel. Outside the United States, we maintain a network of factory-certified service technicians to provide maintenance and support services to customers. Our international distributors are responsible for providing maintenance and support services for products sold by them. We provide parts to distributors at no additional charge for products covered under warranty.

Financing Options. Most customers (other than distributors) finance their purchases through several third-party financial institutions with which we have established good relationships. In the United States, third-party customers enter into a financing agreement with one of the financial institutions that purchases the product from us or one of our distributors. We are not party to these financing agreements. Thus, if the customer agrees to pay the financial institution in installments, we do not bear the credit risk. The financial institutions do not have recourse to us for a customer's failure to make payments, nor do we have any obligation to take back the product.

Seasonality. Typically, we experience fluctuations in revenue from quarter to quarter due to seasonality. Revenue in the first quarter typically is lower than average and revenue in the fourth quarter typically is higher than average due to the buying patterns of dental practitioners. We believe that this trend exists because a significant number of dentists purchase their capital equipment towards the end of the calendar year to maximize their practice earnings while seeking to minimize their taxes. They often use certain tax incentives, such as accelerated depreciation methods for purchasing capital equipment, as part of their year-end tax planning. In addition, revenue in the third quarter may be affected by vacation patterns which can cause revenue to be flat or lower than in the second quarter of the year. Our historical seasonal fluctuations may also be impacted by sales promotions used by large dental distributors that encourage end-of-quarter and end-of-year buying in our industry. Because of these seasonal fluctuations, historically we have often used less cash in operations for the six months ended December 31 as compared to the six months ended June 30.

Engineering and Product Development

Engineering and product development activities are essential to maintaining and enhancing our business. We believe our engineering and product development team has demonstrated its ability to develop innovative products that meet evolving market needs. As of December 31, 2023, our engineering and product development group consists of 11 individuals with medical device or laser development experience. During the years ended December 31, 2023, 2022, and 2021, our engineering and product development expenses totaled approximately $6.0 million, $7.3 million, and $6.0 million, respectively. Our current engineering and product development activities are focused on developing new product platforms, improving our existing products and technology and extending our product range in order to provide dental practitioners and patients with new and improved protocols or procedures that are less painful and have clinically superior results. Some examples of the improvements we are pursuing for our laser systems include faster cutting speed, improved ease of use, less need for anesthesia, interconnectivity, and an expanded portfolio of consumable products for use with our laser systems. Our engineering and product development activities encompass both fundamental and applied fields. We seek to improve methods to perform clinical procedures through the use of new laser wavelengths, laser operation modes and accessories.

We also devote engineering and product development resources toward markets outside of dentistry in which we might exploit our technology platform and capabilities. We believe our laser technology and development capabilities could address unmet needs in several other medical applications, including ophthalmology, otolaryngology, orthopedics, podiatry, pain management, aesthetics/dermatology, veterinary, and consumer products. We have started to enter the otolaryngology, pain management, and veterinary markets to varying degrees.

Intellectual Property and Proprietary Rights

We believe that to maintain a competitive advantage in the marketplace, we must develop and maintain protection of the proprietary aspects of our technology. We rely on a combination of patents, trademarks, trade secrets, copyrights and other intellectual property rights to protect our intellectual property. We have developed a patent portfolio internally, and to a lesser extent through acquisitions and licensing, that covers many aspects of our product offerings. As of December 31, 2023, we maintained approximately 241 active and 21 pending United States and international patents, with the majority relating to our Waterlase technology. Our patent portfolio is regularly evaluated, and we strategically prioritize our core patents to ensure optimal Intellectual Property coverage while minimizing annual maintenance fees. While we hold a variety of patents that cover a broad range of technologies and methods, the majority of these patents provide market protection for our core technologies incorporated in our laser systems and related accessories. Existing patents related to our core technology, which are at various stages of being incorporated into our products, are scheduled to expire ranging from 2025 to 2042. We do not expect the expiration of the expired or soon-to-expire patents to have a material adverse effect on our business, financial condition, or results of operations.

There are risks related to our intellectual property rights. For further details on these risks, see Item 1A — “Risk Factors.”

Competition

We operate under relatively competitive market conditions. We believe that the principal competitive factors for companies that market technologies in dental and other medical applications include acceptance by leading dental and medical practitioners, product performance, product pricing, intellectual property protection, customer education and support, timing of new product research, and development of successful national and international distribution channels.

Our competitors vary by product and location. There are companies that market some, but not all, of the same types of products as ours. Our laser systems compete with other lasers, mostly with other wavelengths, patient outcomes, and benefit profiles, as well as with drills, scalpels, scissors, air abrasion systems, and a variety of other tools that are used to perform dental and medical procedures. We believe our products have key differentiating performance features. For example, we market diode lasers which also have FDA clearance for use in both pain management therapy and teeth whitening and our Waterlase systems have been FDA-cleared for a wide range of uses beyond dentistry, including dermatological, aesthetics, and other general surgery uses. Our teeth whitening technology competes with other in-office whitening products and high intensity lights used by dentists, as well as teeth whitening strips, and other over-the-counter products. Our pain management technology competes with a variety of traditional, advanced, and pharmaceutical pain management products and services.

Traditional tools are generally less expensive than our laser systems for performing similar procedures. For example, a high-speed drill or an electrosurge device can be purchased for less than $2,500. In addition, though our systems are superior to traditional tools in many ways, they are not intended to replace all of the applications of traditional tools, such as removing metal fillings and certain polishing and grinding functions.

Some of our competitors have significantly greater financial, marketing, and/or technical resources than we do. In addition, some competitors have developed, and others may attempt to develop, products with applications similar to those performed by our products. Because of the large size of the potential market for our products, it is possible that new or existing competitors may develop competing products, procedures, or clinical solutions that could prove to be more effective, safer, or less costly than procedures using our laser systems. The introduction of new products, procedures, or clinical solutions by competitors may result in price reductions, reduced margins, or loss of market share, or may render our products obsolete.

Government Regulations

FDA and Related Regulatory Requirements

Our products are subject to extensive regulation particularly as to safety, efficacy, and compliance to FDA Quality System Regulation and related manufacturing standards. Medical device products are subject to FDA and other governmental agency regulations in the United States and similar regulations of foreign agencies abroad. The FDA regulates the design, development, preclinical and clinical testing, manufacture, advertising, labeling, packaging, marketing, distribution, import and export, and record keeping for such products, in order to ensure that medical device products distributed in the United States are safe and effective for their intended use. In addition, the FDA is authorized to establish special controls to provide reasonable assurance of the safety and effectiveness of most devices. Non-compliance with applicable regulations can result in import detentions, fines, civil and administrative penalties, injunctions, suspensions or loss of regulatory approvals, recall or seizure of products, operating restrictions, refusal of the government to approve product export applications or allow us to enter into supply contracts, and criminal prosecution.

Unless an exemption applies, the FDA requires that a manufacturer introducing a new medical device or a new indication for use of an existing medical device obtain either a Section 510(k) premarket clearance, de novo classification, or a Premarket Approval ("PMA") before introducing it into the U.S. market. The type of marketing authorization is generally linked to the classification of the device. The FDA classifies medical devices into one of three classes (Class I, II, or III) based on the degree of risk the FDA determines to be associated with a device and the level of regulatory control deemed necessary to ensure the device’s safety and effectiveness.

Most Class I devices are exempt from the requirement to obtain FDA premarket clearance or approval. For most Class II devices (and a small number of Class I devices), a company must submit to the FDA a premarket notification (known as 510(k) submission) requesting clearance to commercially distribute the device. Devices deemed by the FDA to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices, or devices deemed not substantially equivalent to a previously cleared 510(k) devices, are placed in Class III, requiring either FDA premarket approval via a PMA application or a De Novo petition requesting that the FDA reclassify the device into a lower class (i.e., Class II or Class I). The FDA has issued regulations identifying the Class into which different types of devices fall and identifying whether the device type is exempt from the 510(k) process or if a 510(k) is needed.

Our products currently marketed in the United States are marketed pursuant to 510(k) pre-marketing clearances and are either Class I or Class II devices. The process of obtaining a Section 510(k) clearance generally requires the submission of performance data and clinical data with an assessment and mitigation of any risks involved which in some cases can be extensive, to demonstrate that the device is “substantially equivalent” to a device that was on the market before 1976 or to a device that has been found by the FDA to be “substantially equivalent” to such a pre-1976 device (referred to as a “predicate device”). As a result, FDA clearance requirements may extend the development process for a considerable length of time. The FDA may require further information, including clinical data, to make a determination regarding substantial equivalence. In addition, in some cases, the FDA may require additional review by an advisory panel, which can further lengthen the process for clearance. If the FDA determines that the device is not substantially equivalent to a previously cleared device, the FDA will issue a "Not Substantially Equivalent" letter and place the device into Class III. If the device is placed into Class III automatically based only on the lack of a predicate device and the device is lower risk, a De Novo submission may be submitted petitioning the FDA to reclassify the device into Class II or Class I, as appropriate. Moreover, the PMA process, which is reserved for new devices that are not substantially equivalent to any predicate device and for high-risk devices or those that are used to support or sustain human life, may take several years and requires the submission of extensive performance and clinical data.

Medical devices can be marketed only for the indications for which they are cleared or approved. After a device has received 510(k) clearance for a specific intended use, any change or modification that significantly affects its safety or effectiveness, such as a significant change in the design, materials, method of manufacture, or intended use, may require a new 510(k) clearance or PMA approval and payment of the FDA user fee. The determination as to whether or not a modification could significantly affect the device's safety or effectiveness is initially left to the manufacturer using available FDA guidance; however, the FDA may review this determination to evaluate the regulatory status of the modified product at any time and may require the manufacturer to cease marketing and recall the modified device until 510(k) clearance or PMA approval is obtained. The manufacturer may also be subject to significant regulatory fines or penalties.

Any devices we manufacture and distribute pursuant to clearance or approval by the FDA are subject to ongoing regulation by the FDA and certain state agencies. These include product listing and establishment registration requirements, which help facilitate FDA inspections and other regulatory actions. As a medical device manufacturer, our manufacturing facility is subject to inspection on a periodic basis by the FDA. We are required to adhere to detailed current good manufacturing practice ("cGMP") requirements, as set forth in the FDA's Quality System Regulation ("QSR"), which require those who design, manufacture, package, label, store, install, and service devices, including third-party manufacturers, to follow design, testing, control, documentation, and other quality assurance procedures during all phases of the design and manufacturing process. Noncompliance with these regulations can result in, among other things, fines, injunctions, civil penalties, recalls or seizures of products, total or partial suspension of production, refusal of the government to grant 510(k) clearance or PMA approval of devices, withdrawal of marketing approvals, and criminal prosecution. We believe that our design, manufacturing, and quality management system are in compliance with the FDA's regulatory requirements.

We must also comply with post-market surveillance and complaint handling and adverse event reporting regulations, including medical device reporting (MDR) requirements which require that we review and report to the FDA any incident in which our products may have caused an adverse event which required medical attention or contributed to a death or serious injury. We must also report any incident in which any of our products has malfunctioned if that malfunction would likely cause or contribute to a death or serious injury if it were to recur. We must also comply with FDA regulations pertaining to recalls and notices of corrections and removals.

Labeling and promotional activities are subject to scrutiny by the FDA and, in certain circumstances, by the Federal Trade Commission ("FTC") and by state regulatory and enforcement authorities. In particular, the FTC has issued regulations and guidance regarding the use of social media, testimonials, and endorsements in product advertising. Medical devices approved or cleared by the FDA may not be promoted for unapproved or uncleared uses, otherwise known as "off-label" promotion. The FDA and other governmental agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant liability, including substantial monetary penalties and criminal prosecution.

If the FDA determines that our promotional materials or training constitutes promotion of an uncleared or unapproved use, the FDA could request that we modify our training or promotional materials or subject us to regulatory or enforcement actions, including the issuance of an untitled letter, a cease and desist letter, a notice of violation, a warning letter, an injunction, a seizure, a civil fine, or criminal penalties. In that event, our reputation could be damaged and adoption of the products could be impaired.

Promotional activities for FDA-regulated products of other companies have also been the subject of enforcement actions brought under health care reimbursement laws and consumer protection statutes. In addition, under the federal Lanham Act and similar state laws, competitors and others can initiate litigation relating to advertising claims. The FDA similarly regulates claims regarding competitor products.

We have registered with the FDA as a medical device manufacturer and we have obtained a medical device manufacturing license from the California Department of Public Health. As a medical device manufacturer, we are subject to announced and unannounced facility inspections by the FDA and the California Department of Public Health to determine our compliance with various regulations. Our subcontractors' manufacturing facilities are also subject to inspection.

Foreign Regulation

Sales of medical devices outside the United States are subject to regulatory requirements that vary widely from country to country. In the EU, placing our medical devices on the market must comply with the requirements of Council Directive 93/42/EEC concerning medical devices ("MDD"), and effective May 26, 2021 the Medical Device Regulation, MDR 2017/745 which will ultimately replace the MDD upon completion of the transition periods granted to the medical device manufacturers. Applicable requirements include compliance with the essential requirements of the MDD/MDR (the "Essential Requirements") and the CE marking process. Our devices are classified as Class I, Class IIa, or Class IIb devices.

Medical devices marketed in the EU must meet all proper regulatory requirements and have a CE mark affixed to them. For devices falling within Class I (low risk), the manufacturer is responsible for ensuring that the product complies with the Essential Requirements and must draw up a written statement to this effect (a "Declaration of Conformity"). Class I devices without a measuring function and supplied in non-sterile condition do not require the involvement of an organization designated by an EU-competent authority to assess the conformity of certain products before being placed on the EU market (a "Notified Body").

For devices falling within Class IIa (low – medium risk), in order to affix the CE mark and place the product on the EU market, the manufacturer must follow one of several authorization procedures involving the engagement of a Notified Body. For Class I devices, the manufacturer is responsible for declaring conformity with the provisions of the MDD/MDR and ensuring that the products comply with the Essential Requirements. This declaration must be supported by a conformity assessment by a Notified Body. Once the manufacturer has received certification from the Notified Body, it may affix the CE mark to the relevant products and place them on the EU market.

For devices falling within Class IIb (medium – high risk) and Class III (high risk), in order to affix the CE mark and place the product on the EU market, the manufacturer must follow one of several authorization procedures. For Class IIa devices, this requires the engagement of a Notified Body. The procedure for placing Class III devices on the market is similar to that applicable for Class IIb devices. However, the manufacturer must also submit a design dossier to the Notified Body for approval under Annex II of the MDD and equivalent MDR, and some of the authorization procedures permitted for Class IIb devices are not permitted.

Once medical devices have the CE mark and comply with other applicable regulatory requirements, they may be placed on the market in any member state of the European Economic Area ("EEA").

In addition, other EU regulatory requirements may apply to our medical devices, including other types of CE markings having different requirements, where applicable. For example, Directive 2014/35/EU relating to the making available on the market of electrical equipment designed for use within certain voltage limits, Directive 2014/30/EU on electromagnetic compatibility and Directive2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment may apply to our electrical products. Moreover, we must ensure compliance with applicable EU chemical legislation such as Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment and Regulation 1907/2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals. Additional EU requirements may also include safety, health, and environmental protection.

The European Association for the Co-ordination of Consumer Representation in Standardization has cautioned that, amongst other things, CE marking cannot be considered a "safety mark" for consumers.

CE marking is a self-certification program for Class I devices. Retailers sometimes refer to products as "CE approved," but the CE marking does not actually signify approval. As mentioned above, certain categories of products (such as Class IIa, Class IIb and Class III medical devices) require involvement of a Notified Body to ensure conformity with relevant technical standards, but CE marking by the manufacturer in itself does not certify that this has been done.

Our facilities manufacturing medical devices for the EEA market are EN ISO 13485 (Medical devices - Quality management systems - Requirements for regulatory purposes) certified. Moreover, our Waterlase and diode laser systems have the CE mark. In addition, we have attained the proper licensing for Waterlase and diode laser systems for sale in Canada, meeting the Canadian Medical Device Regulation requirements as part of the ISO certification process.

Other U.S. Regulation

We and our subcontractors also must comply with numerous federal, state and local laws relating to matters such as safe working conditions, manufacturing practices, environmental protection, fire hazard control, and hazardous substance disposal. Furthermore, we are subject to various reporting requirements including those prescribed by the Affordable Care Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act. We cannot be sure that we will not be required to incur significant costs to comply with these laws and regulations in the future or that these laws or regulations will not adversely affect our business, financial condition, and results of operations. Unanticipated changes in existing regulatory requirements or the adoption of new requirements could adversely affect our business, financial condition, and results of operations.

Environmental

Our manufacturing processes involve the use, generation, and disposal of hazardous materials and wastes, including alcohol, adhesives, and cleaning materials. As such, we are subject to stringent federal, state, and local laws relating to the protection of the environment, including those governing the use, handling, and disposal of hazardous materials and wastes. Future environmental laws may require us to alter our manufacturing processes, thereby increasing our manufacturing costs. We believe that our products and manufacturing processes at our facilities comply in all material respects with applicable environmental laws and worker health and safety laws. However, the risk of environmental liabilities cannot be completely eliminated.

Health Care Fraud and Abuse

As a medical device manufacturer, our operations and interactions with health care providers, including dentists, are subject to extensive laws and regulations imposed at the federal, state, and local level in the U.S., including, but not limited to, those discussed in this Form 10-K. In the U.S., there are federal and state anti-kickback statutes that generally prohibit the payment or receipt of kickbacks, bribes, or other remuneration in exchange for the referral of patients or other health-related business. For example, the federal Anti-Kickback Statute is a criminal statute that prohibits anyone from, among other things, knowingly and willfully offering, paying, soliciting, or receiving any bribe, kickback, or other remuneration intended to induce a referral for the furnishing of, or the purchase, order, or recommendation of, any item or service reimbursable under the Federal health care programs ("FHCPs"), including Medicare, Medicaid, and TRICARE. Recognizing that the federal Anti-Kickback Statute is broad and potentially applicable to many commonplace arrangements, the U.S. Congress and the Office of Inspector General ("OIG") within the Department of Health and Human Services ("HHS") have created statutory "exceptions" and regulatory "safe harbors" to the federal Anti-Kickback Statute. Exceptions and safe harbors exist for a number of arrangements relevant to our business, including, among other things, certain payments to bona fide employees, certain discount and rebate arrangements, and certain payment arrangements with health care providers, assuming all elements of the relevant exception/safe harbor have been satisfied. Although an arrangement that fits squarely into one or more of these exceptions or safe harbors may pose reduced risk of prosecution, OIG has also cautioned in various contexts that even where each component of an arrangement has been structured to satisfy a safe harbor, the components, as part of an overall arrangement, may still violate the federal Anti-Kickback Statute. However, arrangements that do not fit squarely within an exception or safe harbor do not necessarily violate the federal Anti-Kickback Statute. Rather, OIG and/or other government enforcement authorities will examine the facts and circumstances relevant to the specific arrangement to determine whether it involves the sorts of abuses that the statute was designed to combat. Violations of this federal law constitute a felony offense punishable by imprisonment, criminal fines of up to $250,000 for individuals and $500,000 for corporations, civil fines of up to $100,000 per violation (as adjusted for annual inflation) and three times the amount of the unlawful remuneration, and exclusion from Medicare, Medicaid, and other FHCPs. Exclusion of a manufacturer like us would preclude any FHCP from paying for the manufacturer's products. In addition, pursuant to the changes made by the Affordable Care Act, a claim resulting from a violation of the federal Anti-Kickback Statute may serve as the basis for a false claim under the federal civil False Claims Act. Many states also have their own laws that parallel and implicate anti-kickback restrictions but may apply regardless of whether any FHCP business is involved. Federal and state anti-kickback laws may affect our sales, marketing and promotional activities, educational programs, pricing and discount practices and policies, and relationships with dental and medical providers by limiting the kinds of arrangements we may have with hospitals, alternate care market providers, physicians, dentists, and others in a position to purchase or recommend our products.

Federal and state false claims laws prohibit anyone from presenting, or causing to be presented, claims for payment to third-party payers that are false or fraudulent. For example, the federal civil False Claims Act imposes liability on any person or entity that knowingly presents, or causes to be presented, a false or fraudulent claim for payment to the government, including FHCPs. Some suits filed under the civil False Claims Act can be brought by a "whistleblower" or a "relator" on behalf of the government, and such individuals may share in any amounts paid by the entity to the government in fines or settlement. Manufacturers, like us, can be held liable under false claims laws, even if they do not submit claims to the government, where they are found to have caused submission of false claims by, among other things, providing incorrect coding or billing advice about their products to customers that file claims, or by engaging in kickback arrangements with customers that file claims. A violation of the civil False Claims Act could result in fines of up to $23,607 (as adjusted for annual inflation) for each false claim, plus up to three times the amount of damages sustained by the government. A civil False Claims Act violation may also provide the basis for the imposition of administrative penalties and exclusion from participation in FHCPs. In addition to the civil False Claims Act, the federal government also can use several criminal statutes to prosecute persons who are alleged to have submitted false or fraudulent claims for payment to the federal government, or improperly retained funds received which were not due. Moreover, a number of states also have false claims laws, and some of these laws may apply to claims for items or services reimbursed under Medicaid and/or commercial insurance.

In addition to the general fraud statutes mentioned above, there are a variety of other fraud and abuse laws specific to health care. For example, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") created several new federal crimes, including health care fraud and false statements related to health care matters. The health care fraud statute prohibits, among other things, knowingly and willfully executing a scheme to defraud any health care benefit program, including private payers. A violation of this statute is a felony and may result in fines, up to ten years imprisonment (assuming no serious bodily injury or death results), or exclusion from FHCPs. The false statements statute prohibits, among other things, knowingly and willfully falsifying, concealing or covering up a material fact, or making any materially false, fictitious, or fraudulent statement in connection with the delivery of or payment for items or services under a health care benefit program. A violation of this statute is a felony and may result in fines and imprisonment and could potentially result in the government's pursuit of exclusion from FHCPs. Additionally, a person who offers or transfers to a Medicare or Medicaid beneficiary any remuneration that the person knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier of items or services payable by Medicare or Medicaid may be liable for civil money penalties of up to $10,000 for each item or service and potential exclusion from FHCPs.

The Physician Payments Sunshine Act requires us to report annually to the Centers for Medicare and Medicaid Services ("CMS") certain payments and other transfers of value we make to U.S.-licensed physicians, dentists, teaching hospitals, physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, anesthesiologist assistants, and certified nurse midwives. These annual reports are publicly available, which could impact the number of health care providers who are willing to work with us on the research and development of our products. In addition, several states have implemented similar transparency and disclosure laws applicable to medical device manufacturers, some of which require reporting of transfers of value made to a wider variety of health care professionals and institutions.

The federal physician self-referral prohibition (the "Stark Law") is a strict liability, civil statute, which, in the absence of a statutory or regulatory exception, prohibits: (i) the referral of Medicare and Medicaid patients by a physician to an entity for the provision of specified "designated health care services" if the physician or a member of the physician's immediate family has a direct or indirect financial relationship, including an ownership interest in, or a compensation arrangement with, the entity and (ii) the submission of a bill to Medicare or Medicaid for services rendered pursuant to a prohibited referral. Penalties for violations of the Stark Law include denial of payment for the service, required refund of payments received pursuant to the prohibited referral, and civil monetary penalties for knowing violations of up to $26,125 per claim (as adjusted for annual inflation), up to $174,172 for circumvention schemes, and up to $20,731 per day for failing to report information concerning the entity's ownership, investment, and compensation arrangements upon HHS' request. Stark Law violations also may lead to False Claims Act liability and possible exclusion from FHCPs.

The FCPA's anti-bribery provisions generally prohibit companies and their intermediaries from offering to pay, promising to pay, or authorizing the payment of money or anything of value to non-U.S. officials for the purpose of influencing any act or decision of the foreign official in his/her capacity or to secure any other improper advantage to obtain or retain business. Violation of the anti-bribery provisions of the FCPA by a corporation or business entity can result in criminal fines of up to $2 million and civil penalties of up to $23,011 for each violation. Individuals, including officers, directors, stockholders, and agents of companies, can be subject to a criminal fine of up to $250,000 and/or imprisonment, in addition to civil penalties of up to $23,011, per violation. Also, under the alternative fines provision of the FCPA, an individual or entity can be fined an amount of up to twice the gross pecuniary gain or loss from a violation.

The FCPA's accounting provisions require that all issuers 1) make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect an issuer's transactions and dispositions of an issuer's assets; and 2) devise and maintain a system of internal accounting controls sufficient to ensure management's control, authority, and responsibility over the firm's assets. Violations of the accounting provisions by a corporation or other business entity can result in criminal fines of up to $25 million per violation and civil penalties of up to $1,035,909. Individuals can be subject to a criminal fine of up to $5 million per violation and/or imprisonment and civil penalties of up to $207,183. As with an anti-bribery violation, under the alternative fines provision of the FCPA, an individual or entity can be fined an amount of up to twice the gross pecuniary gain or loss from the violation. The SEC may also seek injunctive relief, disgorgement of ill-gotten gains, and a bar prohibiting an individual from serving as an officer or director of a public company.

Due to the breadth of some of these laws, it is possible that some of our current or future practices might be challenged under one or more of these laws. In addition, there can be no assurance that we would not be required to alter one or more of our practices to comply with these laws. Evolving interpretations of current laws or the adoption of new federal or state laws or regulations could adversely affect some of the arrangements we have with customers, physicians, and dentists. Violations of any of these laws or any other applicable laws or regulations may result in significant penalties, including, without limitation, administrative, civil, and criminal penalties, damages, fines, disgorgement, the curtailment or restructuring of operations, integrity oversight and reporting obligations to resolve allegations of noncompliance, exclusion from participation in federal and state healthcare programs, such as Medicare and Medicaid, and imprisonment. Ensuring business arrangements comply with applicable healthcare laws, as well as responding to possible investigations by government authorities, can be time- and resource-consuming and can divert a company's attention from its business.

Privacy and Security of Health Information

Numerous federal, state, and international laws and regulations govern the collection, use, and disclosure of patient-identifiable health information, including HIPAA. HIPAA applies to covered entities, which include, among other entities, a "health care provider" that transmits health information in electronic form in connection with certain transactions regulated under HIPAA. HIPAA also applies to "business associates," meaning persons or entities that create, receive, maintain, or transmit protected health information ("PHI") to perform a function on behalf of, or provide a service to, a covered entity. Although we are not a covered entity, most health care (including dental) facilities that purchase our products are covered entities under HIPAA. Due to activities that we perform for or on behalf of covered entities, we may sometimes act as a business associate, or our customers may ask us to enter Business Associate Agreements and assume business associate responsibilities.

Various implementing regulations have been promulgated under HIPAA. The HIPAA Security Rule requires implementation of certain administrative, physical, and technical safeguards to ensure the confidentiality, integrity, and availability of electronic PHI. The HIPAA Privacy Rule governs the use and disclosure of PHI and provides certain rights to individuals with respect to that information. For example, for most uses and disclosures of PHI, other than for treatment, payment, health care operations, and certain public policy purposes, the HIPAA Privacy Rule generally requires obtaining valid written authorization from the individual, including in the research context. With certain limited exceptions, the covered entity performing the research must obtain valid authorization from the research subject (or an appropriate waiver) before providing that subject's PHI to sponsors like us. Furthermore, in most cases, the HIPAA Privacy Rule requires that use or disclosure of PHI be limited to the minimum necessary to achieve the purpose of the use or disclosure.

The HIPAA Privacy and Security Rules require covered entities to contractually bind us, where we are acting as a business associate, to protect the privacy and security of individually identifiable health information that we may use, access, or disclose for purposes of services we may provide. Moreover, the Health Information Technology for Economic and Clinical Health Act ("HITECH") enacted in February 2009, made certain provisions of the HIPAA Privacy and Security Rules directly applicable to business associates.

HITECH also established breach notification requirements, increased civil penalty amounts for HIPAA violations, and requires HHS to conduct periodic audits of covered entities and business associates to confirm compliance. In addition, HITECH authorizes state attorneys general to bring civil actions in response to HIPAA violations committed against residents of their respective states.

In 2013, the Office for Civil Rights ("OCR") of HHS released an omnibus final rule (the "Final Rule"), implementing HITECH. Among other provisions, the Final Rule made certain changes to the breach notification regulations, including requiring business associates to notify covered entities if a breach occurs at or by the business associate. Following a breach of unsecured PHI, covered entities must provide notification of the breach to affected individuals, the HHS Secretary, and, for breaches affecting more than 500 residents of a state or jurisdiction, prominent media outlets serving that state/jurisdiction. Breaches of health information can also give rise to class actions by affected individuals and result in significant reputational damage to the covered entity and/or business associates or other parties involved in the breach.

The Final Rule also provides for heightened governmental investigations of potential non-compliance. However, the Final Rule did not address accounting of disclosures, although such regulations are forthcoming. The proposed rule addressing accounting of disclosures, if finalized, could impose a significant burden on us, as it would require covered entities and their business associates to develop systems to monitor (1) which employees access an individual's electronic PHI contained in a designated record set, (2) the time and date such access occurs, and (3) the action taken during the access session (e.g., modification, deletion, viewing).

Failure to comply with HIPAA may result in civil and criminal penalties. Civil penalties for a single violation of the regulations occurring on or after February 18, 2009 range from $120 to more than $60,000 per violation, with a maximum penalty of $1,806,757 per year for violations of an identical provision of the regulations. Criminal penalties of up to $250,000 and imprisonment may also be imposed for certain knowing violations of HIPAA. We may be required to make costly system modifications, which may restrict our business operations, to comply with HIPAA, to the extent we act as a business associate. Our failure to comply may result in liability and adversely affect our business, financial condition, and results of operations.

Numerous other federal and state laws protect the confidentiality of patient information, including state medical privacy laws and federal and state consumer protection laws. These state laws may be similar to or possibly more stringent than the federal provisions. These laws in many cases are not preempted by the HIPAA rules and may be subject to varying interpretations by the courts and government agencies, creating complex compliance issues for us and our customers and potentially exposing us to additional expense, adverse publicity, and liability. Other countries also have, or are developing, laws governing the collection, use, and transmission of personal or patient information, which could create liability for us or increase our cost of doing business.

New health information standards, whether implemented pursuant to HIPAA, new state privacy laws, future Congressional action, or otherwise, could have a significant effect on the manner in which we handle health information, and the cost of complying with these standards could be significant. If we do not properly comply with existing or new laws and regulations related to patient health information, we could be subject to criminal or civil sanctions.

Third-Party Reimbursement

Dentists and other health care providers that purchase our products may rely on third-party payers, including Medicare, Medicaid, and private payers to cover and reimburse all or part of the cost of the clinical procedures performed using our products. As a result, coverage and reimbursement of the procedures using our products is dependent in part on the policies of these payers. We believe that most of the procedures being performed with our current products generally are reimbursable, with the exception of cosmetic applications, such as teeth whitening.

No uniform coverage or reimbursement policy for dental and medical treatment exists among third-party payers, and coverage and reimbursement can differ significantly from payer to payer. Under Medicaid, for example, states are required to cover basic dental services for children, but retain discretion as to whether to provide coverage for dental services for adults. Under the Early Periodic Screening, Diagnostic, and Treatment benefit available to children, dental services determined to be "medically necessary" and provided at intervals that meet reasonable standards of dental practice (or at such other intervals, as indicated by medical necessity) are generally covered by Medicaid. Although not required to cover dental services for adults, most state Medicaid programs still provide a degree of coverage for at least emergency dental services.

Original Medicare covers dental services only in certain limited circumstances. For instance, Medicare will pay for certain dental services when provided in the inpatient hospital setting if the dental procedure itself made hospitalization necessary. Medicare will also pay for certain dental services that are an integral part of a covered procedure (e.g., jaw reconstruction following accidental injury), extractions done in preparation for certain radiation treatments, and oral examinations preceding kidney transplantation or heart valve replacement, under certain circumstances. However, Medicare Advantage plans, which are health insurance plans administered by private-sector health insurers that receive payment from Medicare to provide Medicare benefits to Medicare-eligible beneficiaries, may (and often do) cover additional items services beyond those covered by original Medicare, including dental items and services.

Future legislation, regulation or coverage and reimbursement policies of third-party payers may adversely affect the utilization of our products. For example, the Affordable Care Act included various reforms impacting Medicare reimbursement and coverage, including revision to prospective payment systems, any of which may adversely impact any Medicare reimbursements received by our end-user customers. Moreover, in August 2011, the Budget Control Act of 2011, among other things, created measures for spending reductions by Congress. A Joint Select Committee on Deficit Reduction, tasked with recommending a targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, was unable to reach required goals, thereby triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions of Medicare payments to providers of 2% per fiscal year, which went into effect in April 2013, and, due to subsequent legislative amendments, will remain in effect into 2031, unless additional Congressional action is taken. However, COVID-19 relief support legislation suspended the 2% Medicare sequester from May 1, 2020 through March 31, 2022. Sequestration will start again on April 1, 2022. From April 1 to June 30, 2022, payment for Medicare fee-for-service claims will be adjusted downwards by 1%; beginning July 1, 2022, the payment will be adjusted downwards by 2%.

In addition, private payers and employer-sponsored health care plans became subject to various rules and potential penalties under the Affordable Care Act. For example, health plans in the individual and small group markets were required to begin providing a core package of health care services, known as "essential health benefits." Essential health benefits include ten general categories of care, including pediatric services, which requires coverage of dental and vision care, among other medical services, for children. The Affordable Care Act also required employers with 50 or more employees to offer health insurance coverage to full-time workers or pay a penalty, which could potentially increase the availability of third-party reimbursement for some medical procedures using our products, although we continue to assess the impact of the Affordable Care Act on our business.

We cannot be sure that government or private third-party payers will cover and reimburse the procedures using our products in whole or in part in the future or that payment rates will be adequate.

Because third-party payments may be less than a provider's actual costs in furnishing care, providers have incentives to lower their operating costs by utilizing products that will decrease labor or otherwise lower their costs. However, we cannot be certain that dental and medical service providers will purchase our products, despite the clinical benefits and opportunity for cost savings that we believe can be derived from their use. If providers cannot obtain adequate coverage and reimbursement for our products, or the procedures in which they are used, our business, financial condition, and results of operations could suffer.

Human Capital Resources

As of December 31, 2023, the Company employed 157 full-time employees in five countries, and 142 of those full-time employees work in the United States. We also leverage a limited number of temporary employee resources from time to time. Our employees are not represented by any collective bargaining agreement, and we believe our employee relations are good.

The Company was awarded a Top Workplaces 2022 honor by the Orange County Register Top Workplaces, as well as by the Inland News Group. The Top Workplaces award is based solely on employee feedback gathered through a third-party survey administered by employee engagement technology partner, Energage LLC. The confidential survey measures 15 culture drivers that are critical to the success of any organization, including alignment, execution, and connection.

We are committed to diversity in our workforce, and we report diversity statistics to the BIOLASE board of directors (the "Board") on a quarterly basis. Continuing to develop an inclusive culture in which each employee has the opportunity to contribute his or her individual talents on a daily basis is also a high priority. As the Company's future depends on our ability to attract, engage and retain talented employees, the Company strives to select talent who share our passion for advancing dentistry and who can best help us achieve our objectives through interviews, as well as with externally-provided assessments for select positions. Compensation decisions are based on performance, external market data and internal equity. Employee retention data is reviewed on a monthly basis by Company leaders and on a quarterly basis by the Board. We strive to provide development opportunities for employees and encourage open sharing of ideas, as we know that each member of our team contributes to the Company's performance.

Information about Our Executive Officers

The executive officers of the Company are elected each year at the meeting of our Board, which follows the annual meeting of stockholders, and at other Board meetings, as appropriate.

As of March 21, 2024, the executive officers of the Company were as follows:

Name	Age	Position
John R. Beaver	62	President and Chief Executive Officer
Jennifer Bright	52	Chief Financial Officer
Steven Sandor	43	Chief Operating Officer

John R. Beaver was named President and Chief Executive Officer in February 2021, and was previously the Company's Executive Vice President, Chief Operating Officer and Chief Financial Officer. He joined the Company in 2017 as Senior Vice President and Chief Financial Officer. He assumed roles of varying responsibilities over the past few years, including Interim Chief Executive Officer of the Company. Prior to joining the Company, Mr. Beaver served as the Chief Financial Officer of Silicor Materials, Inc., a global leader in the production of solar silicon, from 2009 to 2013 and 2015 to 2017. Mr. Beaver also served on the Board of Directors of Silicor Materials, Inc. from 2013 to 2015. From 2013 to 2015, Mr. Beaver was Chief Financial Officer for Modumetal, Inc., a nano-laminated alloy company focused on oil and gas applications. Prior to 2009, Mr. Beaver was Senior Vice

President—Finance and Chief Financial Officer at Sterling Chemicals, a public commodity chemical manufacturer. Mr. Beaver holds a Bachelor of Business Administration in Accounting from the University of Texas at Austin and is a Certified Public Accountant.

Jennifer Bright was named Chief Financial Officer in July 2022. From April 2021 until her appointment as Chief Financial Officer, Ms. Bright was the Company's Vice President of Finance and Accounting Director. Ms. Bright is a certified public accountant with more than 25 years of professional accounting and finance experience. From June 2020 to December 2020 she was consulting as Interim Director of Accounting at Spectrum Pharmaceuticals and was the Corporate Controller at Kellermeyer Bergensons Services from November 2018 to April 2020. Previously, Ms. Bright held senior accounting director and controller positions at Advantage Solutions, Inc., Crunch Holdings, LLC, Apria Healthcare Group, Inc., and Richmond American Homes, and was a Supervising Senior Auditor at the accounting firm of PricewaterhouseCoopers LLP. Ms. Bright holds a B.A. degree in Business Administration from the University of Washington.

Steven Sandor was named Chief Operating Officer in July 2022. From April 2019 until his appointment as Chief Operating Officer, Mr. Sandor served in several positions of increasing responsibility at the Company, and was most recently Senior Director of Commercial Operations and Service. From October 2016 to April 2019 he was Director of Global Training at KaVo Kerr and from May 2014 to May 2016 he was Sales Development Manager. Previously, Mr. Sandor held managerial positions at Sybron Endo, Sybron Orascoptic and AT&T, and served in the United States Coast Guard. Mr. Sandor holds an Executive Masters in Business Administration from Chapman University.

Available Information

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Exchange Act, are available free of charge on our website at http://www.biolase.com, as soon as reasonably practicable after the Company electronically files such reports with, or furnishes those reports to, the SEC. We are providing our internet site solely for the information of investors. We do not intend the address to be an active link or to otherwise incorporate the contents of the website into this report.

Corporate Information

We were originally formed as Societe Endo Technic, SA ("SET") in 1984 in Marseilles, France, to develop and market various endodontic and laser products. In 1987, SET merged into Pamplona Capital Corp., a public holding company incorporated in Delaware. In 1994, we changed our name to BIOLASE Technology, Inc. and in 2012, we changed our name to BIOLASE, Inc.

Our principal executive offices are located at 27042 Towne Centre Drive, Suite 270, Lake Forest, California 92610. Our telephone number is (949) 361-1200. Additional information can be found on our website, at www.biolase.com, and in our periodic and current reports filed with the SEC. Copies of our current and periodic reports filed with the SEC are available to the public on a website maintained by the SEC at *www.sec.gov*, and on our website at www.biolase.com/sec-filings.

Additional Information

BIOLASE®, ZipTip®, ezlase®, eztips®, ComfortPulse®, Waterlase®, Waterlase Dentistry®, Waterlase Express®, iLase®, iPlus®, Epic®, Epic Pro®, Epic Hygiene™, WCLI®, World Clinical Laser Institute®, Waterlase MD®, Waterlase Dentistry®, Waterlase Rapid Endo®, LaserFresh®, and EZLase® are registered trademarks of BIOLASE, and Pedolase™ is a trademark of BIOLASE. All other product and company names are registered trademarks or trademarks of their respective owners.

1A. ***Risk Factors***

Investing in our securities involves a high degree of risk. You should carefully consider the following risk factors together with all of the other information included in this Form 10-K. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we presently consider to be immaterial could also adversely affect us. If any of the following risks come to fruition, our business, financial condition, results of operations, cash flows, and future growth prospects could be materially and adversely affected. In these circumstances, the market price of our stock could decline, and you could lose all or part of your investment.

Risks Related to Our Business and Operations

Due to our accumulated deficit, recurring and negative cash flow from operations for the year ended December 31, 2023 there is substantial doubt about our ability to continue as a going concern.

Our audited consolidated financial statements for the year ended December 31, 2023 were prepared on a going concern basis in accordance with generally accepted accounting principles in the United States. The going concern basis assumes that we will continue in operation for the next 12 months and will be able to realize our assets and discharge our liabilities and commitments in the normal course of business. Thus, our consolidated financial statements do not include any adjustments that might be necessary if we are unable to continue as a going concern. Our recurring losses, negative cash flow, need for additional capital, and the uncertainties surrounding our ability to raise such capital raise substantial doubt about our ability to continue as a going concern. For us to continue operations beyond the next 12 months and be able to discharge our liabilities and commitments in the normal course of business, we must sell our products directly to end-users and through distributors, establish profitable operations through increased sales, decrease expenses, generate cash from operations or raise additional funds when needed. Our goal is to improve our financial condition and ultimately improve our financial results by increasing revenues through expanding awareness of the benefits of our dental lasers among dental specialists and general practitioners and reducing expenses. However, if we are unable to do so on a timely basis, we will be required to seek additional capital. In that event, we would seek additional funds through various financing sources, including the sale of our equity and debt securities, however, there can be no guarantees that such funds will be available on commercially reasonable terms, if at all. If we are unable to raise additional capital, increase sales or reduce expenses, we will be unable to continue to fund our operations, develop our products, realize value from our assets, and discharge our liabilities in the normal course of business. If we become unable to continue as a going concern, we could have to liquidate our assets, and potentially realize significantly less than the values at which they are carried on our financial statements, and stockholders could lose all or part of their investment in our common stock. The Report of Independent Registered Public Accounting Firm from Macias Gini & O'Connell LLP contains an explanatory paragraph regarding our ability to continue as a going concern.

We have experienced net losses for each of the past three years, and we could experience additional losses and have difficulty achieving profitability in the future.

We had an accumulated deficit of $316.8 million as of December 31, 2023. We recorded net losses of $20.6 million, $28.6 million, and $16.2 million for the years ended December 31, 2023, 2022, and 2021, respectively. In order to achieve profitability, we must increase net revenue through new sales and control our costs. Failure to increase our net revenue and decrease our costs could cause our stock price to decline and could have a material adverse effect on our business, financial condition, and results of operations.

We are vulnerable to continued global economic uncertainty and volatility in financial markets.

Our business is highly sensitive to changes in general economic conditions as a seller of capital equipment to end users in dental professional practices. Financial markets inside the United States and internationally have experienced extreme disruption in recent times, including, among other things, extreme volatility in security prices, severely diminished liquidity and credit availability, and declining valuations of investments. We believe these disruptions are likely to have an ongoing adverse effect on the world economy. A continued economic downturn and financial market disruptions could have a material adverse effect on our business, financial condition, and results of operations. Also, the imposition of economic sanctions on Russia as a result of the conflict in Ukraine could prevent us from performing existing contracts and pursuing new growth opportunities, which could adversely affect our business, financial condition and results of operations. Furthermore, sustained uncertainty about, or worsening of, geopolitical tensions, including further escalation of war between Russia and Ukraine, further escalation in the conflict between the State of Israel and Hamas, as well as further escalation of tensions between the State of Israel and various countries in the Middle East and North Africa, could result in a global economic slowdown and long-term changes to global trade. Any or all of these factors could negatively affect Mobix Labs' business, results of operations, financial condition and growth.

We may need to raise additional capital in the future, and if we are unable to secure adequate funds on terms acceptable to us, we could be unable to execute our business plan.

As of the date of this report, we do not have cash on hand to fund our proposed plan of operations over the next 12 months. In order to continue our proposed operations beyond that date we will need to either achieve a significant level of continuing cash flow from operations or raise additional funds through the issuance of equity or debt securities in the public or private markets, or through a collaborative arrangement or sale of assets. Additional financing opportunities may not be available to us, or if available, may not be on favorable terms. The availability of financing opportunities will depend, in part, on market conditions, and the outlook for our business. Any future issuance of equity securities or securities convertible into equity securities could result in substantial dilution to our stockholders, and the securities issued in such a financing could have rights, preferences or privileges senior to those of our common stock. In addition, if we raise additional funds through debt financing, we could be subject to debt covenants that place limitations on our operations. We could not be able to raise additional capital on reasonable terms, or at all, or we could use capital more rapidly than anticipated. If we cannot raise the required capital when needed, we may not be able to satisfy the demands of existing and prospective customers, we could lose revenue and market share and we may have to curtail our capital expenditures.

If we are unable to achieve and sustain an adequate level of profitability or obtain sufficient capital in the future, we could have to curtail our capital expenditures. Any curtailment of our capital expenditures could result in a reduction in net revenue, reduced quality of our products, increased manufacturing costs for our products, harm to our reputation, or reduced manufacturing efficiencies and could have a material adverse effect on our business, financial condition, and results of operations.

Our success depends, in part, on our relationships with, and the efforts of, third-party distributors.

We rely on exclusive and non-exclusive third-party distributors for a portion of our sales in North America and a majority of our sales in countries outside of the U.S. For the fiscal years ended December 31, 2023, 2022, and 2021, revenue from distributors accounted for approximately 31%, 30%, and 35% of our total net revenue, respectively. Our distributors have significant discretion in determining the efforts and resources they apply to the sale of our products, and we face significant challenges and risks in expanding, training, and managing our third-party distributors, particularly given their geographically dispersed operations. Our distributors may not commit the necessary resources to market and sell our products to the level of our expectations, and, regardless of the resources they commit, they may not be successful. From time to time, we may face competition or pricing pressure from one or more of our non-exclusive distributors in certain geographic areas where those distributors are selling inventory to the same customer base as us. Additionally, most of our distributor agreements can be terminated with limited notice, and we may not be able to replace any terminating distributor in a timely manner or on terms agreeable to us, if at all. If we are not able to maintain our distribution network, if our distribution network is not successful in marketing and selling our products, or if we experience a significant reduction in, cancellation, or change in the size and timing of orders from our distributors, our revenues could decline significantly and lead to an inability to meet operating cash flow requirements, which would have a material adverse effect on our business, financial condition, and results of operations.

Dentists and patients have been hesitant in adopting laser technologies, and our inability to overcome this hesitation could limit the market acceptance of our products and our market share.

Our dental laser systems represent relatively new technologies in the dental market. Only a small percentage of dentists use lasers to perform dental procedures. Our future success will depend on our ability to increase demand for our products by demonstrating to a broad spectrum of dentists and patients the potential performance advantages of our laser systems over traditional methods of treatment and over competitive laser systems, and our inability to do so could have a material adverse effect on our business, financial condition, and results of operations. Historically, we have experienced long sales cycles because dentists have been, and could continue to be, slow to adopt new technologies on a widespread basis. As a result, we generally are required to invest a significant amount of time and resources to educate dentists about the benefits of our products in comparison to competing products and technologies before completing a sale, if any.

Any failure in our efforts to train dental practitioners could result in the misuse of our products, reduce the market acceptance of our products and have a material adverse effect on our business, financial condition, and results of operations.

There is a learning process involved for dental practitioners to become proficient users of our laser systems. It is critical to the success of our sales efforts to adequately train a sufficient number of dental practitioners. Convincing dental practitioners to dedicate the time and energy necessary for adequate training is challenging, and we cannot provide assurance that we will be successful in these efforts. If dental practitioners are not properly trained, they could misuse or ineffectively use our products, or could be less likely to appreciate our laser systems. This could also result in unsatisfactory patient outcomes, patient injury, negative publicity, FDA regulatory action, or lawsuits against us, any of which could negatively affect our reputation and sales of our laser systems.

If future data proves to be inconsistent with our clinical results or if competitors' products present more favorable results our revenues could decline and our business, financial condition, and results of operations could be materially and adversely affected.

If new studies or comparative studies generate results that are not as favorable as our clinical results, our revenues could decline. Additionally, if future studies indicate that our competitors' products are more effective or safer than ours, our revenues could decline. Furthermore, dental practitioners could choose not to purchase our laser systems until they receive additional published long-term clinical evidence and recommendations from prominent dental practitioners that indicate our laser systems are effective for dental applications.

Our ability to use net operating loss carryforwards could be limited.

Our ability to use our federal and state NOL carryforwards to offset potential future taxable income is dependent upon our generation of future taxable income before the expiration dates of the NOL carryforwards, and we cannot predict with certainty when, or whether we will generate sufficient taxable income to use all our NOL carryforwards. As of December 31, 2023, we had U.S. federal net operating loss carryforwards of $110 million. Of the total U.S. federal net operating loss carryforwards as of December 31, 2023, $11.8 million is subject to a 20 year carryover period which will be fully expired by 2038. Losses generated beginning in 2018 will carryover indefinitely. We had state net operating loss carryforwards of $80 million as of December 31, 2023. Our net operating loss carryforwards are subject to review and possible adjustment by the taxing authorities. There are no tax examinations currently in progress.

In the future, our ability to utilize our net operating loss carryforwards, tax credits, and built-in items of deduction, including capitalized start-up costs and research and development costs, may be significantly limited due to changes in ownership. These changes in ownership can limit the amount of these tax benefits that can be utilized each year to offset future taxable income. In general, an ownership change, as defined in IRC Section 382, results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50% of the outstanding stock of a company by certain stockholders or public groups. Due to the valuation allowance against deferred tax assets as of December 31, 2023, the net effect of any further limitation will have no impact on results of operations. Refer to *Note 5 - Income Taxes* for further discussion.

We could incur problems in manufacturing our products.

In order to grow our business, we must expand our manufacturing capabilities to produce the systems and accessories necessary to meet any demand we may experience. We could encounter difficulties in increasing the production of our products, including problems involving production capacity and yields, quality control and assurance, component supply, and shortages of qualified personnel. In addition, before we can begin to expand the commercial manufacture of our products, we must ensure that any such expansion of our manufacturing facilities, processes, and quality systems, and the manufacture of our laser systems, will comply with FDA regulations governing facility compliance, quality control, and documentation policies and procedures. In addition, our manufacturing facilities are subject to periodic inspections by the FDA, as well as various state agencies and foreign regulatory agencies. From time to time, we could expend significant resources in obtaining, maintaining, and addressing our compliance with these requirements. Our success will depend in part upon our ability to manufacture our products in compliance with the FDA's Quality System Regulation and other regulatory requirements. We have experienced quality issues with components of our products supplied by third parties, and we could continue to do so. Our future success depends on our ability to manufacture our products on a timely basis with acceptable manufacturing costs, while at the same time maintaining good quality control and complying with applicable regulatory requirements, and an inability to do so could have a material adverse effect on our product sales, cash collections from customers, and our ability to meet operating cash flow requirements, which could have a material adverse effect on our business, financial condition, and results of operations.

We could be subject to significant warranty obligations if our products are defective, which could have a material adverse effect on our business, financial condition, and results of operations.

In manufacturing our products, we depend upon third parties for the supply of various components. Many of these components require a significant degree of technical expertise to design and produce. If we fail to adequately design, or if our suppliers fail to produce components to specification, or to comply with Quality System Regulation, or if the suppliers, or we, use defective materials or workmanship in the manufacturing process, the reliability and performance of our products will be compromised. We have experienced such non-compliance with manufacturing specifications in the past and could continue to experience such non-compliance in the future, which could lead to higher costs and reduced margins.

Our products could contain defects that cannot be repaired easily and inexpensively, and we have experienced in the past and could experience in the future some or all of the following:

- loss of customer orders and delay in order fulfillment;
- damage to our brand reputation;
- increased cost of our warranty program due to product repair or replacement;
- inability to attract new customers;
- diversion of resources from our manufacturing and engineering and development departments into our service department; and
- legal action.

Product liability claims against us could be costly and could harm our reputation.

The sale of dental and medical devices involves the risk of product liability claims against us. Claims could exceed our product liability insurance coverage limits. Our insurance policies are subject to various standard coverage exclusions, including damage to the product itself, losses from recall of our product, and losses covered by other forms of insurance such as workers compensation. We cannot be certain that we will be able to successfully defend any claims against us, nor can we be certain that our insurance will cover all liabilities resulting from such claims. In addition, we cannot provide assurance that we will be able to obtain such insurance in the future on terms acceptable to us, or at all. Regardless of merit or eventual outcome, any product liability claim brought against us could result in harm to our reputation, decreased demand for our products, costs related to litigation, product recalls, loss of revenue, an increase in our product liability insurance rates, or the inability to secure coverage in the future, and could have a material adverse effect on our business by reducing cash collections from customers and limiting our ability to meet our operating cash flow requirements.

Our suppliers may not supply us with a sufficient amount or adequate quality of materials, which could have a material adverse effect on our business, financial condition, and results of operations.

Our business depends on our ability to obtain timely deliveries of materials, components, and subassemblies of acceptable quality and in acceptable quantities from third-party suppliers. We generally purchase components and subassemblies from a limited group of suppliers through purchase orders, rather than written supply contracts. Consequently, many of our suppliers have no obligation to continue to supply us on a long-term basis. In addition, our suppliers manufacture products for a range of customers, and fluctuations in demand for the products those suppliers manufacture for others could affect their ability to deliver components for us in a timely manner. Moreover, our suppliers could encounter financial hardships, be acquired, or experience other business events unrelated to our demand for components, which could inhibit or prevent their ability to fulfill our orders and satisfy our requirements.

Certain components of our products, particularly specialized components used in our laser systems, are currently available only from a single source or limited sources. For example, the crystal, fiber, and hand pieces used in our Waterlase systems are each supplied by a separate single supplier. Our dependence on single-source suppliers involves several risks, including limited control over pricing, availability, quality, and delivery schedules.

If any of our suppliers cease to provide us with sufficient quantities of our components in a timely manner or on terms acceptable to us, or ceases to manufacture components of acceptable quality, we could incur manufacturing delays and sales disruptions while we locate and engage alternative qualified suppliers, and we might be unable to engage acceptable alternative suppliers on favorable terms. In addition, we could need to reengineer our components, which could require product redesign and submission to the FDA of a 510(k) application, which could significantly delay production. Any interruption or delay in the supply of components or materials, or our inability to obtain components or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers and cause them to cancel orders or switch to competitive procedures. We are continually in the process of identifying and qualifying alternate source suppliers for our key components. There can be no assurance, however, that we will successfully identify and qualify an alternate source supplier for any of our key components or that we could enter into an agreement with any such alternate source supplier on terms acceptable to us, or at all.

We have significant international sales and are subject to risks associated with operating internationally.

International sales comprise a significant portion of our net revenue, and we intend to continue to pursue and expand our international business activities. For the fiscal years ended December 31, 2023, 2022, and 2021, international sales accounted for approximately 31%, 30%, and 35% of our net revenue, respectively. Political, economic, and health conditions outside the United States, could make it difficult for us to increase our international revenue or to operate abroad. For example, efforts to contain the outbreak of COVID-19 in Asia and Europe included travel restrictions and closures of dental offices and clinics, significantly adversely impacting our international sales in 2022 and 2021.

In addition, international operations are subject to many inherent risks, which could have a material adverse effect on our revenues and operating cash flow, including among others:

•adverse changes in tariffs and trade restrictions;

•political, social, and economic instability and increased security concerns;

•fluctuations in foreign currency exchange rates;

•longer collection periods and difficulties in collecting receivables from foreign entities;

•exposure to different legal standards;

•transportation delays and difficulties of managing international distribution channels;

•reduced protection for our intellectual property in some countries;

•difficulties in obtaining domestic and foreign export, import, and other governmental approvals, permits, and licenses, and compliance with foreign laws;

•the imposition of governmental controls;

•unexpected changes in regulatory or certification requirements;

•difficulties in staffing and managing foreign operations; and

•potentially adverse tax consequences and the complexities of foreign value-added tax systems.

We believe that international sales will continue to represent a significant portion of our net revenue, and we intend to expand our international operations further. In international markets where our sales are denominated in U.S. dollars, an increase in the relative value of the dollar against the currency in such markets could indirectly increase the price of our products in those markets and result in a decrease in sales. We do not currently engage in any transactions as a hedge against risks of loss due to foreign currency fluctuations. However, we could do so in the future.

Security breaches of our information technology systems could harm our reputation and customer relationships. Such breaches could subject us to significant reputational, financial, legal, and operational consequences.

We rely on information systems in our business to obtain, rapidly process, analyze and manage data. Any failure by us or our third-party service providers to prevent or mitigate security breaches and improper access to or disclosure of our data could lead to a material disruption of our information systems and loss of business information. In addition, computer malware, viruses, software vulnerabilities, social engineering (predominantly spear phishing attacks), ransomware and general hacking have become more prevalent in the business environment, have occurred on our systems in the past, and may occur on our systems in the future. Such an attack could result in, among other things: the theft, destruction, loss, unavailability, misappropriation or release of confidential data and intellectual property; operational or business delays; cyber extortion; liability for a breach of personal financial and health information belonging to our customers and their patients or to our employees; and damage to our reputation.

Any of these results could have a material adverse effect on our business due to the time and expense to respond to such an attack, recover data, and remediate information system weaknesses, each of which would disrupt our daily business operations. Further, such an attack would expose us to a risk of loss, regulatory investigations, or litigation and possible liability, including under laws that protect the privacy of personal information.

Our revenue and operating results fluctuate due to seasonality and other factors, so you should not rely on quarter-to-quarter comparisons of our operating results as an indication of our future performance.

Our revenue typically fluctuates from quarter to quarter due to a number of factors, many of which are beyond our control. Revenue in the first quarter typically is lower than average, and revenue in the fourth quarter typically is stronger than average due to the buying patterns of dental practitioners. We believe that this trend exists because a significant number of dentists purchase their capital equipment towards the end of the calendar year in order to maximize their practice earnings while seeking to minimize their taxes. They often use certain tax incentives, such as accelerated depreciation methods for purchasing capital equipment, as part of their year-end tax planning. In addition, revenue in the third quarter could be affected by vacation patterns, which can cause revenue to be flat or lower than in the second quarter of the year. Our historical seasonal fluctuations could also be impacted by sales promotions used by large dental distributors that encourage end-of-quarter and end-of-year buying in our industry.

The expenses we incur are based, in large part, on our expectations regarding future net revenue. Since many of our costs are fixed in the short term, we could be unable to reduce expenses quickly enough to avoid losses if we experience a decrease in expected net revenue. Accordingly, you should not rely on quarter-to-quarter comparisons of our operating results as an indication of our future performance.

Litigation against us could be costly and time-consuming to defend and could materially and adversely affect our business, financial condition, and results of operations.

We are from time to time involved in various claims, litigation matters and regulatory proceedings incidental to our business, including claims for damages arising out of the use of our products or services and claims relating to intellectual property matters, employment matters, commercial disputes, competition, sales and trading practices, environmental matters, personal injury, and insurance coverage. Some of these lawsuits include claims for punitive as well as compensatory damages. The defense of these lawsuits could divert our management's attention, and we could incur significant expenses in defending these lawsuits. In addition, we could be required to pay damage awards or settlements or become subject to unfavorable equitable remedies. Moreover, any insurance or indemnification rights that we could have may be insufficient or unavailable to protect us against potential loss exposures.

Our manufacturing operations are consolidated primarily in one facility. A disruption at this facility could result in a prolonged interruption of our business and have a material adverse effect on our business, financial condition, and results of operations.

Substantially all of our manufacturing operations are located at our leased facility in Corona, California, which is near known earthquake fault zones. Although we have taken precautions to safeguard our leased facility including disaster recovery planning and off-site backup of computer data, a natural disaster such as an earthquake, fire, or flood, could seriously harm our facility and significantly disrupt our operations. Additionally, labor disputes, maintenance requirements, power outages, equipment failures, civil unrest, or terrorist attacks affecting our Corona, California facility could significantly disrupt our operations. Our business interruption insurance coverage may not cover all or any of our losses from natural disasters or other disruptions.

If we lose our key management personnel, or are unable to attract or retain qualified personnel, it could adversely affect our ability to execute our growth strategy.

Our success is dependent, in part, upon our ability to hire and retain management, engineers, marketing and sales personnel, and technical, research and other personnel who are in high demand and are often subject to competing employment opportunities. Our success will depend on our ability to retain our current personnel and to attract and retain qualified personnel in the future. Competition for senior management, engineers, marketing and sales personnel, and other specialized technicians is intense and we may not be able to retain our personnel. If we lose the services of any executive officers or key employees, our ability to achieve our business objectives could be harmed or delayed, which could have a material adverse effect on our daily operations, operating cash flows, results of operations, and ultimately share price. In general, our officers could terminate their employment at any time without notice for any reason.

Failure to meet covenants in the Credit Agreements with our debt agreements could result in acceleration of our payment obligations thereunder, and we may not be able to find alternative financing.

Under the Credit Agreement dated November 9, 2018, as amended from time to time, between BIOLASE, Inc. and SWK, we are required to maintain a specified amount of consolidated unencumbered liquid assets as of the end of each fiscal quarter, and, if we fall below certain levels, generate minimum levels of revenue as of the end of each period specified in the Credit Agreement and maintain specified levels of consolidated EBITDA as of the end of each period specified in the Credit Agreement. Our ability to comply with these covenants may be affected by factors beyond our control.

If we fail to comply with the covenants contained in the Credit Agreement or if the Required Lenders (as defined in the Credit Agreement) contend that we have failed to comply with these covenants or any other restrictions, it could result in an event of default under the Credit Agreement, which would permit or, in certain events, require SWK to declare all amounts outstanding thereunder to be immediately due and payable. There can be no assurances that we will be able to repay all such amounts or able to find alternative financing in an event of a default. Even if alternative financing is available in an event of a default under the Credit Agreement, it may be on unfavorable terms, and the interest rate charged on any new borrowings could be substantially higher than the interest rate under the Credit Agreement, thus adversely affecting cash flows, results of operations, and ultimately, our ability to meet operating cash flow requirements.

The restrictive covenants in the Credit Agreement and BIOLASE's obligation to make debt payments under the Credit Agreement may limit our operating and financial flexibility and may adversely affect the Company's business, financial condition, and results of operations.

The Credit Agreement imposes operating and financial restrictions and covenants, which may limit or prohibit our ability to, among other things:

•incur additional indebtedness;

•make investments, including acquisitions;

•create liens;

•make dividends, distributions or other restricted payments;

•effect affiliate transactions;

•enter into mergers, divisions, consolidations or sales of substantially all of our or our subsidiaries' assets;

•change business activities and issue equity interests; or

•sell material assets (without using the proceeds thereof to repay the obligations under the Credit Agreement).

In addition, we are required to comply with certain financial covenants under the Credit Agreement as described above.

Such restrictive covenants in the Credit Agreement and our repayment obligations under the Credit Agreement could have adverse consequences to us, including:

•limiting our ability to use cash;

•limiting our flexibility in operating our business and planning for, or reacting to, changes in our business and our industry;

•requiring the dedication of a substantial portion of any cash flow from operations to the payment of principal of, and interests on, the indebtedness, thereby reducing the availability of such cash flow to fund our operations, working capital, capital expenditures, future business opportunities and other general corporate purposes;

•restricting us from making strategic acquisitions or causing us to make non-strategic divestitures;

•limiting our ability to obtain additional financing;

•limiting our ability to adjust to changing market conditions; and

•placing us at a competitive disadvantage relative to our competitors who are less highly leveraged.

If we fail to comply with the terms of the Credit Agreement and there is an event of default, the creditor(s) may foreclose upon the assets securing our obligations thereunder.

To secure the performance of our obligations under the Credit Agreement, we granted SWK security interests in substantially all of the assets of BIOLASE and certain of our foreign and domestic subsidiaries. Our failure to comply with the terms of the Credit Agreement could result in an event of default thereunder. In that event, SWK will have the option to (and, in certain circumstances, will have the obligation to) foreclose on the assets of BIOLASE and certain of our subsidiaries pledged as collateral under the Credit Agreement or the other documents executed in connection with the Credit Agreement. The foreclosure on the Company's assets could severely and negatively impact our business, financial condition, and results of operations.

If we fail to comply with the reporting obligations of the Exchange Act and Section 404 of the Sarbanes-Oxley Act, or if we fail to maintain adequate internal control over financial reporting, our business, financial condition, and results of operations, and investors' confidence in us, could be materially and adversely affected.

As a public company, we are required to comply with the periodic reporting obligations of the Exchange Act, including preparing annual reports, quarterly reports, and current reports. Our failure to prepare and disclose this information in a timely manner and meet our reporting obligations in their entirety could subject us to penalties under federal securities laws and regulations of the Nasdaq Stock Market, LLC ("Nasdaq"), expose us to lawsuits, and restrict our ability to access financing on favorable terms, or at all.

In addition, pursuant to Section 404 of the Sarbanes-Oxley Act, we are required to evaluate and provide a management report of our systems of internal control over financial reporting. During the course of the evaluation of our internal control over financial reporting, we could identify areas requiring improvement and could be required to design enhanced processes and controls to address issues identified through this review. This could result in significant delays and costs to us and require us to divert substantial resources, including management time, from other activities.

Any failure to maintain compliance with the requirements of Section 404 on a timely basis could result in the loss of investor confidence in the reliability of our financial statements, which in turn could, negatively impact the trading price of our stock, and adversely affect investors' confidence in the Company and our ability to access capital markets for financing.

Risks Related to Our Intellectual Property

If the patents that we own or license, or our other intellectual property rights, do not adequately protect our technologies, we could lose market share to our competitors and be unable to operate our business profitably.

Our future success depends, in part, on our ability to obtain and maintain patent protection for our products and technology, to preserve our trade secrets and to operate without infringing the intellectual property of others. We rely on patents to establish and maintain proprietary rights in our technology and products. We currently possess a number of issued patents and patent applications with respect to our products and technology. However, we cannot ensure that any additional patents will be issued, that the scope of any patent protection will be effective in helping us address our competition, or that any of our patents will be held valid if subsequently challenged. It is also possible that our competitors could independently develop similar or more desirable products, duplicate our products, or design products that circumvent our patents. The laws of foreign countries may not protect our products or intellectual property rights to the same extent as the laws of the United States. In addition, there have been recent changes in the patent laws and rules of the U.S. Patent and Trademark Office, and there could be future proposed changes that, if enacted, have a significant impact on our ability to protect our technology and enforce our intellectual property rights. If we fail to protect our intellectual property rights adequately, our competitive position could be adversely affected, and there could be a material adverse effect on our business, financial condition, and results of operations.

If third parties claim that we infringe their intellectual property rights, we could incur liabilities and costs and have to redesign or discontinue selling certain products, which could have a material adverse effect on our business, financial condition, and results of operations.

We face substantial uncertainty regarding the impact that other parties' intellectual property positions will have on dental and other medical laser applications. The medical technology industry has in the past been characterized by a substantial amount of litigation and related administrative proceedings regarding patents and intellectual property rights. From time to time, we have received, and we expect to continue to receive, notices of claims of infringement, misappropriation, or misuse of other parties' proprietary rights. Some of these claims could lead to litigation. We may not prevail in any future intellectual property infringement litigation given the complex technical issues and inherent uncertainties in litigation. Any claims, with or without merit, could be time-consuming and distracting to management, result in costly litigation, or cause product shipment delays. Adverse determinations in litigation could subject us to significant liability and could result in the loss of proprietary rights. A successful lawsuit against us could also force us to cease selling or redesign products that incorporate the infringed intellectual property. Additionally, we could be required to seek a license from the holder of the intellectual property to use the infringed technology, and we may not be able to obtain a license on acceptable terms, or at all. Refer to Item 3 - *Legal Proceedings* for discussion on such a pending litigation.

Risks Related to Our Regulatory Environment

Changes in government regulation, failure to comply with government regulation or the inability to obtain or maintain necessary government approvals could have a material adverse effect on our business, financial condition, and results of operations.

Our products are subject to extensive government regulation, both in the United States and globally in other countries. To clinically test, manufacture, and market products for human use, we must comply with regulations and safety standards set by the FDA and comparable state and foreign agencies. Regulations adopted by the FDA are wide-ranging and govern, among other things, product design, development, manufacture and control testing, labeling control, storage, advertising, marketing, and sales. Generally, products must meet regulatory standards as safe and effective for their intended use before being marketed for human applications. The clearance and approval process is expensive, time-consuming, and uncertain. Failure to comply with applicable regulatory requirements of the FDA can result in an enforcement action, which could include a variety of sanctions, including fines, injunctions, civil penalties, recall or seizure of our products, operating restrictions, partial suspension, or total shutdown of production and criminal prosecution. The failure to receive or maintain requisite approvals for the use of our products or processes, or significant delays in obtaining such clearances or approvals, could prevent us from developing, manufacturing, and marketing products and services necessary for us to remain competitive.

If we develop new products and applications or make any significant modifications to our existing products or labeling, we will need to obtain additional regulatory clearances or approvals. Any modification that could significantly affect a product's safety or effectiveness, or that would constitute a change in its intended use, will require a new FDA 510(k) clearance. The FDA requires each manufacturer to make this determination initially, but the FDA can review any such decision and can disagree with a manufacturer's determination. If the FDA disagrees with a manufacturer's determination, the FDA can require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance or PMA is obtained. If 510(k) clearance is denied and a PMA application is required, we could be required to submit substantially more data and conduct human clinical testing and would very likely be subject to a significantly longer review period.

Products sold in international markets are also subject to the regulatory requirements of each respective country or region. The regulations of the European Union require that a device have the CE Mark, indicating conformance with European Union laws and regulations before it can be marketed in the European Union. The regulatory international review process varies from country to country. We rely on our distributors and sales representatives in the foreign countries in which we market our products to comply with the regulatory laws of such countries. Failure to comply with the laws of such countries could prevent us from continuing to sell products in such countries. In addition, unanticipated changes in existing regulatory requirements or the adoption of new requirements could impose significant costs and burdens on us, which could increase our operating expenses.

Changes in health care regulations in the U.S. and elsewhere could adversely affect the demand for our products as well as the way in which we conduct our business and operations. For example, in 2010, President Obama signed the Affordable Care Act into law, which included various reforms impacting Medicare coverage and reimbursement, including revision to prospective payment systems, any of which could adversely impact any Medicare reimbursements received by our end-user customers. New legislation may be enacted as President Biden and Congress consider further reform. In addition, as a result of the focus on health care reform, there is risk that Congress could implement changes in laws and regulations governing health care service providers, including measures to control costs, and reductions in reimbursement levels. We cannot be sure that government or private third-party payers will cover and reimburse the procedures using our products, in whole or in part, in the future, or that payment rates will be adequate. If providers cannot obtain adequate coverage and reimbursement for our products, or the procedures in which they are used, our business, results of operations, and financial condition could suffer.

Additionally, we may be subject to the Excise Tax (as defined below) included in the Inflation Reduction Act ("IRA") enacted in August 2022 in connection with redemptions of our common stock, Series H Convertible Redeemable Preferred Stock, or Series J Convertible Redeemable Preferred Stock. In particular, an excise tax is imposed on "covered corporations" (generally, publicly-traded domestic corporations) equal to 1% of the fair market value of certain stock repurchased after December 31, 2022 (the "Excise Tax"). It is likely that the Excise Tax will generally apply to any redemptions of shares of our Series H Convertible Redeemable Preferred Stock or common stock after December 31, 2022, and any redemption of shares of our Series J Convertible Redeemable Preferred Stock. The Excise Tax base is reduced by the fair market value of any issuances of the covered corporation's stock during its taxable year. The fair market value of any of shares our Series H Convertible Redeemable Preferred Stock, Series J Convertible Redeemable Preferred Stock, or common stock that are redeemed may exceed the fair market value of any of our stock issued during the same taxable year. Consequently, the Excise Tax may reduce the amount of cash we have available to shareholders.

We could be subject to or otherwise affected by federal and state health care laws, including fraud and abuse and health information privacy and security laws, and we could face substantial penalties if we are unable to fully comply with such regulations.

We are directly or indirectly, through our customers, subject to extensive regulation by both the federal government and the states and foreign countries in which we conduct our business. If our past or present operations are found to be in violation of governmental laws or regulations to which we or our customers are subject, we may be subject to penalties, including civil, criminal and administrative penalties, damages, fines, disgorgement, individual imprisonment, possible exclusion from participation in federal and state funded healthcare programs, contractual damages, and the curtailment or restricting of our operations, as well as additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws. This could harm our ability to operate our business and our financial results. If we are required to obtain permits or licensure under these laws that we do not already possess, we could become subject to substantial additional regulation or incur significant expense. Any penalties, damages, fines, or curtailment or restructuring of our operations could be significant. The risk of potential non-compliance is increased by the fact that many of these laws have not been fully interpreted by applicable regulatory authorities or the courts, and their provisions are open to a variety of interpretations and additional legal or regulatory change. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management's attention from the operation of our business, damage our reputation, and cause a material adverse effect on sales, cash collections, and our ability to meet operating cash flow requirements.

Changes to the reimbursement rates for procedures performed using our products and measures to reduce healthcare costs may adversely impact our business.

Dentists and other health care providers that purchase and use our products may rely on third-party payers, including Medicare, Medicaid, and private payers to cover and reimburse all or part of the cost of the procedures performed using our products. As a result, coverage and reimbursement of the procedures using our products is dependent in part on the policies of these payers. There is a significant trend in the healthcare industry by public and private payers to contain or reduce their costs, including by taking the following steps, among others: decreasing the portion of costs payers will cover, ceasing to provide full payment for certain products or procedures depending on outcomes, or not covering certain products or procedures at all. If payers implement any of the foregoing with respect to our procedures performed using our products, it would have an adverse impact on our revenue and results of operations.

There have been, and likely will continue to be, legislative and regulatory proposals at the foreign, federal, and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare. We cannot predict the initiatives that may be adopted in the future. Any reduction in reimbursement rates for dental procedures using our products may adversely affect our customers' businesses and cause them to enact cost reduction measures, which could result in reduced demand for our product or additional pricing pressures.

We could be exposed to liabilities under the FCPA, and any determination that we violated the FCPA could have a material adverse effect on our business, financial condition, and results of operations.

In light of our operations outside the United States, we are subject to the FCPA, which generally prohibits companies and their intermediaries from offering to pay, promising to pay, or authorizing the payment of money or anything of value to non-U.S. officials for the purpose of influencing any act or decision of the foreign official in his/her capacity or to secure any other improper advantage to obtain or retain business. Violation of the anti-bribery provisions of the FCPA can result in criminal fines of up to $2 million and civil penalties of up to $23,011 for each violation. Individuals, including officers, directors, stockholders, and agents of companies, can be subject to a criminal fine of up to $250,000 and imprisonment, in addition to civil penalties of up to $23,011, per violation. Also, under the alternative fines provision of the FCPA an individual or entity can be fined an amount of up to twice the gross pecuniary gain or loss from a violation. We could be held liable for actions taken by our distributors in violation of the FCPA, even though such partners are foreign companies that may not be subject to the FCPA. Any determination that we violated the FCPA could result in sanctions that could have a material adverse effect on our business, financial condition, and results of operations.

Product sales or introductions could be delayed or canceled as a result of the FDA regulatory requirements applicable to laser products, dental devices, or both, which could cause our sales or profitability to decline and have a material adverse effect on our business, financial condition, and results of operations.

The process of obtaining and maintaining regulatory approvals and clearances to market a medical device from the FDA and similar regulatory authorities abroad can be costly and time-consuming, and we cannot provide assurance that such approvals and clearances will be granted. Pursuant to FDA regulations, unless exempt, the FDA permits commercial distribution of a new medical device only after the device has received 510(k) clearance or is the subject of an approved PMA. The FDA will clear marketing of a medical device through the 510(k) process if it is demonstrated that the new product is substantially equivalent to other 510(k)-cleared products. The PMA process is more costly, lengthy and uncertain than the 510(k) process, and must be supported by extensive data, including data from preclinical studies, and human clinical trials. Because we cannot provide assurance that any new products, or any product enhancements, that we develop will be subject to the shorter 510(k) clearance process, significant delays in the introduction of any new products or product enhancement could occur. We cannot provide assurance that the FDA will not require a new product or product enhancement to go through the lengthy and expensive PMA process. Delays in obtaining regulatory clearances and approvals could:

•delay or eliminate commercialization of products we develop;

•require us to perform costly additional procedures;

•diminish any competitive advantages that we may attain; and

•reduce our ability to collect revenues or royalties.

Although we have obtained 510(k) clearance from the FDA to market our dental laser systems, we cannot provide assurance that we will not be required to obtain new clearances or approvals for modifications or improvements to our products.

Our marketed products may be used by healthcare practitioners for indications that are not cleared or approved by the FDA. If the FDA finds that we marketed our products in a manner that promoted off-label use, we may be subject to civil or criminal penalties.

Under the United States Federal Food, Drug, and Cosmetic Act and other laws, we are prohibited from promoting our products for off-label uses. This means that we may not make claims about the use of any of our marketed medical device products outside of their approved or cleared indications, and that our website, advertising, promotional materials and training methods and materials may not promote or encourage unapproved uses. Note, however, that the FDA does not generally restrict healthcare providers from prescribing products for off-label uses (or using products in an off-label manner) in their practice of medicine. Should the FDA determine that our activities constitute the promotion of off-label uses, the FDA could bring action to prevent us from distributing our devices for the off-label use and could impose fines and penalties on us and our executives. In addition, failure to follow FDA rules and guidelines relating to promotion and advertising can result in, among other things, the FDA's refusal to approve or clear other products in our pipeline, the withdrawal of an approved product from the market, product recalls, fines, disgorgement of profits, operating restrictions, injunctions, or criminal prosecutions. Any of these adverse regulatory actions could result in substantial costs and could significantly and adversely impact our reputation and divert management's attention and resources, which could have a material adverse effect on our business.

Our products are subject to recalls and other regulatory actions after receiving FDA clearance or approval.

The FDA and similar governmental bodies in other countries have the authority to require the recall of our products in the event of material deficiencies or defects in design or manufacture. A government mandated or voluntary recall by us could occur as a result of component failures, manufacturing errors, or design defects, including errors in labeling or other safety issues. Any recall would divert management's attention and financial resources and harm our reputation with customers. Any recall involving our laser systems would be particularly harmful to us, because our laser systems comprise such an important part of our portfolio of products. However, any recall could have a material adverse effect on our business, financial condition, and results of operations.

If we or our third-party manufacturers fail to comply with the FDA's QSR, our business would suffer.

We and our third-party manufacturers are required to demonstrate and maintain compliance with the FDA's QSR. The QSR is a complex regulatory scheme that covers the methods and documentation of the design, testing, control, manufacturing, labeling, quality assurance, packaging, storage, and shipping of our product. The FDA enforces the QSR through periodic unannounced inspections. We anticipate that in the future we will be subject to such inspections. Our failure, or the failure of our third-party manufacturers, to take satisfactory corrective action in response to an adverse QSR inspection could result in enforcement actions, including a public warning letter, a shutdown of our manufacturing operations, a recall of our product, civil or criminal penalties, or other sanctions, which could have a material adverse effect on our business, financial condition, and results of operations.

If our product causes or contributes to a death or a serious injury, or malfunctions in certain ways, we will be subject to medical device reporting regulations, which can result in voluntary corrective actions or agency enforcement actions.

Under the FDA's medical device reporting regulations, medical device manufacturers are required to report to the FDA information that a device has or may have caused or contributed to a death or serious injury or has malfunctioned in a way that would be likely to cause or contribute to death or serious injury if the malfunction of the device were to recur. If we fail to report these events to the FDA within the required timeframes, or at all, the FDA could take enforcement action against us. Any such adverse event involving our devices could result in future voluntary corrective actions, such as recalls or customer notifications, or agency action, such as inspection or enforcement action. Any corrective action, whether voluntary or involuntary, as well as mounting a defense to a legal action, if one were to be brought, would require the dedication of our time and capital, distract management from operating our business, and could have a material adverse effect on our business, financial condition, and results of operations.

Risks Related to Our Common Stock

Failure to meet Nasdaq's continued listing requirements could result in the delisting of our common stock, negatively impact the price of our common stock and negatively impact our ability to raise additional capital.

On January 11, 2023, we received a deficiency letter from the Listing Qualifications Department (the "Staff") of the Nasdaq Stock Market ("Nasdaq") notifying us that, for the last 30 consecutive business days, ending on January 10, 2023, the bid price for our common stock had closed below the minimum $1.00 per share requirement for continued inclusion on the Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2) (the "Bid Price Rule"). In accordance with Nasdaq rules, we were provided an initial period of 180 calendar days, or until July 10, 2023, to regain compliance with the Bid Price Rule.

On June 8, 2023, we were notified by the Staff of Nasdaq that we did not meet the minimum closing bid price requirement of $1.00 for continued listing, as set forth in the Bid Price Rule, as the Staff has determined that as of June 8, 2023, the Company's securities had a closing bid price of $0.10 or less for ten consecutive trading days, from May 24, 2023 through June 7, 2023. As such, the Staff had determined to delist the Company's common stock from the Nasdaq Capital Market and to suspend trading of the common stock at the opening of business on June 20, 2023, and file a Form 25-NSE with the SEC. We timely requested a hearing to appeal this determination, which stayed the suspension of our common stock pending the panel's decision.

We subsequently requested the Panel grant us a temporary exception to regain compliance with the Bid Price Rule. On July 5, 2023, the Panel granted us an exception until August 11, 2023 to demonstrate bid price compliance subject to us taking the following actions: (i) on July 20, 2023, we obtain stockholder approval for a reverse stock split at a ratio that is sufficient to regain and maintain long term compliance with the Bid Price Rule; (ii) on or before July 31, 2023, we effect a reverse stock split and, thereafter, maintain a $1.00 closing bid price for a minimum of ten consecutive business days; and (iii) on August 11, 2023, we demonstrated compliance with the Bid Price Rule, by evidencing a closing bid price of $1.00 or more per share for a minimum of ten consecutive trading sessions.

On July 20, 2023, we held a special meeting of our stockholders where the stockholders approved an amendment to our Certificate of Incorporation to effect a reverse stock split of our common stock, at a ratio between one-for-two (1:2) and one-for-one hundred (1:100). Immediately after the special meeting, our Board approved the 2023 Reverse Stock Split. On July 26, 2023, we filed an amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware to effect the 2023 Reverse Stock Split, which became effective on July 27, 2023.

On August 14, 2023, we received a letter from the Nasdaq Office of General Counsel confirming the decision of the Panel that we currently demonstrate compliance with the requirements for continued listing on the Nasdaq Capital Market.

On March 4, 2024, we received a deficiency letter from the Staff of Nasdaq notifying us that, for the last 30 consecutive business days, ending on March 1, 2024, the bid price for our common stock had closed below the minimum $1.00 per share requirement for continued inclusion on the Nasdaq Capital Market pursuant to the Bid Price Rule. In accordance with Nasdaq rules, we were provided an initial period of 180 calendar days, or until September 3, 2024 (the "Compliance Date"), to regain compliance with the Bid Price Rule. Compliance is generally achieved if, at any time before the Compliance Date, the bid price for the Company's common stock closes at $1.00 or more for a minimum of 10 consecutive business days. However, the Staff may, in its discretion, require a company to satisfy the applicable bid price requirement for a period in excess of 10 consecutive business days, but generally no more than 20 consecutive business days, before determining that it has demonstrated an ability to maintain long-term compliance. If we do not regain compliance with the Bid Price Rule by the Compliance Date, we may be eligible for an additional 180 calendar day compliance period. To qualify, we would need to provide written notice of our intention to cure the deficiency during the additional compliance period, by effecting a reverse stock split, if necessary, provided that we meet the continued listing requirement for the market value of publicly held shares and all other initial listing standards, with the exception of the bid price requirement. If we do not regain compliance with the Bid Price Rule by the Compliance Date and are not eligible for an additional compliance period at that time, the Staff will provide written notification to us that our common stock may be delisted. At that time, we may appeal the Staff's delisting determination to a Nasdaq Listing Qualifications Panel. We intend to monitor the closing bid price of our common stock and may, if appropriate, consider available options to regain compliance with the Bid Price Rule.

On November 14, 2023, we received a deficiency letter from the Staff notifying us that, based on our stockholders' equity of $332,000 as of September 30, 2023, as reported in the our Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2023, we were no longer in compliance with the minimum stockholders' equity requirement for continued listing on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(b)(1), which requires listed companies to maintain stockholders' equity of at least $2.5 million. We were provided until December 29, 2023 to provide Nasdaq with a specific plan to achieve and sustain compliance with the foregoing listing requirement, which plan was provided to Nasdaq on December 22, 2023. Nasdaq subsequently requested that we submit a plan with greater detail, which we submitted to Nasdaq on January 22, 2024. On February 13, 2024, the Staff provided notice to us that it had granted the Company an extension to regain compliance with Nasdaq Listing Rule 5550(b)(1), conditioned upon us undertaking and closing no later than March 31, 2024 the February 2024 Offering (as defined below) that we subsequently consummated on February 15, 2024 and publicly disclose evidence of compliance with the minimum stockholders' equity requirement. On February 16, 2024, the Staff provided notice that based on our Current Report on Form 8-K dated February 12, 2024, the Staff had determined that we complied with Nasdaq Listing Rule 5550(b)(1). However, in the event we fail to evidence compliance with such rule upon the filing of our periodic report for the period ending March 31, 2024, with the SEC and Nasdaq, we may be subject to delisting. In the event we do not satisfy these terms, the Staff will provide written notification that our securities will be delisted. At that time, we may appeal the Staff's determination to a Hearings Panel.

We intend to attempt to take actions to restore our compliance with Nasdaq's listing requirements, but we can provide no assurance that we will be able to do so. Any perception that we may not regain compliance or a delisting of our common stock by Nasdaq could adversely affect our ability to attract new investors, decrease the liquidity of the outstanding shares of our common stock, reduce the price at which such shares trade and increase the transaction costs inherent in trading such shares with overall negative effects for our stockholder. In addition, delisting of our common stock from Nasdaq could deter broker-dealers from making a market in or otherwise seeking or generating interest in our common stock, and might deter certain institutions and persons from investing in our common stock.

In the event of a de-listing, we would take actions to restore our compliance with the Nasdaq listing requirements, but we can provide no assurance that any such action taken by us would allow our common stock become listed again, stabilize the market price or improve the liquidity of our common stock, prevent our common stock from dropping below the Nasdaq listing requirements.

Our stock price has been, and could continue to be, volatile.

There has been significant volatility in the market price and trading volume of equity securities, which may be unrelated to the financial performance of the companies issuing the securities. These broad market fluctuations could negatively affect the market price of our stock. The market price and volume of our common stock could fluctuate, and in the past has fluctuated, more dramatically than the stock market in general. During the 12 months ended December 31, 2023, the market price of our common stock has ranged from a high of $75.00 per share to a low of $1.09 per share and the closing price of our common stock on March 14, 2024 was $0.1348. Stockholders may not be able to resell their shares at or above the price they paid for them due to fluctuations in the market price of our stock caused by changes in our operating performance or prospects or other factors. Some factors, in addition to the other risk factors identified above, that could have a significant effect on our stock market price include but are not limited to the following:

•actual or anticipated fluctuations in our operating results or future prospects;

•our announcements or our competitors' announcements of new products;

•the public's reaction to our press releases, our other public announcements, and our filings with the SEC;

•strategic actions by us or our competitors, such as acquisitions or restructurings;

•new laws or regulations or new interpretations of existing laws or regulations applicable to our business;

•changes in accounting standards, policies, guidance, interpretations, or principles;

•changes in our growth rates or our competitors' growth rates;

•developments regarding our patents or proprietary rights or those of our competitors;

•our inability to raise additional capital as needed;

•concerns or allegations as to the safety or efficacy of our products;

•changes in financial markets or general economic conditions;

•sales of stock by us or members of our management team, our Board, our significant stockholders, or certain institutional stockholders; and

•changes in stock market analyst recommendations or earnings estimates regarding our stock, other comparable companies or our industry generally.

Stockholders could experience substantial dilution of their investment as a result of future sales of our equity, subsequent exercises of our outstanding warrants and options, or the future grant of equity by us.

As of the date of the filing of this Form 10-K, management is evaluating all options to conserve cash and to obtain additional debt or equity financing and/or enter into a collaborative arrangement or sale of assets, to permit the Company to continue operations. Moreover, we may choose to raise additional capital from time to time, even if we believe we have sufficient funds for our current or future operating plans. To the extent that we raise additional funds through the future sale of equity or convertible securities, the issuance of such securities will result in dilution to our stockholders. The price per share at which we sell additional shares of our common stock, or securities convertible or exchangeable into common stock, in future transactions may be higher or lower than the price per share paid by investors in the offering. Investors purchasing shares or other securities in the future could have rights superior to existing stockholders.

In addition, stockholders could experience substantial dilution of their investment as a result of subsequent exercises of outstanding warrants and outstanding options and vesting of restricted stock units issued as compensation for services performed by employees, directors, consultants, and others, warrants issued in past sales of our equity, or the grant of future equity-based awards. As of December 31, 2023, approximately 55,000 shares of common stock were reserved for issuance under our equity incentive plans, approximately 300 of which were subject to options outstanding, 51,000 of which were subject to restricted stock units outstanding or expected to be issued as of that date, 200 stock appreciation rights outstanding and 3,500 phantom restricted stock units outstanding or expected to be issued as of that date. In addition, as of December 31, 2023, approximately 4.3 million shares of our common stock were subject to warrants at a weighted-average exercise price of $11.88 per share. To the extent that outstanding warrants or options are exercised or the convertible preferred stock is converted, our existing stockholders could experience dilution. We rely heavily on equity awards to motivate current employees and to attract new employees. The grant of future equity awards by us to our employees and other service providers could further dilute our stockholders' interests in the Company.

Because we do not intend to pay cash dividends on our common stock, our stockholders will benefit from an investment in our common stock only if it appreciates in value.

We intend to retain our future earnings, if any, to finance the expansion of our business and do not expect to pay any cash dividends on our common stock in the foreseeable future. As a result, the success of an investment in our securities will depend entirely upon any future appreciation. There is no guarantee that our common stock will appreciate in value or even maintain the price at which our stockholders purchased their shares.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our share price and trading volume could decline.

The trading market for our common stock will depend on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. There can be no assurance that analysts will cover us or provide favorable coverage. If one or more of the analysts who cover us downgrade our stock or change their opinion of our stock, our share price would likely decline. If one or more of these analysts cease coverage of the Company or fail to regularly publish reports on the Company, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

Item 1B. ***Unresolved Staff Comments***

None.

Item 1C. ***Cybersecurity***

We maintain a cyber risk management program designed to identify, assess, manage, mitigate, and respond to cybersecurity threats.

The underlying processes and controls of our cyber risk management program incorporate recognized best practices and standards for cybersecurity and information technology, including the National Institute of Standards and Technology ("NIST") Cybersecurity Framework ("CSF"). We have an annual assessment performed by a third-party specialist of the Company's cyber risk management program against the NIST CSF. The annual risk assessment identifies, quantifies, and categorizes material cyber risks. In addition, the Company, in conjunction with the third-party cyber risk management specialists develop a risk mitigation plan to address such risks, and where necessary, remediate potential vulnerabilities identified through the annual assessment process.

In addition, we maintain policies over areas such as information security, access on/offboarding, and access and account management, to help govern the processes put in place by management designed to protect our IT assets, data, and services from threats and vulnerabilities. We partner with industry recognized cybersecurity providers leveraging third-party technology and expertise. These cybersecurity partners, including consultants and other third-party service providers, are a key part of BIOLASE's cybersecurity risk management strategy and infrastructure and provide services including, maintenance of an IT assets inventory, periodic vulnerability scanning, identity access management controls including restricted access of privileged accounts, network integrity safeguarded by employing web-based software, including endpoint protection, endpoint detection and response, and remote monitoring management on all devices, industry-standard encryption protocols, critical data backups, infrastructure maintenance, incident response, cybersecurity strategy, and cyber risk advisory, assessment and remediation.

Our management team, in conjunction with third-party information technology ("IT") and cybersecurity service providers, is responsible for oversight and administration of our cyber risk management program, and for informing senior management and other relevant stakeholders regarding the prevention, detection, mitigation, and remediation of cybersecurity incidents. BIOLASE's management team has prior experience selecting, deploying, and overseeing cybersecurity technologies, initiatives, and processes directly or via selection of strategic third-party partners, and relies on threat intelligence as well as other information obtained from governmental, public, or private sources, including external consultants engaged by us for strategic cyber risk management, advisory and decision making. Our Audit Committee also provides oversight of risks from cybersecurity threats.

As part of its review of the adequacy of our system of internal controls over financial reporting and disclosure controls and procedures, the Audit Committee is specifically responsible for reviewing the adequacy of our computerized information system controls and security related thereof. The cybersecurity stakeholders, including member(s) of management assigned with cybersecurity oversight responsibility and/or third-party consultants providing cyber risk services brief the Audit Committee on cyber vulnerabilities identified through the risk management process, the effectiveness of our cyber risk management program, and the emerging threat landscape and new cyber risks on at least an annual basis. This includes updates on BIOLASE's processes to prevent, detect, and mitigate cybersecurity incidents. In addition, cybersecurity risks are reviewed by our Board of Directors at least annually, as part of the Company's corporate risk oversight processes.

We face risks from cybersecurity threats that could have a material adverse effect on our business, financial condition, results of operations, cash flows or reputation. BIOLASE acknowledges that the risk of cyber incident is prevalent in the current threat landscape and that a future cyber incident may occur in the normal course of its business. However, prior cybersecurity incidents have not had a material adverse effect on our business, financial condition, results of operations, or cash flows. We proactively seek to detect and investigate unauthorized attempts and attacks against our IT assets, data, and services, and to prevent their occurrence and recurrence where practicable through changes or updates to internal processes and tools and changes or updates to service delivery; however, potential vulnerabilities to known or unknown threats will remain. Further, there is increasing regulation regarding responses to cybersecurity incidents, including reporting to regulators, investors, and additional stakeholders, which could subject us to additional liability and reputational harm. In response to such risks, we have implemented initiatives such as implementation of the cybersecurity risk assessment process and development of an incident response plan. See Item 1A. "Risk Factors" for more information on cybersecurity risks.

Item 2. ***Properties***

As of December 31, 2023, we owned or leased a total of approximately 59,000 square feet of space worldwide. We lease our corporate headquarters, which consists of approximately 12,000 square feet in Lake Forest, California and we expanded to 20,000 square feet in early 2023. Our lease expires on December 31, 2025. We lease our manufacturing facility, which consists of approximately 26,000 square feet in Corona, California. Our lease expires on June 30, 2025. For additional information, refer to *Note 7 – Commitments and Contingencies – Leases* in our Consolidated Financial Statements.

We believe that our current facilities are sufficient for the current operations of our business, and we believe that suitable additional space in various applicable local markets is available to accommodate any needs that may arise.

Item 3. ***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.

On January 4, 2023, Plaintiff PIPStek, LLC (a wholly-owned subsidiary of Sonendo, Inc.) filed a lawsuit against BIOLASE, Inc. in the Federal District Court for the District of Delaware, alleging that BIOLASE's Waterlase dental laser product infringes two PIPStek patents. A third patent was subsequently added to the case. The Complaint seeks unspecified damages and injunctive relief, as well as costs and attorneys' fees against BIOLASE. BIOLASE has answered denying all of PIPStek's allegations and also asserting that the asserted patents are invalid and not infringed. BIOLASE intends to continue to vigorously and fully defend itself against PIPStek's claims. The parties have exchanged preliminary contentions. Trial in this matter is currently set for May 12, 2025.

Item 4. ***Mine Safety Disclosures***

Not applicable.

PART II

Item 5. ***Market for the Registrant's Common Equity, Related Stockholder Matters, and Issuer Purchases of Equity Securities***

Market Information

Our common stock is traded on the Nasdaq Capital Market under the symbol "BIOL."

As of March 14, 2024, the closing price of our common stock on the Nasdaq Capital Market was $0.1348 per share, and the number of stockholders of record was 11. We believe that the number of beneficial owners is substantially greater than the number of record holders because a large portion of our stock is held of record through brokerage firms in "street name."

Dividend Policy

We intend to retain our available funds from earnings and other sources for future growth and, therefore, do not anticipate paying any cash dividends in the foreseeable future. Additionally we are prohibited from declaring and paying cash dividends under our Credit Agreement with SWK. As a result, we do not anticipate paying any cash dividends in 2024. Our dividend policy may be changed at any time, and from time to time, by our Board. We did not pay or declare any cash dividends in 2023, 2022, or 2021.

Dividends on the Series H Convertible Redeemable Preferred Stock, if any, will be paid in-kind ("Series H PIK dividends") in additional shares of Series H Convertible Redeemable Preferred Stock based on the stated value of $50.00 per share at the dividend rate of 20.0%. The Series H PIK dividends will be a one-time payment payable to holders of the Series H Convertible Redeemable Preferred Stock of record at the close of business on May 26, 2024, which is the one-year anniversary of the original issue date.

Dividends on the Series J Convertible Redeemable Preferred Stock will be paid in-kind ("Series J PIK dividends") in additional shares of Series J Convertible Redeemable Preferred Stock based on the stated value of $100.00 per share at the dividend rate of 5.0% per quarter. The Series J PIK dividends were(and will be, if applicable) paid quarterly payable to holders of the Series J Convertible Redeemable Preferred Stock of record at the close of business on record at the close of business on October 31, 2023, January 31, 2024, April 30, 2024 and July 31, 2024. We paid a total of 3,094 shares of Series J PIK dividends to holders of record on October 31, 2023 and a total of 1,217 shares of Series J PIK dividends to holders of record on January 31, 2024.

Recent Sales of Unregistered Securities

None.

Issuer Purchases of Equity Securities

None.

Equity Compensation Plan Information

At our annual meeting of stockholders held on May 9, 2018, the Company's stockholders approved the BIOLASE, Inc. 2018 Long-Term Incentive Plan (as amended on September 21, 2018, May 15, 2019, May 13, 2020, June 11, 2021, and April 27, 2023 the "2018 Plan"). The purposes of the 2018 Plan are (i) to align the interests of the Company's stockholders and recipients of awards under the 2018 Plan by increasing the proprietary interest of such recipients in the Company's growth and success; (ii) to advance the interests of the Company by attracting and retaining non-employee directors, officers, other employees, consultants, independent contractors and agents; and (iii) to motivate such persons to act in the long-term best interests of the Company and its stockholders. The 2018 Plan replaced the BIOLASE, Inc. 2002 Stock Incentive Plan, (as amended, the "2002 Plan"), with respect to future awards.

The 2018 Plan has been amended multiple times to increase the shares available for issuance. Under the terms of the 2018 Plan, approximately 112,268 shares of BIOLASE common stock have been authorized for issuance.

The 2002 Plan and the 2018 Plan are designed to attract and retain the services of individuals essential to the Company's long-term growth and success. The following table summarizes information as of December 31, 2023 with respect to the shares of our common stock that may be issued upon exercise of options, warrants or rights under the 2002 Plan and the 2018 Plan.

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options and Release of Restricted Stock Units	Weighted Average Exercise Price of Outstanding Options	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans
Equity Compensation Plan Approved by Stockholders	55,000	$1,490.37	49,000
Equity Compensation Plan Not Approved by Stockholders	—	—	—
Total	55,000	$1,490.37	49,000

Item 6. ***[Reserved]***

Item 7. ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

The following information should be read in conjunction with our consolidated financial statements and related notes included elsewhere in this Form 10-K. In addition to historical information, this discussion and analysis contains forward-looking statements that involve risks, uncertainties, and assumptions, which could cause actual results to differ materially from management's expectations. Please see the "Cautionary Statement Regarding Forward-Looking Statements" section immediately preceding Part I, Item 1 of this Form 10-K and the "Risk Factors" section in Part I, Item 1A of this Form 10-K.

Overview

BIOLASE, Inc. ("BIOLASE" and, together with its consolidated subsidiaries, the "Company," "we," "our" or "us") is a leading provider of advanced laser systems for the dental industry. We develop, manufacture, market, and sell laser systems that provide significant benefits for dental practitioners and their patients. Our proprietary systems allow dentists, periodontists, endodontists, oral surgeons, and other dental specialists to perform a broad range of minimally invasive dental procedures, including cosmetic, restorative, and complex surgical applications. Our laser systems are designed to provide clinically superior results for many types of dental procedures compared to those achieved with drills, scalpels, and other conventional instruments. Potential patient benefits include less pain, fewer shots, faster healing, decreased fear and anxiety, and fewer appointments. Potential practitioner benefits include improved patient care and the ability to perform a higher volume and wider variety of procedures and generate more patient referrals.

We offer two categories of laser system products: Waterlase (all-tissue) systems and diode (soft-tissue) systems. Our flagship brand, Waterlase, uses a patented combination of water and laser energy and is FDA cleared for over 80 clinical indications to perform most procedures currently performed using drills, scalpels, and other traditional dental instruments for cutting soft and hard tissue. For example, Waterlase safely debrides implants without damaging or significantly affecting surface temperature and is the only effective, safe solution to preserving sick implants. In addition, Waterlase disinfects root canals more efficiently than some traditional chemical methods. We also offer our diode laser systems to perform soft tissue, pain therapy, and cosmetic procedures, including teeth whitening. As of December 31, 2023, we maintained approximately 241 active and 21 pending United States and international patents, with the majority relating to our Waterlase technology. Our patent portfolio is regularly evaluated, and we strategically prioritize our core patents to ensure optimal Intellectual Property coverage while minimizing annual maintenance fees. From 1982 through December 31, 2023 we have sold over 47,700 laser systems in over 80 countries around the world, and we believe that Waterlase iPlus is the world's best-selling all-tissue dental laser. Since 1998, we have been the global leading innovator, manufacturer, and marketer of dental laser systems.

Recent Developments

February 2024 Best Efforts Public Offering

On February 15, 2024, we completed a best efforts, public offering (the "February 2024 Offering") pursuant to which we raised approximately $7.0 million of gross proceeds by issuing securities consisting of an aggregate of: (i) 7,795,000 units (the "Units"), with each Unit consisting of (A) one share of our common stock, (B) one Class A warrant to purchase one share of common stock (each, a "Class A Common Warrant" and collectively, the "Class A Common Warrants"), each exercisable from time to time for one share of Common Stock at an exercise price of $0.66 per share (the "Class A Common Warrant Shares"), and (C) one Class B warrant to purchase one share of common stock (each, a "Class B Common Warrant" and collectively, the "Class B Common Warrants" and collectively with the Class A Common Warrants, the "Common Warrants"), each exercisable from time to time for one share of Common Stock at an exercise price of $0.748 per share (the "Class B Common Warrant Shares" and collectively with the Class A Common Warrant Shares, the "Common Warrant Shares"); and (ii) 8,205,000 pre-funded units (the " Pre Funded Units"), with each Pre-Funded Unit consisting of (A) one pre-funded warrant (each, a "Pre-Funded Warrant" and collectively, the "Pre-Funded Warrants"), each such Pre-Funded Warrant being exercisable from time to time for one share of Common Stock at an exercise price of $0.001 per share (the "Pre-Funded Warrant Shares"), (B) one Class A Common Warrant, and (C) one Class B Common Warrant. The Units were sold at the public offering price of $0.44 per Unit and the Pre-Funded Units were sold at the public offering price of $0.439 per Pre-Funded Unit.

As of March 14, 2024, all of the Pre-Funded Warrants had been exercised for the issuance of 8,205,000 additional shares of our common stock and an aggregate of 12,329,102 shares of our common stock have been issued upon the cashless exercise of Class A Common Warrants, leaving Class A Common Warrants to purchase an aggregate of 3,022,000 shares of our common stock outstanding and unexercised. The Class B Common Warrants will be exercisable on or after the date that the Company's stockholders vote to approve that the Class B Common Warrants may be exercisable for shares of our common stock, as may be required by the applicable rules and regulations of The Nasdaq Stock Market LLC.

December 2023 Registered Direct Offering and Concurrent Private Placement

On December 8, 2023, pursuant to the terms of that certain Securities Purchase Agreement that we entered into on December 6, 2023 with a single institutional investor (the "December 2023 Purchase Agreement"), we issued the following securities: (i) in a registered direct offering, 331,000 shares of our common stock and pre-funded warrants to purchase 779,940 shares of our common stock with an exercise price of $0.001 per share, and (ii) in a concurrent private placement, warrants to purchase an aggregate of 2,221,880 shares of common stock (the "December 2023 Warrants") with an initial exercise price of $1.23 per share. The combined purchase price for one share of our common stock and two common warrants was $1.23, and the combined purchase price for one pre-funded warrant and two common warrants was $1.229. We received aggregate gross proceeds of approximately $1.4 million. In connection with the closing of the February 2024 Offering, the exercise price of the December 2023 Warrants was reduced to $0.2256 per share due to certain anti-dilution provisions in the December 2023 Warrants.

Consent and Waiver; Issuance of Investor Warrant; Warrant Repricing

Pursuant to the December 2023 Purchase Agreement, the Company agreed, among other things, pursuant to Section 4.12 thereof not to enter into a Variable Rate Transaction (as defined in the December 2023 Purchase Agreement) for a period of one-hundred and eighty (180) days following the closing date of the December 2023 Offering (or until June 5, 2024) (the "VRT Prohibition"). In order to induce the institutional investor (the "Investor") to agree to waive the VRT Prohibition to enable the Company to effect the February 2024 Offering, the Company and the Investor entered into a Consent and Waiver, dated February 12, 2024 (the "Consent and Waiver"), whereby the Company agreed to issue to the Investor a new warrant to purchase up to 2,221,880 shares of our common stock (the "Investor Warrant"), which Investor Warrant is in a form substantially identical to the Class B Common Warrants. The Investor Warrants will be exercisable commencing on the effective date of stockholder approval for the issuance of the shares of common stock issuable upon exercise of the Investor Warrants and will expire on the fifth anniversary of such stockholder approval date.

Eleventh Amendment to the Credit Agreement

On November 15, 2023, we entered into the Eleventh Amendment to Credit Agreement (the "Eleventh Amendment") with SWK, in connection with that certain Credit Agreement, by and among the Company, SWK, and the lender parties thereto. The Eleventh Amendment amends the Credit Agreement by reducing the principal amortization payment due on November 15, 2023 to $165,000, reducing the principal amortization payment due on February 15, 2024 to $165,000 provided that minimum consolidated unencumbered liquid assets are not less than $3,500,000 on such date, reducing the required minimum consolidated unencumbered liquid assets to $1,500,000 through and including December 30, 2023 and to $2,500,000 thereafter, and reducing the required minimum consolidated unencumbered liquid assets to $3,500,000 as of the last day of any fiscal quarter beginning with the period ending March 31, 2024. The Eleventh Amendment contains representations, warranties, covenants, releases, and conditions customary for a credit agreement amendment of this type.

Compliance with Nasdaq Listing Rules

Stockholders' Equity Rule

On November 14, 2023, we received a deficiency letter from the Staff of the Listing Qualifications Department (the "Staff") of The Nasdaq Stock Market LLC ("Nasdaq") notifying us that, based on our stockholders' equity of $332,000 as of September 30, 2023, as reported in our Quarterly Report on the quarterly period ended September 30, 2023, we were no longer in compliance with the minimum stockholders' equity requirement for continued listing on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(b)(1) (the "Rule"), which requires listed companies to maintain at least $2,500,000 of stockholders' equity, $35,000,000 market value of listed securities, or $500,000 net income from continuing operations. On December 22, 2023, as supplemented on January 22, 2024, we submitted a plan of compliance to the Staff, which plan demonstrated that we intended to regain compliance with the Rule through, among other things, receipt of approximately $7 million in gross proceeds in the February 2024 Offering, and conversion of certain of our outstanding preferred stock.

On February 13, 2024, Nasdaq informed us that it had determined to grant us an extension to regain compliance with the minimum stockholders' equity requirement; provided that, prior to March 31, 2024, we close the February 2024 Offering, which was closed on February 15, 2024 and publicly disclose evidence of compliance with the minimum stockholders' equity requirement upon the filing of our periodic report for the period ending March 31, 2024.On February 16, 2024, the Staff provided notice that based on our Current Report on Form 8-K dated February 12, 2024, the Staff had determined that we complied with Nasdaq Listing Rule 5550(b)(1). However, in the event we fail to evidence compliance with such rule upon the filing of our periodic report for the period ending March 31, 2024, with the SEC and Nasdaq, we may be subject to delisting. In the event we do not satisfy these terms, the Staff

will provide written notification that our securities will be delisted. At that time, we may appeal the Staff's determination to a Hearings Panel.

Bid Price Rule

On March 4, 2024, we received a deficiency letter from the Staff of Nasdaq notifying us that, for the last 30 consecutive business days, ending on March 1, 2024, the bid price for our common stock had closed below the minimum $1.00 per share requirement for continued inclusion on the Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2) (the "Bid Price Rule"). In accordance with Nasdaq rules, we were provided an initial period of 180 calendar days, or until September 3, 2024 (the "Compliance Date"), to regain compliance with the Bid Price Rule. Compliance is generally achieved if, at any time before the Compliance Date, the bid price for the Company's common stock closes at $1.00 or more for a minimum of 10 consecutive business days. However, the Staff may, in its discretion, require a company to satisfy the applicable bid price requirement for a period in excess of 10 consecutive business days, but generally no more than 20 consecutive business days, before determining that it has demonstrated an ability to maintain long-term compliance. If we do not regain compliance with the Bid Price Rule by the Compliance Date, we may be eligible for an additional 180 calendar day compliance period. To qualify, we would need to provide written notice of our intention to cure the deficiency during the additional compliance period, by effecting a reverse stock split, if necessary, provided that we meet the continued listing requirement for the market value of publicly held shares and all other initial listing standards, with the exception of the bid price requirement. If we do not regain compliance with the Bid Price Rule by the Compliance Date and are not eligible for an additional compliance period at that time, the Staff will provide written notification to us that our common stock may be delisted. At that time, we may appeal the Staff's delisting determination to a Nasdaq Listing Qualifications Panel. We intend to monitor the closing bid price of our common stock and may, if appropriate, consider available options to regain compliance with the Bid Price Rule.

Series J Convertible Redeemable Preferred Stock

On September 13, 2023, the Company entered into an underwriting agreement pursuant to which the Company agreed to sell to the underwriters in a firm commitment underwritten public offering 75,000 units (each, a "Series J Preferred Unit"), with each Series J Preferred Unit consisting of (A) one share of the Company's Series J Convertible Redeemable Preferred Stock, par value $0.001 per share and a stated value equal to $100.00 (the "Series J Convertible Preferred Stock"), and (B) one warrant (each, a "Series J Preferred Warrant" and collectively, the "Series J Preferred Warrants") to purchase one-half of one (0.50) share of Series J Convertible Preferred Stock, at a price to the public of $60.00 per Series J Preferred Unit, less underwriting discounts and commissions. The public offering price of $60.00 per Series J Preferred Unit reflects the issuance of the Series J Convertible Preferred Stock with an original issue discount of 40%. The Company also registered under the registration statement additional shares of Series J Convertible Preferred Stock that will be issued, if and when the Board declares certain paid in-kind dividends (the "Series J Preferred PIK dividends") and the shares of common stock issuable upon conversion of the Series J Convertible Preferred Stock issued as Series J Preferred PIK dividends. Each Series J Preferred Warrant has an exercise price of $30.00 per share, is exercisable for one-half of one (0.5) share of Series J Convertible Preferred Stock, is immediately exercisable and will expire one (1) year from the date of issuance. Gross proceeds from the offering were $4.5 million, before deducting the underwriting discount and estimated offering expenses payable by us, which was approximately $900,000.

A total of 3,091 shares of Series J Convertible Preferred Stock were issued as Series J Preferred PIK dividends to holders of record on October 31, 2023. As of December 31, 2023, 14,606 shares of Series J Convertible Preferred Stock remain outstanding and Series J Preferred Warrants to purchase an aggregate of 34,520 shares of Series J Convertible Preferred Stock remain outstanding.

2023 Reverse Stock Split

At a special meeting of the Company's stockholders held on July 20, 2023 (the "2023 Special Meeting"), the Company's stockholders approved an amendment to the Company's Restated Certificate of Incorporation, as amended (the "Restated Certificate of Incorporation"), to effect a reverse stock split of our common stock, at a ratio between one-for-two (1:2) and one-for-one hundred (1:100). Immediately after the 2023 Special Meeting, the Company's board of directors (the "Board") approved a one-for-one hundred (1:100) reverse stock split of the outstanding shares of our common stock (the "2023 Reverse Stock Split"). On July 26, 2023, the Company filed an amendment to the Restated Certificate of Incorporation with the Secretary of State of the State of Delaware to effect the 2023 Reverse Stock Split, which became effective on July 27, 2023. The amendment did not change the number of authorized shares of our common stock.

Series I Preferred Stock

On June 5, 2023, the Board declared a dividend of one one-thousandth of a share of Series I Preferred Stock, par value $0.001 per share ("Series I Preferred Stock"), of our common stock outstanding as of June 16, 2023 (as calculated on a pre-2023 Reverse Stock Split basis). The certificate of designation for the Series I Preferred Stock provided that all shares of Series I Preferred Stock not present in person or by proxy at any meeting of stockholders held to vote on the 2023 Reverse Stock Split immediately prior to the opening of the polls at such meeting would be automatically redeemed (the "Series I Initial Redemption") and that any outstanding shares of Series I Preferred Stock that have not been redeemed pursuant to the Series I Initial Redemption would be redeemed in whole, but not in part, (i) if and when ordered by the Board or (ii) automatically upon the effectiveness of the amendment to the Restated Certificate of Incorporation effecting the 2023 Reverse Stock Split that was subject to the vote (the "Series I Subsequent Redemption"). On July 20, 2023, the Series I Initial Redemption occurred, and on July 27, 2023, the Series I Subsequent Redemption occurred. As a result, no shares of Series I Preferred Stock remain outstanding as of July 27, 2023.

Series H Convertible Redeemable Preferred Stock

On May 24, 2023, the Company entered into an underwriting agreement pursuant to which the Company agreed to sell to the underwriters in a firm commitment underwritten public offering 175,000 units (each, a "Series H Preferred Unit" and collectively, the "Series H Preferred Units"), with each Series H Preferred Unit consisting of (A) one share of the Company's Series H Convertible Redeemable Preferred Stock, par value $0.001 per share and a stated value equal to $50.00 (the "Series H Convertible Preferred Stock"), and (B) one warrant (each, a "Series H Preferred Warrant" and collectively, the "Series H Preferred Warrants") to purchase one-half of one (0.50) share of Series H Convertible Preferred Stock, at a price to the public of $26.00 per Series H Preferred Unit, less underwriting discounts and commissions. The public offering price of $26.00 per Series H Preferred Unit reflects the issuance of the Series H Convertible Preferred Stock with an original issue discount of 48%. The Company also registered under the registration statement an additional 80,769 shares of Series H Convertible Preferred Stock that will be issued, if and when the Board declares such dividends to holders of record on May 26, 2024, as paid in-kind dividends ("Series H Preferred PIK dividends") and the shares of our common stock issuable upon conversion of the Series H Convertible Preferred Stock issued as Series H Preferred PIK dividends. Each Series H Preferred Warrant is exercisable for one-half of one (0.5) share of Series H Convertible Preferred Stock, is immediately exercisable and will expire two (2) years from the date of issuance. Gross proceeds from the offering were $4.6 million, before deducting the underwriting discount and estimated offering expenses payable by us, which was approximately $800,000.

As of December 31, 2023, 5,000 shares of Series H Convertible Preferred Stock remain outstanding and Series H Preferred Warrants to purchase an aggregate of 67,500 shares of Series H Convertible Preferred Stock remain outstanding.

January 2023 Public Offering

On January 9, 2023, the Company completed a public offering, pursuant to which the Company agreed to issue, in a registered direct offering, 171,678 shares of BIOLASE common stock, par value $0.001 per share, and pre-funded warrants to purchase 114,035 shares of BIOLASE common stock with an exercise price of $1.00 per share. The purchase price for one share of common stock was determined to be $35.00, and the purchase price for one January 2023 Pre-Funded Warrant was determined to be $34.00. The Company received aggregate gross proceeds from the transactions of approximately $9.9 million, before deducting underwriting discounts and commissions and other transaction expenses paid by the Company.

Based on the terms and conditions of the January 2023 public offering, the Company determined that equity classification was appropriate for the pre-funded warrants and recognized the net proceeds from the issuance of common stock and pre-funded warrants in excess of par of $8.5 million in additional paid-in capital.

Critical Accounting Estimates

The preparation of consolidated financial statements and related disclosures in conformity with generally accepted accounting principles in the United States ("GAAP") requires us to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and the accompanying notes. The following is a summary of those accounting policies that we believe are necessary to understand and evaluate our reported financial results. Certain of our more critical accounting policies require the application of significant judgment by management in selecting the appropriate assumptions for calculating financial estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. On an ongoing basis, we evaluate our judgments. We use historical experience and other assumptions as the basis for our judgments and making these estimates. Because future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Any changes in those estimates will be reflected in our financial statements as they occur.

Revenue Recognition. Revenue for sales of products and services is derived from contracts with customers. The products and services promised in customer contracts include delivery of laser systems and consumables as well as certain ancillary services such as product training and support for extended warranties. Contracts with each customer generally state the terms of the sale, including the description, quantity and price of each product or service. Payment terms are stated in the contract and vary according to the arrangement. Because the customer typically agrees to a stated rate and price in the contract that does not vary over the life of the contract, our contracts do not contain variable consideration. We establish a provision for estimated warranty expense. For further information on warranty, see the discussion under "Warranty Cost" below.

At contract inception, we assess the products and services promised in our contracts with customers. We then identify performance obligations to transfer distinct products or services to the customers. In order to identify performance obligations, we consider all of the products or services promised in the contract regardless of whether they are explicitly stated or are implied by customary business practices.

Revenue from products and services transferred to customers at a single point in time accounted for 89%, 88% and 88% of net revenue for the years ended December 31, 2023, 2022, and 2021, respectively. The majority of the revenue recognized at a point in time is for the sale of laser systems and consumables. Revenue from these contracts is recognized when the customer is able to direct the use of and obtain substantially all of the benefits from the product which generally coincides with title transfer during the shipping process.

Revenue from services transferred to customers over time accounted for 11%, 12%, and 12% of net revenue for the years ended December 31, 2023, 2022, and 2021, respectively. The majority of our revenue that is recognized over time relates to training and extended warranties.

The transaction price for a contract is allocated to each distinct performance obligation and recognized as revenue when, or as, each performance obligation is satisfied. For contracts with multiple performance obligations, we allocate the contract's transaction price to each performance obligation using the best estimate of the standalone selling price of each distinct good or service in a contract. The primary method used to estimate standalone selling price is the observable price when the good or service is sold separately in similar circumstances and to similar customers.

Revenue is recorded for extended warranties over time as the customer benefits from the warranty coverage. This revenue will be recognized equally throughout the contract period as the customer receives benefits from our promise to provide such services. Revenue is recorded for product training as the customer attends a training program or upon the expiration of the obligation.

We also have contracts that include both the product sales and product training as performance obligations. In those cases, we record revenue for product sales at the point in time when the product has been shipped. The customer obtains control of the product when it is shipped, as all shipments are made FOB shipping point, and after the customer selects its shipping method and pays all shipping costs and insurance. We have concluded that control is transferred to the customer upon shipment.

We perform our obligations under a contract with a customer by transferring products and/or services in exchange for consideration from the customer. We invoice our customers as soon as control of an asset is transferred and a receivable due to us is established. We recognize a contract liability when a customer prepays for goods and/or services and we have not transferred control of the goods and/or services.

Accounts receivable are stated at estimated net realizable value. The allowance for doubtful accounts is based on an analysis of customer accounts and our historical experience with accounts receivable write-offs.

Accounting for Stock-Based Payments. Stock-based compensation expense is estimated at the grant date of the award, is based on the fair value of the award and is recognized ratably over the requisite service period of the award. For restricted stock units we estimate the fair value of the award based on the number of awards and the fair value of our common stock on the grant date and apply an estimated forfeiture rate. For stock options, we estimate the fair value of the option award using the Black-Scholes option pricing model. This option-pricing model requires us to make several assumptions regarding the key variables used to calculate the fair value of its stock options. The risk-free interest rate used is based on the U.S. Treasury yield curve in effect for the expected lives of the options at their grant dates. Since July 1, 2005, we have used a dividend yield of zero, as we do not intend to pay cash dividends on our common stock in the foreseeable future. The most critical assumptions used in calculating the fair value of stock options are the expected life of the option and the expected volatility of our common stock. The expected life is calculated in accordance with the simplified method, whereby for service-based awards, the expected life is calculated as a midpoint between the vesting date and expiration date. We use the simplified method, as there is not a sufficient history of share option exercises. We believe the historic volatility of our common stock is a reliable indicator of future volatility, and accordingly, a stock volatility factor based on the historical volatility of our common stock over a lookback period of the expected life is used in approximating the estimated volatility of new stock options. Compensation expense is recognized using the straight-line method for all service-based employee awards and graded amortization for all performance-based awards. Compensation expense is recognized only for those options expected to vest, with forfeitures estimated at the date of grant based on historical experience and future expectations. Forfeitures are estimated at the time of the grant and revised in subsequent periods as actual forfeitures differ from those estimates.

Valuation of Inventory. Inventory is valued at the lower of cost or net realizable value, with cost determined using the first-in, first-out method. We periodically evaluate the carrying value of inventory and maintain an allowance for excess and obsolete inventory to adjust the carrying value as necessary to the lower of cost or net realizable value. We evaluate quantities on hand, physical condition, and technical functionality, as these characteristics may be impacted by anticipated customer demand for current products and new product introductions. Unfavorable changes in estimates of excess and obsolete inventory would result in an increase in cost of revenue and a decrease in gross profit.

Valuation of Long-Lived Assets. Property, plant, and equipment and certain intangibles with finite lives are amortized over their estimated useful lives. Useful lives are based on our estimate of the period that the assets will generate revenue or otherwise productively support our business goals. We monitor events and changes in circumstances that could indicate that the carrying balances of long-lived assets may exceed the undiscounted expected future cash flows from those assets. If such a condition were to exist, we would determine if an impairment loss should be recognized by comparing the carrying amount of the assets to their fair value.

Valuation of Goodwill and Other Intangible Assets. Goodwill and other intangible assets with indefinite lives are not subject to amortization but are evaluated for impairment annually or whenever events or changes in circumstances indicate that the asset might be impaired. We conducted our annual impairment analysis of our goodwill as of September 30, 2022 and concluded there had been no impairment in goodwill. We closely monitor our stock price and market capitalization and perform such analysis when events or circumstances indicate that there may have been a change to the carrying value of those assets.

Warranty Cost. We provide warranties against defects in materials and workmanship of our laser systems for specified periods of time. For the years ended December 31, 2023, 2022, and 2021 domestic sales of our Waterlase laser systems were covered by our warranty for a period of up to one year and diode systems were covered by our warranty for a period of up to two years from the date of sale by us or the distributor to the end-user. Laser systems sold internationally during the same periods were covered by our warranty for a period of up to 24 months from the date of sale to the international distributor. Estimated warranty expenses are recorded as an accrued liability with a corresponding provision to cost of revenue. This estimate is recognized concurrent with the recognition of revenue on the sale to the distributor or end-user. Warranty expenses expected to be incurred after one year from the time of sale to the distributor are classified as a long-term warranty accrual. Our overall accrual is based on our historical experience and our expectation of future conditions, taking into consideration the location and type of customer and the type of laser, which directly correlate to the materials and components under warranty, the duration of the warranty period, and the logistical costs to service the warranty. Additional factors that may impact our warranty accrual include changes in the quality of materials, leadership and training of the production and services departments, knowledge of the lasers and workmanship, training of customers, and adherence to the warranty policies. Additionally, an increase in warranty claims or in the costs associated with servicing those claims would likely result in an increase in the accrual and a decrease in gross profit.

Recent Accounting Pronouncements

For a description of recently issued and adopted accounting pronouncements, including the respective dates of adoption and expected effects on our results of operations and financial condition, please refer to *Part I, Item 1, Note 2 – Summary of Significant Accounting Policies*, which is incorporated herein by this reference.

Fair Value of Financial Instruments

Our financial instruments, consisting of cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, warrants, and the SWK Loan (as defined below) as discussed in *Note 6 - Debt*, to the notes to our financial statements included in this Form 10-K approximate fair value because of the relative short maturity of these items and the market interest rates the Company could obtain.

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants in the principal market (or, if none exists, the most advantageous market) for the specific asset or liability at the measurement date (referred to as the "exit price"). The fair value is based on assumptions that market participants would use, including a consideration of non-performance risk. Under the accounting guidance for value hierarchy, there are three levels of measurement inputs. Level 1 inputs are quoted prices in active markets for identical assets or liabilities. Level 2 inputs are observable, either directly or indirectly. Level 3 inputs are unobservable due to little or no corroborating market data.

Results of Operations

The following table sets forth certain data from our operating results, expressed in thousands and as percentages of revenue:

	Years Ended December 31,					
	2023		2022		2021	
Net revenue	$ 49,164	100.0 %	$ 48,462	100.0 %	$ 39,188	100.0 %
Cost of revenue	32,440	66.0 %	32,551	67.2 %	22,659	57.8 %
Gross profit	16,724	34.0 %	15,911	32.8 %	16,529	42.2 %
Operating expenses:						
Sales and marketing	18,441	37.5 %	21,675	44.7 %	15,339	39.1 %
General and administrative	10,216	20.8 %	12,309	25.4 %	11,258	28.7 %
Engineering and development	6,004	12.2 %	7,265	15.0 %	6,048	15.4 %
Loss on patent litigation settlement	—	— %	—	— %	315	0.8 %
Total operating expenses	34,661	70.5 %	41,249	85.1 %	32,960	84.1 %
Loss from operations	(17,937)	(36.5) %	(25,338)	(52.3) %	(16,431)	(41.9) %
Non-operating (loss) gain, net	(2,664)	(5.4) %	(3,187)	(6.6) %	338	0.9 %
Loss before income tax provision	(20,601)	(41.9) %	(28,525)	(58.9) %	(16,093)	(41.1) %
Income tax provision	(31)	(0.1) %	(109)	(0.2) %	(65)	(0.2) %
Net loss	$ (20,632)	(42.0) %	$ (28,634)	(59.1) %	$ (16,158)	(41.2) %

The following table summarizes our net revenues by category ($ in thousands):

	Years Ended December 31,					
	2023		2022		2021	
Laser systems	$ 30,043	61.1 %	$ 31,443	64.8 %	$ 25,023	63.9 %
Consumables and other	13,596	27.7 %	11,322	23.4 %	9,456	24.1 %
Services	5,525	11.2 %	5,697	11.8 %	4,709	12.0 %
Net revenue	$ 49,164	100.0 %	$ 48,462	100.0 %	$ 39,188	100.0 %

Comparison of Results of Operations

Year Ended December 31, 2023 Compared with Year Ended December 31, 2022

Net Revenue. Net revenue for the year ended December 31, 2023 was $49.2 million, an increase of $0.7 million, or 1%, as compared with net revenue of $48.5 million for the year ended December 31, 2022. Domestic revenues were $33.9 million, or 69% of net revenue, for the year ended December 31, 2023 compared to $33.9 million, or 70% of net revenue, for the year ended December 31, 2022. International revenues for year ended December 31, 2023 were $15.3 million, or 31% of net revenue, compared to $14.6 million, or 30% of net revenue for year ended December 31, 2022.

Laser system net revenues decreased by $1.4 million, or 4%, for the year ended December 31, 2023 compared to the same period in 2022. Consumables and other net revenue, which includes products such as disposable tips and shipping revenue, increased $2.3 million, or 20%, for the year ended December 31, 2023, as compared to the same period in 2022. Services revenue decreased $0.2 million, or 3%, for the year ended December 31, 2023, as compared to the same period in 2022.

The increase in year-over-year net revenue primarily resulted from an increase in worldwide consumables and other revenue from improved utilization of installed laser systems.

Cost of Revenue. Cost of revenue decreased by $0.1 million, or approximately 0.3%, to $32.4 million, or 66% of net revenue for the year ended December 31, 2023, compared to cost of revenue of $32.6 million, or 67% of net revenue, for the same period in 2022. The decrease is due to higher warranty expenses and an increase in material costs and unfavorable absorption of fixed expenses, partially offset by higher sales volume and lower inventory reserve charges for the year ended December 31, 2023

Gross Profit. Gross profit as a percentage of revenue typically fluctuates with product and regional mix, selling prices, product costs and revenue levels. Gross profit for the year ended December 31, 2023 was $16.7 million, or 34% of net revenue, an increase of $0.8 million, or 5%, as compared with gross profit of $15.9 million, or 33% of net revenue, for the same period in 2022. There was a slight improvement of 1% in gross profit as a percentage of revenue. Lower inventory reserve charges for the year ended December 31, 2023, were offset by higher warranty expenses and an increase in material costs and unfavorable absorption of fixed expenses.

Operating Expenses. Operating expenses for the year ended December 31, 2023 were $34.7 million, or 71% of net revenue, a decrease of $6.6 million, or 16%, as compared with $41.2 million, or 85% of net revenue, for the same period in 2022. See the following expense categories for further explanations.

Sales and Marketing Expense. Sales and marketing expense for the year ended December 31, 2023 decreased by $3.2 million, or 15%, to $18.4 million, or 38% of net revenue, as compared with $21.7 million, or 45% of net revenue, for the same period in 2022. This decrease is primarily due to $2.7 million in lower compensation expense from a decrease in commissions and bonus incentives earned for achieving lower sales targets, $1.1 million in decreased advertising spending, $0.6 million in lower travel and tradeshow-related expenses, and $0.2 million of reductions in other expenses. These decreases were partially offset by $1.4 million in recognition of depreciation expense for equipment used in sales and marketing for demos, training and educational purposes, of which $0.8 million was non-recurring.

General and Administrative Expense. General and administrative expense for the year ended December 31, 2023 decreased by $2.1 million, or 17%, to $10.2 million, or 21% of net revenue, as compared with $12.3 million, or 25% of net revenue, for the same period in 2022. This decrease is primarily due to $1.5 million in reduced compensation and bonus incentives earned from achieving lower sales targets, and $0.5 million for the production of the "Talk Dental To Me" docuseries that was a one-time expense for the year ended December 31, 2022.

Engineering and Development Expense. Engineering and development expense for the year ended December 31, 2023 decreased by $1.3 million, or 17%, to $6.0 million, or 12% of net revenue, as compared with $7.3 million, or 15% of net revenue, for the same period in 2022. This decrease is primarily from the impact of our cost savings initiatives implemented during the latter part of the second quarter of 2023, as well as fewer engineering projects for 2023 as compared to 2022.

Non-Operating Income (Loss)

Loss on Foreign Currency Transactions. We recognized a loss of $0.4 million on foreign currency transactions for the year ended December 31, 2023 compared to a $0.4 million loss for the same period in 2022, due to exchange rate fluctuations primarily between the U.S. dollar and the Euro.

Interest Expense, Net. Net interest expense decreased to $2.4 million for the year ended December 31, 2023 compared to $2.7 million of net interest expense for the same period in 2022. The decrease was due to an accrual booked in 2022 for exit fees to be paid in May 2025 upon maturity of the Term Loan. This was partially offset by the impact of higher variable interest rates applied to outstanding Term Loan balances during the year ended December 31, 2023 compared to the same period in 2022.

Other Income, Net. Other Income during the year ended December 31, 2023 was $0.1 million and relates to gains recorded on the Series J warrants issued in the September 2023 public offering and the Series H warrants issued in the May 2023 public offering. These gains were partially offset by issuance costs that were allocated to these warrants and immediately expensed due to the liability classification of the warrants.

Provision for Income Taxes. Our provision for income taxes was a provision of $31 thousand for the year ended December 31, 2023, a decrease of $78 thousand as compared with our provision for income taxes of $109 thousand for the same period in 2022. The decrease in our provision is primarily due to a decrease to our current income taxes in our European subsidiary and Domestic State income taxes.

Net Loss. For the reasons stated above, our net loss was $20.6 million for the year ended December 31, 2023 compared to a net loss of $28.6 million for the same period in 2022.

Year Ended December 31, 2022 Compared with Year Ended December 31, 2021

Net Revenue. Net revenue for the year ended December 31, 2022 was $48.5 million, an increase of $9.3 million, or 24%, as compared with net revenue of $39.2 million for the year ended December 31, 2021. Domestic revenues were $33.9 million, or 70% of net revenue, for the year ended December 31, 2022 compared to $25.4 million, or 65% of net revenue, for the year ended December 31, 2021. International revenues for year ended December 31, 2022 were $14.6 million, or 30% of net revenue, compared to $13.8 million, or 35% of net revenue for year ended December 31, 2021.

Laser system net revenues increased by $6.4 million, or 26%, for the year ended December 31, 2022 compared to the same period in 2021. Consumables and other net revenue, which includes products such as disposable tips and shipping revenue, increased $1.9 million, or 20%, for the year ended December 31, 2022, as compared to the same period in 2021. Services revenue increased $1.0 million, or 21%, for the year ended December 31, 2022, as compared to the same period in 2021.

The increase in year-over-year net revenue primarily resulted from additional adoption of our lasers in dentistry, an increase in consumable sales and the addition of our OEM product at the start of 2022.

Cost of Revenue. Cost of revenue increased by $9.9 million, or approximately 44%, to $32.6 million, or 67% of net revenue for the year ended December 31, 2022, compared to cost of revenue of $22.7 million, or 58% of net revenue, for the same period in 2021. The increase is primarily due to the increase in sales and higher warranty and inventory reserve charges for the year ended December 31, 2022.

Gross Profit. Gross profit as a percentage of revenue typically fluctuates with product and regional mix, selling prices, product costs and revenue levels. Gross profit for the year ended December 31, 2022 was $15.9 million, or 33% of net revenue, a decrease of $0.6 million, or 4%, as compared with gross profit of $16.5 million, or 42% of net revenue, for the same period in 2021. The decrease in gross profit as a percentage of revenue reflects the impact of a $2.7 million charge for inventory. This inventory charge was driven by the supply chain issues that we have encountered requiring us to change to new suppliers along with end of life designation for certain products and components, which resulted in higher inventory reserves and warranty expenses. In addition, lower margin OEM products were launched at the beginning of 2022 and an Employee Retention Credit under the CARES Act of $0.7 million was received during the year ended December 31, 2021 that did not occur in 2022. The decrease was partially offset by the impact of the increase in sales and the favorable absorption of fixed expenses.

Operating Expenses. Operating expenses for the year ended December 31, 2022 were $41.2 million, or 85% of net revenue, an increase of $8.3 million, or 25%, as compared with $33.0 million, or 84% of net revenue, for the same period in 2021. See the following expense categories for further explanations.

Sales and Marketing Expense. Sales and marketing expense for the year ended December 31, 2022 increased by $6.3 million, or 41%, to $21.7 million, or 45% of net revenue, as compared with $15.3 million, or 39% of net revenue, for the same period in 2021. This increase is primarily due to $2.9 million from compensation expense due to no open territories, or no territories without a sales representative in 2022, and commissions and bonus incentives for achieving sales targets, $1.9 million in higher travel and trade show related expenses, $0.7 million in higher supply costs and other expenses, $0.2 million in additional advertising expenses, and $0.6 million from an Employee Retention Credit under the CARES Act received during the year ended December 31, 2021 that did not occur in 2022.

General and Administrative Expense. General and administrative expense for the year ended December 31, 2022 increased by $1.1 million, or 9%, to $12.3 million, or 25% of net revenue, as compared with $11.3 million, or 29% of net revenue, for the same period in 2021. This increase is primarily from $0.8 million in compensation expense for achieving sales targets and filling open positions, $0.5 million for the production of the “Talk Dental To Me” docuseries, and $0.2 million in a higher allowance for doubtful accounts. The increase in general and administrative expenses was partially offset by $0.4 million in severance expense that did not occur in 2022, and $0.2 million from an Employee Retention Credit under the CARES Act received during the year ended December 31, 2021 that did not occur in 2022.

Engineering and Development Expense. Engineering and development expense for the year ended December 31, 2022 increased by $1.2 million, or 20%, to $7.3 million, or 15% of net revenue, as compared with $6.0 million, or 15% of net revenue, for the same period in 2021. This increase is primarily due to $0.7 million from compensation expenses driven by more engineering projects for 2022 as compared to 2021, $0.5 million in other various expense, and $0.2 million for the impact of an Employee Retention Credit under the CARES Act received during the year ended December 31, 2021 that did not occur in 2022. This increase in engineering and development expenses was partially offset by $0.2 million decrease in other expenses.

Loss on Patent Litigation Settlement. Loss on patent litigation settlement for the year ended December 31, 2021 was $0.3 million due to the change in fair value of the remaining accrued liability.

Non-Operating Income (Loss)

Loss on Foreign Currency Transactions. We recognized a loss of $0.4 million on foreign currency transactions for the year ended December 31, 2022 compared to a $0.5 million loss for the same period in 2021, due to exchange rate fluctuations primarily between the U.S. dollar and the Euro.

Interest Expense, Net. Net interest expense increased to $2.7 million for the year ended December 31, 2022 compared to $2.2 million of net interest expense for the same period in 2021. The increase was due to the impact of higher variable interest rates applied to outstanding Term Loan balances during the year ended December 31, 2022 compared to the same period in 2021 and an accrual for exit fees to be paid in May 2025 upon maturity of the Term Loan, partially offset by lower interest expense associated with reduced Term Loan balances during the year ended December 31, 2022 compared to the same period in 2021.

Gain on debt forgiveness. Gain on debt forgiveness was $3.0 million for the year ended December 31, 2021 due to the approval of the Company's request for forgiveness of the loan received under the Paycheck Protection Program under the CARES Act (the "PPP Loan").

Other Income, Net. There was no Other Income (Expense) for the years ended December 31, 2022 and 2021.

(Provision) benefit for Income Taxes. Our provision for income taxes was a provision of $109 thousand for the year ended December 31, 2022, an increase of $44 thousand as compared with our provision for income taxes of $65 thousand for the same period in 2021. The increase in our provision is primarily due to an increase to our current income taxes in our European subsidiary.

Net Loss. For the reasons stated above, our net loss was $28.6 million for the year ended December 31, 2022 compared to a net loss of $16.2 million for the same period in 2021.

Non-GAAP Disclosure

In addition to the financial information prepared in conformity with GAAP, we provide certain historical non-GAAP financial information. Management believes that these non-GAAP financial measures assist investors in making comparisons of period-to-period operating results and that, in some respects, are indicative of our ongoing core performance.

Management believes that the presentation of this non-GAAP financial information provides investors with greater transparency and facilitates comparison of operating results across a broad spectrum of companies with varying capital structures, compensation strategies, derivative instruments, and amortization methods, which provides a more complete understanding of our financial performance, competitive position, and prospects for the future. However, the non-GAAP financial measures presented in this Form 10-K have certain limitations in that they do not reflect all of the costs associated with the operations of our business as determined in accordance with GAAP. Therefore, investors should consider non-GAAP financial measures in addition to, and not as a substitute for, or as superior to, measures of financial performance prepared in accordance with GAAP. Further, the non-GAAP financial measures presented by us may be different from similarly named non-GAAP financial measures used by other companies.

Adjusted EBITDA

Management uses Adjusted EBITDA in its evaluation of our core results of operations and trends between fiscal periods and believes that these measures are important components of its internal performance measurement process. Adjusted EBITDA is defined as net loss before interest, taxes, depreciation, stock-based compensation and other non-cash compensation, severance expense, change in allowance for doubtful accounts, increase in inventory reserves, and other (income) expense, net. Management uses adjusted EBITDA in its evaluation of our core results of operations and trends between fiscal periods and believes that these measures are important components of its internal performance measurement process. Therefore, investors should consider non-GAAP financial measures in addition to, and not as a substitute for, or as superior to, measures of financial performance prepared in accordance with GAAP. Further, the non-GAAP financial measures presented by us may be different from similarly named non-GAAP financial measures used by other companies.

The following table contains a reconciliation of non-GAAP Adjusted EBITDA to GAAP net loss attributable to common stockholders (in thousands):

	Years Ended December 31,		
	2023	2022	2021
GAAP net loss attributable to common stockholders	$(37,619)	$(28,851)	$(16,704)
Deemed dividend on convertible preferred stock	16,987	217	546
GAAP net loss	$(20,632)	$(28,634)	$(16,158)
Adjustments:			
Interest expense, net	2,361	2,749	2,224
Income tax provision	31	109	65
Depreciation	2,798	497	400
Severance expense	236	—	—
Change in allowance for doubtful accounts	533	40	(202)
Loss on patent litigation settlement	—	—	315
Stock-based and other non-cash compensation	1,232	2,303	1,662
Increase in inventory reserve and disposals	715	2,798	—
Gain on debt forgiveness	—	—	(3,014)
Other income, net	(48)	—	—
Adjusted EBITDA	$(12,774)	$(20,138)	$(14,708)

Other income for the year ended December 31, 2023, is comprised of a $0.5 million gains on stock warrant activity partially offset by stock warrant issuance costs.

Liquidity and Capital Resources

The Company has reported losses from operations of $17.9 million, $25.3 million, and $16.4 million for the years ended December 31, 2023, 2022, and 2021, respectively, and has not generated positive net cash from operations for the same periods.

At December 31, 2023, we had $6.6 million in cash and cash equivalents, which does not take into account any cash raised in the February 2024 offering, compared to $4.2 million as of December 31, 2022. Management defines cash and cash equivalents as highly liquid deposits with original maturities of 90 days or less when purchased. The increase in our cash and cash equivalents by $2.4 million from December 31, 2022 was primarily due to cash provided by financing activities of $17.4 million, partially offset by cash used in operating activities of $14.1 million and cash used in investing activities of $1.1 million. The $14.1 million of net cash used in operating activities in 2023 was primarily driven by our net loss of $20.6 million during the year.

At December 31, 2023, we had $5.2 million in working capital. Our principal sources of liquidity consisted of $6.6 million in cash and cash equivalents and $5.5 million of net accounts receivable.

The Company may need to raise additional capital in the future. Additional capital requirements may depend on many factors, including, among other things, the rate at which the Company's business grows, demands for working capital, manufacturing capacity, and any acquisitions that the Company may pursue. From time to time, the Company could be required, or may otherwise attempt, to raise capital through either equity or debt offerings. The Company cannot provide assurance that it will be able to successfully enter into any such equity or debt financings in the future or that the required capital would be available on acceptable terms, if at all, or that any such financing activity would not be dilutive to its stockholders.

Our recurring losses, level of cash used in operations, potential need for additional capital, and the uncertainties surrounding our ability to raise additional capital, raises substantial doubt about our ability to continue as a going concern. The financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

In order for us to continue operations beyond the next 12 months and be able to discharge our liabilities and commitments in the normal course of business, we must either raise additional capital or increase sales of our products, control or potentially reduce expenses, and establish profitable operations in order to generate cash from operations or obtain additional funds when needed.

We will endeavor to improve our financial condition and ultimately improve our financial results by increasing revenues through expansion of our product offerings, continuing to expand and develop our field sales force and distributor relationships both domestically and internationally, forming strategic arrangements within the dental and medical industries, educating dental and medical patients as to the benefits of our advanced medical technologies, and reducing expenses.

Term Loan

The information set forth in *Note 6 – Debt – Term Loan* is hereby incorporated herein by reference.

EIDL Loan

The information set forth in *Note 6 – Debt – EIDL Loan* is hereby incorporated herein by reference.

Public Offering of Common Shares and Private Placement of Unregistered Preferred Shares

The information set forth in *Note 8 – Convertible Redeemable Preferred Stock and Stockholders' Equity (Deficit)* – Public Offering of Common Shares and Private Placement of Unregistered Preferred Shares is hereby incorporated herein by reference.

Concentration of Credit Risk

Financial instruments, which potentially expose us to a concentration of credit risk, consist principally of cash and cash equivalents and trade accounts receivable. We maintain our cash and cash equivalents with established commercial banks. At times, balances may exceed federally insured limits. To minimize the risk associated with trade accounts receivable, we perform ongoing credit evaluations of customers' financial condition and maintain relationships with our customers that allow us to monitor changes in business operations so we can respond as needed. We do not, generally, require customers to provide collateral before we sell them our products. However, we have required certain distributors to make prepayments for significant purchases of our products.

Receivables and Allowance for Doubtful Accounts

Trade accounts receivable are recorded at the invoiced amount and do not bear interest. The allowance for doubtful accounts is our best estimate of the amount of probable credit losses in the existing accounts receivable. We determine the allowance based on a quarterly specific account review of past due balances. All other balances are reviewed on a pooled basis by age of receivable. Account balances are charged off against the allowance when it is probable the receivable will not be recovered. We do not have any off-balance-sheet credit exposure related to our customers.

Consolidated Cash Flows

The following table summarizes our statements of cash flows (in thousands):

	Years Ended December 31,		
	2023	**2022**	**2021**
Net cash (used in) provided by:			
Operating activities	$ (14,091)	$ (26,761)	$ (16,710)
Investing activities	(1,129)	(3,727)	(707)
Financing activities	17,434	4,603	29,954
Effect of exchange rates on cash	171	(109)	(238)
Net change in cash and cash equivalents	$ 2,385	$ (25,994)	$ 12,299

Year Ended December 31, 2023 Compared with Year Ended December 31, 2022

Net cash used in operating activities for the year ended December 31, 2023 totaled $14.1 million and was primarily comprised of our net loss of $20.6 million, and an increase in operating liabilities of $1.7 million, partially offset by an decrease in operating assets of $2.7 million, and non-cash adjustments for depreciation expense of $2.8 million, stock-based compensation of $1.2 million, a $0.7 million increase in our inventory reserve, and amortization of debt issuance costs of $0.4 million. The net decrease in our operating assets and liabilities was primarily due a $1.5 million decrease in prepaid expenses and other current assets, and a $1.0 million decrease in inventory, partially offset by a $1.9 million decrease in accounts payable and accrued liabilities.

Net cash used in investing activities for the year ended December 31, 2023 was $1.1 million and was primarily driven by our capital expenditures.

Net cash provided by financing activities for the year ended December 31, 2023 was $17.4 million primarily comprised $8.5 million net proceeds from the January 2023 public offering, $3.7 million net proceeds from the May 2023 public offering, $3.5 million net proceeds from the September 2023 public offering, $1.0 million net proceeds from the December 2023 public offering, and $0.8 million proceeds from the exercise of warrants.

The $0.2 million effect of exchange rate on cash for the year ended December 31, 2023 was due to a recognized gain on foreign currency transactions, primarily driven by changes in the Euro during the year.

Year Ended December 31, 2022 Compared with Year Ended December 31, 2021

Net cash used in operating activities for the year ended December 31, 2022 totaled $26.8 million and was primarily comprised of our net loss of $28.6 million, and an increase in operating assets of $8.5 million, partially offset by an increase in operating liabilities of $3.5 million, non-cash adjustments for stock-based compensation of $2.3 million, a $2.8 million write-off of inventory, amortization of debt issuance costs of $1.2 million, and depreciation expenses of $0.5 million. The net increase in our operating assets was primarily due to a $5.8 million increase in inventory as we have increased inventory levels to try to mitigate the impact of supply disruptions from potential product shortages and delivery delays, a $1.1 million increase in prepaid expenses and other current assets, and a $1.6 million increase in accounts receivable, partially offset by a $3.5 million increase in accounts payable and accrued liabilities.

Net cash used in investing activities for the year ended December 31, 2022 was $3.7 million and was primarily driven by our capital expenditures. We expect cash flows used in investing activities to decrease somewhat in 2023 due to the completion of our new training facility.

Net cash provided by financing activities for the year ended December 31, 2022 was $4.6 million primarily comprised of $5.6 million of net proceeds from the June 2022 direct offering and private placement, partially offset by a $1.0 million payment on the SWK Loan.

The $0.1 million effect of exchange rate on cash for the year ended December 31, 2022 was due to a recognized gain on foreign currency transactions, primarily driven by changes in the Euro during the year.

Contractual Obligations

Leases

On January 22, 2020, the Company entered into a five-year real property lease agreement for an approximately 11,000 square foot facility in Corona, California where it moved its manufacturing operations. The lease commenced on July 1, 2020. On December 10, 2021, the Company entered into an additional three and a half year lease at this location to expand the leased space by an additional 15,000 square feet to meet growing manufacturing needs. The additional lease commenced on February 1, 2022. Future minimum rent payments under these leases are approximately $0.5 million.

On February 4, 2020, the Company also entered into a sixty-six month real property lease agreement for office space of approximately 12,000 square feet of office space in Lake Forest, California. The lease commenced on July 1, 2020. On May 26, 2022, the Company entered into an additional lease at this location to expand the leased space by an additional 8,000 square feet for an additional training facility and model dental office. The additional lease commenced on March 9, 2023. Future minimum rent payments under these leases are approximately $1.3 million.

SWK Loan

On November 9, 2018, we entered into the Credit Agreement with SWK, which provides us with the SWK Loan, a variable-rate term loan. The Credit Agreement has been amended multiple times with the most recent being effective November 15, 2023 for total outstanding principal of $13.1 million and exit fees of $1.4 million. Refer to *Note 6 - Debt* for further details.

EIDL Loan

On May 22, 2020, the Company executed the standard loan documents required for securing a loan from the United States Small Business Administration under its Economic Injury Disaster Loan (the "EIDL Loan") assistance program in light of the impact of the COVID-19 pandemic on our business. The principal amount of the EIDL Loan is $150,000, with proceeds to be used for working capital purposes. The information set forth in *Note 6 – Debt – EIDL Loan* is hereby incorporated herein by reference.

Purchase Obligations

Purchase obligations relate to purchase orders with suppliers that we expect to complete primarily during the year ended December 31, 2023. In conformity with current GAAP, purchase obligations that have not met the recognition criteria are not reported in the consolidated balance sheet as of December 31, 2023.

The following table presents our expected cash requirements for contractual obligations outstanding for the years ended as indicated below (in thousands):

	Less Than 1 Year	1 to 3 Years	3 to 5 Years	More Than 5 years	Total
Operating lease obligations	$ 1,049	$ 820	$ —	$ —	$ 1,869
Purchase obligations	12,615	4	—	—	12,619
Loan interest [1]	1,867	926	12	77	2,882
Loan principal	2,265	12,295	6	144	14,710
Total	$ 17,796	$ 14,045	$ 18	$ 221	$ 32,080

(1)Estimated using LIBOR rates as of December 31, 2023

Item 8. ***Financial Statements and Supplementary Data***

All financial statements required by this Item 8, including the report of the independent registered public accounting firm, are listed in Part IV, Item 15 of this Form 10-K, are set forth beginning on Page F-1 of this Form 10-K, and are hereby incorporated herein by reference.

Item 9. ***Changes in and Disagreements with Accountants on Accounting and Financial Disclosure***

Overview

There have been no changes in or disagreements with accountants on accounting and financial disclosure within the parameters of Item 304(b) of Regulation S-K.

Dismissal of Independent Registered Public Accounting Firm

On June 21, 2023, the Audit Committee of the Company's Board of Directors dismissed BDO USA, P.C. ("BDO USA") as our independent registered public accounting firm.

BDO USA's reports on our consolidated financial statements as of and for the years ended December 31, 2022 and 2021, did not contain an adverse opinion or disclaimer of opinion, and were not qualified or modified as to uncertainty, audit scope, or accounting principles, except that the report on our consolidated financial statements as of and for the years ended December 31, 2022 and 2021 contained an explanatory paragraph regarding our ability to continue as a going concern.

During the years ended December 31, 2022 and 2021, and the subsequent interim period through June 21, 2023, there were no disagreements with BDO USA on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of BDO USA, would have caused it to make reference to the subject matter of the disagreement in connection with its reports on our financial statements for such periods.

During the years ended December 31, 2022 and 2021, and the subsequent interim period through June 21, 2023, there were no events otherwise reportable under Item 304(a)(1)(v) of Regulation S-K.

Appointment of New Independent Registered Public Accounting Firm

On June 21, 2023, we engaged Macias Gini & O'Connell LLP ("MGO") as our independent registered public accounting firm for the fiscal year ending December 31, 2023, effective immediately. During the fiscal years ended December 31, 2022 and 2021 and through June 21, 2023, neither we nor anyone on our behalf consulted with MGO regarding (i) the application of accounting principles to any specified transaction, either completed or proposed or the type of audit opinion that might be rendered on our consolidated financial statements, and neither a written report nor oral advice was provided to us that MGO concluded was an important factor considered by us in reaching a decision as to any accounting, auditing, or financial reporting issue, or (ii) any matter that was either the subject of a "disagreement," as defined in Item 304(a)(1)(iv) of Regulation S-K, or a "reportable event," as defined in Item 304(a)(1)(v) of Regulation S-K.

Item 9A. ***Controls and Procedures***

Disclosure Controls and Procedures

Our management has evaluated, with the participation of our President and Chief Executive Officer and Chief Financial Officer the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on that evaluation, our President and Chief Executive Officer and Chief Financial Officer has concluded that the Company's disclosure controls and procedures were effective as of December 31, 2023, except for the matter noted below.

Management's Annual Report on Internal Control over Financial Reporting

We have adopted and maintain disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in the reports filed under the Exchange Act, such as this Annual Report on Form 10-K, is collected, recorded, processed, summarized and reported within the time periods specified under the rules of the SEC. Our disclosure controls and procedures are also designed to ensure that such information is accumulated and communicated to management to allow timely decisions regarding required disclosure. Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework established by the Committee of Sponsoring Organizations of the Treadway Commission entitled "Internal Control — Integrated Framework (2013)" (the "COSO Framework"). Based on that evaluation, the Company's management concluded that its internal control over financial reporting was effective as of December 31, 2023 except for the material weakness related to the matter described below that required correction of previously furnished financial statements for period ended three and six months as of June 30, 2023 and for period ended three and nine months as of September 30, 2023 related to deemed dividend on convertible redeemable preferred stock and its's impact to the calculation of net loss per share attributable to common stockholders.

This Form 10-K does not include an attestation report from Macias Gini O'Connell LLP regarding internal control over financial reporting. Management's report was not subject to attestation by Macias Gini O'Connell LLP pursuant to the SEC rules that permit the Company to provide only management's report in this Form 10-K.

Correction of Errors in Previously Furnished Financial Statements

As discussed in Note 11, we have revised the previously furnished unaudited interim period financial statements for the three and six month period ending June 30, 2023 and for the three and nine month period ending September 30, 2023 to comply with presentation of accretion of redeemable Series H Convertible Preferred Stock and Series J Convertible Preferred Stock as an adjustment to net loss attributable to common stockholders' under accounting guidance. This revision resulted in the correction of previously furnished basic and diluted net loss per share for the related periods. We concluded that the error was not material to the previously furnished financial statements.

This error led to a material weakness for all periods subsequent to March 31, 2023. In light of this material weakness, we performed additional analysis as deemed necessary to ensure that our financial statements were prepared in accordance with U.S. generally accepted accounting principles. Accordingly, management believes that the financial statements included in this Annual Report on Form 10-K present fairly in all material respects our financial position, results of operations and cash flows for the periods presented.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during our quarter ended December 31, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

However, to remediate the aforementioned material weakness, we plan to enhance our processes to identify and appropriately apply applicable accounting requirements to better evaluate and understand the nuances of the complex accounting standards that apply to our financial statements. Our plans at this time include providing enhanced access to accounting literature, research materials and documents and increased communication among our personnel and third-party professionals with whom we consult regarding complex accounting applications. The elements of our remediation plan can only be accomplished over time, and we can offer no assurance that these initiatives will ultimately have the intended effects.

Item 9B. ***Other Information***

During the three months ended December 31, 2023, no director or officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of Regulation S-K.

In addition, on March 21, 2024, the Company entered into an indemnification agreement with each of Jennifer Bright, the Company's Chief Financial Officer, and Steven Sandor, the Company's Chief Operating Officer. The forms of Indemnification Agreement entered into by and between the Company and Ms. Bright and Mr. Sandor are filed as Exhibits 10.20 and 10.21, respectively, to this Annual Report on Form 10-K and are incorporated by reference herein.

Item 9C. ***Disclosure Regarding Foreign Jurisdictions that Prevent Inspections***

Not applicable.

PART III

Item 10. ***Directors, Executive Officers and Corporate Governance***

Information regarding our executive officers is included in Part I of this Form 10-K under “Item 1. Business — Information about Our Executive Officers.” In addition, the information set forth under the caption “Election of Directors” to be included in the definitive proxy statement for the Company’s 2024 annual meeting of stockholders (the “Proxy Statement”) is incorporated by reference herein.

The BIOLASE, Inc. Code of Business Conduct and Ethics (the "Code of Ethics") applies to all of our employees, officers, and directors, including our President and Chief Executive Officer. The Code of Ethics can be found on our investor relations website at the following address: https://ir.biolase.com/corporate-governance/governance-documents. In addition, we intend to post on our website all disclosures that are required by law or the Nasdaq Capital Market rules concerning any amendments to, or waivers from, any provision of the Code of Ethics. The reference to our website address does not constitute incorporation by reference of the information contained at or available through our website, and you should not consider it to be a part of this Form 10-K. We have also adopted a Supplier Code of Conduct applicable to the suppliers of our goods and services, which can also be found on our investor relations website at the web address above.

Item 11. ***Executive Compensation***

The information set forth under the captions “Executive Compensation” and “2023 Director Compensation” to be included in the Proxy Statement is incorporated by reference herein.

Item 12. ***Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

The information set forth under the caption “Security Ownership of Certain Beneficial Owners and Management” to be included in the Proxy Statement and the information set forth under the caption “Equity Compensation Plan Information” in Item 5 of this Form 10-K are incorporated by reference herein.

Item 13. ***Certain Relationships and Related Transactions, and Director Independence***

The information set forth under the captions “Proposal No. 1–Election of Directors” and “Certain Relationships and Related Transactions” to be included in the Proxy Statement is incorporated by reference herein.

Item 14. ***Principal Accountant Fees and Services***

The information set forth under the caption “Principal Accountant Fees and Services” to be included in the Proxy Statement is incorporated by reference herein.

PART IV

Item 15. ***Exhibit Financial Statement Schedules***

(a) The following documents are filed as part of this Form 10-K beginning on the pages referenced below:

(1)Financial Statements:

(2)Financial Statement Schedule:

All other schedules have been omitted as they are not applicable, not required or the information is included in the consolidated financial statements or the notes thereto.

(3)Exhibits:

The exhibits filed as a part of this Form 10-K are listed in the accompanying Exhibit Index immediately preceding the signature page hereto.

Item 16. ***Form 10-K Summary***

None

Exhibit	Description	Filed Herewith	Incorporated by Reference			
			Form	Period Ending/Date of Report	Exhibit	Filing Date
1.1	Placement Agency Agreement, dated December 6, 2023, by and among the Registrant, Lake Street Capital Markets, LLC and Maxim Group LLC		8-K	12/06/2023	1.1	12/08/2023
1.2	Placement Agency Agreement, dated February 13, 2024, by and among the Registrant and Maxim Group LLC		8-K	02/12/2024	1.1	02/15/2024
2.1	Membership Interest Purchase Agreement, dated as of September 22, 2022, by and among BIOLASE, Inc., Med-Fiber LLC and Alexei Tchapyjnikov		10-Q	9/30/2022	2.1	11/20/2022
3.1.1	Restated Certificate of Incorporation, including, (i) Certificate of Designations, Preferences and Rights of 6% Redeemable Cumulative Convertible Preferred Stock of the Registrant; (ii) Certificate of Designations, Preferences and Rights of Series A 6% Redeemable Cumulative Convertible Preferred Stock of the Registrant; (iii) Certificate of Correction Filed to Correct a Certain Error in the Certificate of Designation of the Registrant; and (iv) Certificate of Designations of Series B Junior Participating Cumulative Preferred Stock of the Registrant		S-1, Amendment No. 1	12/23/2005	3.1	12/23/2005
3.1.2	Amendment to Restated Certificate of Incorporation		8-K	05/10/2012	3.1	05/16/2012
3.1.3	Second Amendment to Restated Certificate of Incorporation		8-A/A	11/04/2014	3.1.3	11/04/2014
3.1.4	Third Amendment to Restated Certificate of Incorporation		S-3	07/21/2017	3.4	07/21/2017
3.1.5	Fourth Amendment to Restated Certificate of Incorporation		8-K	05/10/2018	3.1	05/11/2018
3.1.6	Fifth Amendment to Restated Certificate of Incorporation		8-K	05.28/2020	3.1	06/01/2020
3.1.7	Sixth Amendment to Restated Certificate of Incorporation		8-K	04/28/2022	3.1	05/02/2022
3.1.8	Seventh Amendment to Restated Certificate of Incorporation		8-K	07/20/2023	3.1	07/26/2023
3.1.9	Certificate of Designation of Series G Preferred Stock		8-A	03/03/2022	3.1	03/03/2022
3.1.10	Certificate of Elimination of Series D, Series E and Series F Preferred Stock of the Registrant		8-K	03/01/2022	3.3	03/03/2022
3.1.11	Certificate of Elimination of Series G Preferred Stock		8-K	06/08/2022	3.1	06/08/2022
3.1.12	Certificate of Designation of Series H Convertible Redeemable Preferred Stock		8-K	05/24/2023	3.1	05/26/2023
3.1.13	Certificate of Designation of Series I Preferred Stock		8-K	06/05/2023	3.1	06/06/2023

3.1.14	Certificate of Designation of Series J Convertible Redeemable Preferred Stock		8-K	09/13/2023	3.1	09/18/2023
3.2	Eighth Amended and Restated Bylaws of the Registrant, adopted on March 1, 2022		8-K	03/01/2022	3.1	03/03/2022
4.1	Description of Registrant's Securities Registered Pursuant to Section 12 of the Exchange Act	X				
4.2	Form of Warrant issued on July 15, 2020		8-K	07/15/2020	4.2	07/22/2020
4.3	Form of Warrant to Purchase Common Stock issued on June 30, 2022		8-K	06/27/2022	4.2	06/29/2022
4.4	Form of Warrant to Purchase Common Stock issued on January 11, 2023		S-1/A	01/03/2023	4.2	01/03/2023
4.5	Form of Pre-Funded Warrant to Purchase Common Stock issued on December 8, 2023		8-K	12/06/2023	4.1	12/08/2023
4.6	Form of Warrant to Purchase Common Stock issued on December 8, 2023		8-K	12/06/2023	4.2	12/08/2023
4.7	Form of Pre-Funded Warrant to Purchase Common Stock issued on February 15, 2024		8-K	02/12/2024	4.1	02/15/2024
4.8	Form of Class A Warrant to Purchase Common Stock issued on February 15, 2024		8-K	02/12/2024	4.2	02/15/2024
4.9	Form of Class B Warrant to Purchase Common Stock issued on February 15, 2024		8-K	02/12/2024	4.3	02/15/2024
4.10	Warrant Agency Agreement, dated February 15, 2024, by and among the Registrant, Computershare Inc., a Delaware corporation, and its affiliate, Computershare Trust Company, N.A., a federal trust company		8-K	02/12/2024	4.4	02/15/2024
4.11	Form of Warrant issued to Investor issued on February 15, 2024		8-K	02/12/2024	4.5	02/15/2024
10.1*	2002 Stock Incentive Plan, as amended		DEF14A	05/06/2016	A	04/07/2016
10.2*	Form of Stock Option Agreement under the 2002 Stock Incentive Plan (attached as Exhibit A to the Notice of Grant of Stock Option under the 2002 Stock Incentive Plan – Discretionary Option Grant Program)		10-K	12/31/2004	10.26	07/19/2005
10.3*	Form of Option Award Notice for California Employees under the 2002 Stock Incentive Plan		10-Q	09/30/2015	10.2	11/06/2015
10.4*	Form of Option Award Notice for Non-California Employees under the 2002 Stock Incentive Plan		10-Q	09/30/2015	10.3	11/06/2015
10.5*	Form of Option Award Notice for Non-Employee Directors under the 2002 Stock Incentive Plan		10-Q	09/30/2015	10.4	11/06/2015
10.6*	Form of Restricted Stock Unit Award Notice for Non-Employee Directors under the 2002 Stock Incentive Plan		10-Q	09/30/2015	10.5	11/06/2015
10.7*	2018 Long-Term Incentive Plan		DEF14A	05/09/2018	A	04/05/2018
10.8*	First Amendment to 2018 Long-Term Incentive Plan		DEF14A	09/21/2018	B	08/24/2018
10.9*	Second Amendment to 2018 Long-Term Incentive Plan		DEF14A	05/15/2019	A	04/10/2019

10.10*	Third Amendment to 2018 Long-Term Incentive Plan		DEF14A	05/13/2020	A	04/23/2020
10.11*	Fourth Amendment to 2018 Long-Term Incentive Plan		DEF14A	05/26/2021	A	04/19/2021
10.12*	Fifth Amendment to 2018 Long-Term Incentive Plan		DEF14A		A	03/29/2023
10.13*	Form of Restricted Stock Unit—Phantom Award Notice and Restricted Stock Unit Award Agreement for Employees		10-Q	09/30/2021	10.1	11/10/2021
10.14*	Form of Restricted Stock Unit—Phantom Award Notice and Restricted Stock Unit Award Agreement for Non-Employee Directors		10-Q	09/30/2021	10.2	11/10/2021
10.15*	Restricted Stock Unit—Phantom Award Notice and Restricted Stock Unit Award Agreement, dated July 21, 2021, by and between the Registrant and John R. Beaver		10-Q	09/30/2021	10.3	11/10/2021
10.16*	Form of Stock Appreciation Rights Award Notice and Stock Appreciation Rights Agreement for Non-Employee Directors		10-Q	09/30/2021	10.4	11/10/2021
10.17	Lease dated February 4, 2020 by and between the Registrant and Foothill Corporate I MT, LLC		10-K	12/31/2019	10.12	03/30/2020
10.18	Lease dated January 22, 2020 by and between the Registrant and Green River Properties, LLC		10-K	12/31/2019	10.13	03/30/2020
10.19*	Form of Indemnification Agreement between the Registrant and its officers and directors		10-Q	09/30/2005	10.1	11/09/2005
10.20*	Indemnification Agreement between the Registrant and Jennifer Bright	**				
10.21*	Indemnification Agreement between the Registrant and Steven Sandor	**				
10.22*	Form of Stock Option Agreement for inducement grants made to John R. Beaver on September 30, 2017		8-K	09/30/2017	10.1	10/03/2017
10.23*	Letter Agreement Amending Employment with John Beaver, dated April 12, 2020		10-Q	03/31/2020	10.10	05/08/2020
10.24	Credit Agreement dated as of November 9, 2018, by and between the Registrant and SWK Funding LLC		10-Q	09/30/2018	10.6	11/14/2018
10.25	Tenth Amendment to Credit Agreement, dated as of December 30, 2022 by and between the Registrant and SWK LLC		8-K	01/05/2023	10.1	01/05/2023
10.26	Letter Agreement, dated as of August 20, 2019, by and between the Registrant and SWK Funding LLC		S-1	09/04/2019	10.28	09/05/2019

10.27	Eleventh Amendment to Credit Agreement, dated as of November 15, 2023, by and between the Registrant and SWK LLC	**				
10.28	Form of Securities Purchase Agreement, dated as of December 6, 2023, by and between the Company and the investor party thereto		8-K	12/06/2023	10.1	12/08/2023
10.29	Form of Securities Purchase Agreement, dated as of dated February 13, 2024, by and among the Registrant and the investors parties thereto		8-K	02/12/2024	10.1	02/15/2024
10.30	Consent and Waiver, dated February 12, 2024, by and between the Registrant and the Investor named therein		8-K	02/12/2014	10.2	02/15/2024
16.1	Letter from BDO USA, P.C., dated June 22, 2023, addressed to the U.S. Securities and Exchange Commission		8-K	06/21/2023	16.1	06.23/2023
21.1	Subsidiaries of the Registrant	X				
23.1	Consent of Independent Registered Public Accounting Firm, Macias Gini & O'Connell LLP	X				
23.2	Consent of Independent Registered Public Accounting Firm, BDO USA, P.C.	X				
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14 and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended	X				
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14 and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended	X				
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	**				
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	**				
97.1	Clawback Policy	**				
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.					
101.SCH	Inline XBRL Taxonomy Extension Schema With Embedded Linkbase Documents					
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)					

* Management contract or compensatory plan or arrangement.

** Furnished herewith.

SIGNATURES

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

BIOLASE, INC.,
a Delaware Corporation
(registrant)

Dated: March 21, 2024

By: /s/ JOHN R. BEAVER
John R. Beaver
President and Chief Executive Officer

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

Signature	Title	Date
/s/ JOHN R. BEAVER **John R. Beaver**	Director, President and Chief Executive Officer (Principal Executive Officer)	March 21, 2024
/s/ JENNIFER BRIGHT **Jennifer Bright**	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 21, 2024
/s/ DR. JONATHAN T. LORD **Dr. Jonathan T. Lord**	Director	March 21, 2024
/s/ DR. KATHLEEN T. O'LOUGHLIN **Dr. Kathleen T. O'Loughlin**	Director	March 21, 2024
/s/ JESS ROPER **Jess Roper**	Director	March 21, 2024
/s/ DR. MARTHA SOMERMAN **Dr. Martha Somerman**	Director	March 21, 2024
/s/ DR. KENNETH P. YALE **Dr. Kenneth P. Yale**	Director	March 21, 2024

BIOLASE, INC.

Index to Consolidated Financial Statements and Schedule

All Schedules, except Schedule II, have been omitted as the required information is shown in the consolidated financial statements, or notes thereto, or the amounts involved are not significant or the schedules are not applicable.

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Biolase, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Biolase, Inc. (the Company) as of December 31, 2023, the related consolidated statements of operations and comprehensive loss, convertible redeemable preferred stock and stockholders' deficit and cash flows for the year then ended, and the related notes to the consolidated financial statements and schedule listed in the index appearing under Item 15(a)(2) (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has suffered recurring losses from operations and has had negative cash flows from operations for each of the three years ended December 31, 2023. This raises substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters also are described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

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

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

Critical Audit Matter

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Valuation of Goodwill

Description of the Matter

As discussed in Note 4 to the consolidated financial statements, the Company had approximately $2.9 million of goodwill as of December 31, 2023. The Company performs its annual impairment analysis as of the last day of the third quarter, and more frequently if the Company believes indicators of impairment exist. If an indicator of impairment exists, the Company utilizes a combined discounted cash flow income and market comparable company approach in order to value reporting units for the test. Auditing the annual goodwill impairment test was especially complex and judgmental due to the significant estimation required in determining the fair value of the reporting unit. In particular, the fair value estimates involve judgmental assumptions including the amount and timing of expected future cash flows from revenue growth rates, which are affected by expectations about future market or economic conditions and reporting unit specific risk factors as well as an assessment of comparable companies and their respective multiples.

How We Addressed the Matter in Our Audit

Our audit procedures related to the valuation of goodwill included the following, among others:

- We obtained an understanding of the Company's goodwill impairment review process.
- To test the estimated fair value of the Company's reporting unit, we performed audit procedures that included, among others, assessing fair value estimation methodologies, testing the significant assumptions discussed above and the completeness and accuracy of the underlying data used by the Company in its analysis.
- We compared the significant assumptions used by management to historical financial results of the reporting unit and information generated by external parties.
- We considered the historical accuracy of management's estimates and performed sensitivity analyses of significant assumptions to evaluate the changes in the fair value of the reporting unit that would result from changes in the assumptions
- In addition, we involved our valuation professionals to assist in our evaluation of the significant assumptions used to develop the fair value estimates.

Fair value measurement of Series H & J Convertible Redeemable Preferred Stock and Warrants

Description of the Matter

As described further in Note 8 to the consolidated financial statements, in May 2023 and September 2023, the Company issued Series H & J Redeemable Convertible Preferred Stock and Warrants, respectively, pursuant to certain redemption, conversion and exercise terms (collectively, "redeemable convertible preferred stock and warrants"). The accounting for the transactions required management to assess whether the preferred stock instruments qualify for mezzanine equity presentation and whether the warrants meet liability classification requirements.

We identified the fair value measurement of the redeemable convertible preferred stock and warrant derivative liability as a critical audit matter. Auditing management's accounting for the redeemable convertible preferred stock and warrants was especially challenging as it required auditor judgment in assessing the accounting for and estimation of the fair value of the redeemable convertible preferred stock and warrants, including the interpretation and application of the accounting literature to the transaction. It also required professionals with specialized skills and knowledge to assess the methodology and key inputs used by the Company to estimate the fair value of the redeemable convertible preferred stock and warrants. There is limited observable market data available for the redeemable convertible preferred stock and warrants, making it a complex financial instrument and, as such, the fair value measurement requires management to make complex judgments in order to identify and select the significant assumptions. In addition, the fair value measurement of the redeemable convertible preferred stock and warrants requires the use of complex financial models. As a result, obtaining sufficient appropriate audit evidence related to the fair value measurement requires significant auditor subjectivity.

How We Addressed the Matter in Our Audit

Our audit procedures related to the fair value measurement of the redeemable convertible preferred stock and warrants included the following, among others:

- Testing of the Company's accounting treatment and disclosures related to the redeemable convertible preferred stock and warrants including reading the terms of the redeemable convertible preferred stock and warrant prospectus, evaluating provisions related to contingent redemption features, and evaluating the Company's application of the technical accounting literature regarding classifying the redeemable convertible preferred stock as mezzanine equity.

•We obtained an understanding of the process of estimating the fair value of the embedded derivative.

•With the assistance of our valuation specialists, we evaluated the reasonableness of the Company's valuation methodology and significant assumptions by: (1) comparing significant assumptions against available market data and historical amounts and (2) validating the mathematical accuracy of the model by developing an independent calculation and comparing to management's concluded valuations.

/s/ Macias Gini & O'Connell, LLP

We have served as the Company's auditor since 2023.

Irvine, CA

March 21, 2024

Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors
BIOLASE, Inc.
Lake Forest, California

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheet of BIOLASE, Inc. (the "Company") as of December 31, 2022, the related consolidated statements of operations and comprehensive loss, redeemable preferred stock and stockholders' equity (deficit), and cash flows for each of the two years in the period ended December 31, 2022, and the related notes and schedule listed in the index appearing under Item 15(a)(2) (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2022**,** in conformity with accounting principles generally accepted in the United States of America.

Going Concern Uncertainty

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses from operations and has had negative cash flows from operations for each of the two years ended December 31, 2022. These factors, among others, raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

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

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

/s/ BDO USA, P.C.

We have served as the Company's auditor since 2005 through 2023.

Costa Mesa, California

March 28, 2023

BIOLASE, INC.
CONSOLIDATED BALANCE SHEETS
(*In thousands, except per share data*)

	December 31, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	$ 6,566	$ 4,181
Accounts receivable, less allowance of $244 and $2,164 as of December 31, 2023 and 2022, respectively	5,483	5,841
Inventory	11,433	15,884
Prepaid expenses and other current assets	1,381	3,053
Total current assets	24,863	28,959
Property, plant, and equipment, net	5,525	4,278
Goodwill	2,926	2,926
Right-of-use assets, leases	1,519	1,768
Other assets	268	255
Total assets	$ 35,101	$ 38,186
LIABILITIES, CONVERTIBLE REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable	$ 6,065	$ 5,786
Accrued liabilities	8,881	9,210
Deferred revenue, current portion	2,452	2,111
Current portion of term loans, net of discount	2,265	700
Total current liabilities	19,663	17,807
Deferred revenue	256	418
Warranty accrual	593	360
Non-current term loans, net of discount	11,782	13,091
Non-current operating lease liability	772	1,259
Other liabilities	79	362
Total liabilities	33,145	33,297
Mezzanine Equity:		
Series H Convertible Redeemable Preferred stock, par value $0.001 per share; 370 shares authorized, 5 shares issued and outstanding as of December 31, 2023	346	—
Series J Convertible Redeemable Preferred stock, par value $0.001 per share; 160 shares authorized, 15 shares issued and outstanding as of December 31, 2023	1,857	—
Total mezzanine equity	2,203	—
Commitments and contingencies — Note 7		
Stockholders' equity (deficit):		
Common stock, par value $0.001 per share; 180,000 shares authorized, 3,416 and 77 shares issued and outstanding as of December 31, 2023 and 2022, respectively	3	—
Additional paid-in capital	317,103	301,790
Accumulated other comprehensive loss	(553)	(733)
Accumulated deficit	(316,800)	(296,168)
Total stockholders' equity (deficit)	(247)	4,889
Total liabilities, convertible redeemable preferred stock and stockholders' equity (deficit)	$ 35,101	$ 38,186

See accompanying notes to consolidated financial statements.

BIOLASE, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(*In thousands, except per share data*)

	Years Ended December 31,		
	2023	**2022**	**2021**
Net revenue	$ 49,164	$ 48,462	$ 39,188
Cost of revenue	32,440	32,551	22,659
Gross profit	16,724	15,911	16,529
Operating expenses:			
Sales and marketing	18,441	21,675	15,339
General and administrative	10,216	12,309	11,258
Engineering and development	6,004	7,265	6,048
Loss on patent litigation settlement	—	—	315
Total operating expenses	34,661	41,249	32,960
Loss from operations	(17,937)	(25,338)	(16,431)
Loss on foreign currency transactions	(351)	(438)	(452)
Interest expense, net	(2,361)	(2,749)	(2,224)
Gain on debt forgiveness	—	—	3,014
Other income, net	48	—	—
Non-operating (loss) gain, net	(2,664)	(3,187)	338
Loss before income tax provision	(20,601)	(28,525)	(16,093)
Income tax provision	(31)	(109)	(65)
Net loss	(20,632)	(28,634)	(16,158)
Other comprehensive loss items:			
Foreign currency translation adjustments	180	(110)	(238)
Comprehensive loss	$ (20,452)	$ (28,744)	$ (16,396)
Net loss	$ (20,632)	$ (28,634)	$ (16,158)
Deemed dividend on convertible preferred stock	(16,987)	(217)	(546)
Net loss attributable to common stockholders	$ (37,619)	$ (28,851)	$ (16,704)
Net loss per share attributable to common stockholders:			
Basic and Diluted	$ (29.44)	$ (418.13)	$ (283.12)
Shares used in the calculation of net loss per share:			
Basic and Diluted	1,278	69	59

See accompanying notes to consolidated financial statements.

BIOLASE, INC.
CONSOLIDATED STATEMENTS OF CONVERTIBLE REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)
(*In thousands*)

	Mezzanine Equity								Stockholders' Equity (Deficit)						
	Series G Redeemable Preferred Stock		Series H Convertible Redeemable Preferred Stock		Series I Redeemable Preferred Stock		Series J Convertible Redeemable Preferred Stock		Common Stock		Additional Paid-in	Series F Convertible Preferred Stock		Accumulated Other Comprehensive	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Capital	Shares	Amount	Loss	Deficit	Equity (Deficit)
Balance, December 31, 2020	—	$ —	—	$ —	$ —	$ —	$ —	$ —	39	$ —	$ 261,671	1	$ 118	$ (385)	$ (251,376)	$ 10,028
Sale of common stock, net	—	—	—	—	—	—	—	—	6	—	13,291	—	—	—	—	13,291
Exercise of stock options, net	—	—	—	—	—	—	—	—	—	—	132	—	—	—	—	132
Issuance of common stock for settlement of liability	—	—	—	—	—	—	—	—	—	—	510	—	—	—	—	510
Issuance of restricted shares	—	—	—	—	—	—	—	—	—	—	164	—	—	—	—	164
Conversion of Series F Convertible Preferred Stock	—	—	—	—	—	—	—	—	—	—	630	(1)	(630)	—	—	—
Deemed dividend on Series F Convertible Preferred Stock	—	—	—	—	—	—	—	—	—	—	(546)	—	546	—	—	—
Issuance of stock from RSUs, net	—	—	—	—	—	—	—	—	2	—	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	2,416	—	—	—	—	2,416
Exercise of common stock warrants	—	—	—	—	—	—	—	—	14	—	15,063	—	—	—	—	15,063
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(16,158)	(16,158)
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	—	—	—	—	—	(238)	—	(238)
Balance, December 31, 2021	—	—	—	—	—	—	—	—	61	—	293,331	—	34	(623)	(267,534)	25,208
Sale of common stock, net	—	—	—	—	—	—	—	—	7	—	5,602	—	—	—	—	5,602
Issuance of restricted shares	—	—	—	—	—	—	—	—	—	—	109	—	—	—	—	109
Issuance of Series G Redeemable Preferred Stock	154	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Redemption of Series G Redeemable Preferred Stock	(154)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Conversion of Series F Convertible Preferred Stock	—	—	—	—	—	—	—	—	—	—	251	—	(251)	—	—	—
Deemed dividend on Series F Convertible Preferred Stock	—	—	—	—	—	—	—	—	—	—	(217)	—	217	—	—	—
Issuance of stock from RSUs, net	—	—	—	—	—	—	—	—	1	—	—	—	—	—	—	—
Liability award reclass	—	—	—	—	—	—	—	—	—	—	596	—	—	—	—	596
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	2,117	—	—	—	—	2,117
Exercise of common stock warrants	—	—	—	—	—	—	—	—	8	—	1	—	—	—	—	1
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(28,634)	(28,634)
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	—	—	—	—	—	(110)	—	(110)
Balance, December 31, 2022	—	—	—	—	—	—	—	—	77	—	301,790	—	—	(733)	(296,168)	4,889
Sale of common stock and pre-funded warrants, net of fees	—	—	—	—	—	—	—	—	503	—	9,553	—	—	—	—	9,553
Issuance of Series H Convertible Redeemable Preferred Stock, net of fees	—	—	175	2,738	—	—	—	—	—	—	—	—	—	—	—	—
Issuance of Series H Convertible Redeemable Preferred Stock, adjustment to redemption value	—	—	—	9,377	—	—	—	—	—	—	(9,345)	—	—	—	—	(9,345)
Exercise of Series H Convertible Redeemable Preferred Stock Warrants	—	—	20	1,385	—	—	—	—	—	—	(615)	—	—	—	—	(615)
Conversion of Series H Convertible Redeemable Preferred Stock	—	—	(190)	(13,154)	—	—	—	—	680	1	13,153	—	—	—	—	13,154
Issuance of Series I Redeemable Preferred Stock	—	—	—	—	85	—	—	—	—	—	—	—	—	—	—	—
Redemption of Series I Redeemable Preferred Stock	—	—	—	—	(85)	—	—	—	—	—	—	—	—	—	—	—
Issuance of Series J Convertible Redeemable Preferred Stock, net of fees	—	—	—	—	—	—	75	2,720	—	—	—	—	—	—	—	—
Issuance of Series J Convertible Redeemable Preferred Stock, adjustment to redemption value	—	—	—	—	—	—	—	7,610	—	—	(7,611)	—	—	—	—	(7,611)
Exercise of Series J Convertible Redeemable Preferred Stock Warrants	—	—	—	—	—	—	3	410	—	—	(148)	—	—	—	—	(148)
Paid-in-kind dividend on Series J Convertible Redeemable Preferred Stock	—	—	—	—	—	—	3	—	—	—	—	—	—	—	—	—
Conversion of Series J Convertible Redeemable Preferred Stock	—	—	—	—	—	—	(66)	(8,883)	2,038	2	8,881	—	—	—	—	8,883
Issuance of stock from RSUs, net	—	—	—	—	—	—	—	—	4	—	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	1,331	—	—	—	—	1,331
Exercise of common stock warrants	—	—	—	—	—	—	—	—	114	—	114	—	—	—	—	114
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(20,632)	(20,632)
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	—	—	—	—	—	180	—	180
Balance, December 31, 2023	—	$ —	5	$ 346	$ —	$ —	$ 15	$ 1,857	3,416	$ 3	$ 317,103	—	$ —	$ (553)	$ (316,800)	$ (247)

See accompanying notes to consolidated financial statements.

BIOLASE, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(*In thousands*)

	Years Ended December 31,		
	2023	**2022**	**2021**
Cash Flows from Operating Activities:			
Net loss	$ (20,632)	$ (28,634)	$ (16,158)
Adjustments to reconcile net loss to net cash and cash equivalents used in operating activities:			
Depreciation	2,798	497	400
Provision for bad debts	533	40	(202)
Provision for inventory excess and obsolescence	715	1,312	(275)
Inventory write-offs and disposals	—	1,486	(122)
Amortization of debt issuance costs	426	1,196	515
Patent litigation mark-to-market	—	—	315
Change in fair value of warrants	(494)	—	—
Issuance of restricted shares	—	109	164
Issuance costs for warrants	447	—	—
Stock-based compensation	1,232	2,303	1,662
Gain on debt forgiveness	—	—	(3,014)
Gain on disposal of fixed assets	(141)	—	—
Changes in operating assets and liabilities:			
Accounts receivable	201	(1,643)	(978)
Inventory	969	(5,754)	(1,375)
Prepaid expenses and other current assets	1,527	(1,135)	285
Accounts payable and accrued liabilities	(1,851)	3,521	1,765
Deferred revenue	179	(59)	308
Net cash and cash equivalents used in operating activities	(14,091)	(26,761)	(16,710)
Cash Flows from Investing Activities:			
Purchases of property, plant, and equipment	(1,311)	(3,727)	(707)
Proceeds from disposal of property, plant, and equipment	182	—	—
Net cash and cash equivalents used in investing activities	(1,129)	(3,727)	(707)
Cash Flows from Financing Activities:			
Proceeds from the sale of common stock and pre-funded warrants, net of fees	9,553	5,602	14,420
Proceeds from the sale of Convertible Redeemable Preferred Stock, net of fees	5,490	—	—
Proceeds from the sale of warrants, net of fees	1,743	—	—
Payments of equity offering costs	—	—	(1,135)
Principal payment on loan	(165)	(1,000)	—
Payments of debt issuance costs	—	—	(25)
Proceeds from the exercise of common stock warrants	114	1	16,562
Proceeds from the exercise of preferred share warrants	699	—	—
Proceeds from exercise of stock options	—	—	132
Net cash and cash equivalents provided by financing activities	17,434	4,603	29,954
Effect of exchange rate changes	171	(109)	(238)
Increase (decrease) in cash and cash equivalents	2,385	(25,994)	12,299
Cash, cash equivalents and restricted cash, beginning of year	4,181	30,175	17,876
Cash, cash equivalents and restricted cash, end of year	$ 6,566	$ 4,181	$ 30,175
Supplemental cash flow disclosure:			
Cash paid for interest	$ 1,918	$ 1,519	$ 1,771
Cash received for interest	$ 9	$ 26	$ 56
Cash paid for income taxes	$ 41	$ 59	$ 171
Cash paid for operating leases	$ 302	$ 254	$ 246
Non-cash settlement of liability	$ —	$ —	$ 510
Non-cash right-of-use assets obtained in exchange for lease obligations	$ 483	$ 574	$ 150
Deemed dividend on preferred stock	$ —	$ 217	$ 546
Receivable from warrants exercised and included in prepaid and other current assets	$ —	$ —	$ (1,498)
Non-cash property, plant and equipment additions acquired under inventory	$ 2,768	$ —	$ —
Common stock issued upon exercise of preferred stock	$ 22,037	$ —	$ —

See accompanying notes to consolidated financial statements.

NOTE 1 — BASIS OF PRESENTATION

The Company

BIOLASE, Inc. ("BIOLASE" and, together with its consolidated subsidiaries, the "Company") is a leading provider of advanced laser systems for the dental industry. The Company develops, manufactures, markets, and sells laser systems that provide significant benefits for dental practitioners and their patients. The Company's proprietary systems allow dentists, periodontists, endodontists, pediatric dentists, oral surgeons, and other dental specialists to perform a broad range of minimally invasive dental procedures, including cosmetic, restorative, and complex surgical applications. The Company's laser systems are designed to provide clinically superior results for many types of dental procedures compared to those achieved with drills, scalpels, and other conventional instruments. Potential patient benefits include less pain, fewer shots, faster healing, decreased fear and anxiety, and fewer appointments. Potential practitioner benefits include improved patient care and the ability to perform a higher volume and wider variety of procedures and generate more patient referrals.

Use of Estimates

The preparation of these consolidated financial statements in conformity with generally accepted accounting principles in the United States of America ("GAAP") requires the Company to make estimates and assumptions that affect amounts reported in the consolidated financial statements and the accompanying notes. Significant estimates in these consolidated financial statements include allowances on accounts receivable, inventory, and deferred taxes, as well as estimates for accrued warranty expenses, goodwill and the ability of goodwill to be realized, revenue deferrals, effects of stock-based compensation and warrants, contingent liabilities, and the provision or benefit for income taxes. Due to the inherent uncertainty involved in making estimates, actual results reported in future periods may differ materially from those estimates.

Fair Value of Financial Instruments

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants in the principal market (or, if none exists, the most advantageous market) for the specific asset or liability at the measurement date (referred to as the "exit price"). The fair value is based on assumptions that market participants would use, including a consideration of non-performance risk. Under the accounting guidance for fair value hierarchy, there are three levels of measurement inputs. Level 1 inputs are quoted prices in active markets for identical assets or liabilities. Level 2 inputs are observable, either directly or indirectly. Level 3 inputs are unobservable due to little or no corroborating market data.

The Company's financial instruments, consisting of cash, cash equivalents, accounts receivable, accounts payable, accrued liabilities, warrants, and the SWK Loan (as defined below) as discussed in *Note 6 – Debt – Term Loan*, approximate fair value because of the relative short maturity of these items and the market interest rates the Company could currently obtain.

Concentration of Credit Risk, Interest Rate Risk and Foreign Currency Exchange Rate

Financial instruments which potentially expose the Company to a concentration of credit risk consist principally of cash and cash equivalents, and trade accounts receivable. The Company maintains its cash and cash equivalents with established commercial banks. At times, balances may exceed federally insured limits. To minimize the risk associated with trade accounts receivable, management performs ongoing credit evaluations of customers' financial condition and maintains relationships with the Company's customers that allow management to monitor current changes in business operations so the Company can respond as needed. The Company does not, generally, require customers to provide collateral before it sells them its products. However, the Company has required certain distributors to make prepayments for significant purchases of products.

Substantially all of the Company's revenue is denominated in U.S. dollars, including sales to international distributors. Only a small portion of its revenue and expenses is denominated in foreign currencies, principally the Euro and Indian Rupee. The Company's foreign currency expenditures primarily consist of the cost of maintaining offices, consulting services, and employee-related costs. During the years ended December 31, 2023, 2022, and 2021, the Company did not enter into any hedging contracts. Future fluctuations in the value of the U.S. dollar may affect the price competitiveness of the Company's products outside the U.S.

Liquidity and Management's Plans

The Company incurred losses from operations of $17.9 million, $25.3 million, and $16.4 million for the years ended December 31, 2023, 2022, and 2021, respectively, and has not generated positive net cash from operations for the same periods.

As of December 31, 2023, the Company had working capital of approximately $5.2 million. The Company's principal sources of liquidity consisted of approximately $6.6 million in cash and cash equivalents and $5.5 million of net accounts receivable. As of December 31, 2022, the Company had working capital of approximately $11.2 million, $4.2 million in cash and cash equivalents and $5.8 million of net accounts receivable. The increase in cash and cash equivalents since December 31, 2022 was primarily due $8.5 million net proceeds from the January 2023 public offering, $3.7 million net proceeds from the May 2023 public offering, $3.5 million net proceeds from the September 2023 public offering, $1.1 million for the December 2023 public offering, and $0.8 million proceeds from the exercise of warrants. This increase was partially offset by cash used in operating activities of $14.1 million and $1.3 million in capital expenditures. Refer to *Note 8 – Convertible Redeemable Preferred Stock and Stockholders' Equity (Deficit)* for additional information on these common stock issuances and warrant exercises.

The Company's recurring losses, level of cash used in operations, potential need for additional capital, and the uncertainties surrounding our ability to raise additional capital, raises substantial doubt about its ability to continue as a going concern. The financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

In order for the Company to continue operations beyond the next 12 months and be able to discharge its liabilities and commitments in the normal course of business, the Company must increase sales of its products, control or potentially reduce expenses and establish profitable operations in order to generate cash from operations or obtain additional funds when needed.

Although the Company received net proceeds of approximately $16.8 million from public offerings in 2023, the Company may still have to raise additional capital in the future. Additional capital requirements may depend on many factors, including, among other things, the rate at which the Company's business grows, demands for working capital, manufacturing capacity, continued Nasdaq listing requirements, and any acquisitions that the Company may pursue. The Company expects that it will be required to raise capital through either equity or debt offerings. The Company cannot provide assurance that it will be able to successfully enter into any such equity or debt financings in the future or that the required capital would be available on acceptable terms, if at all, or that any such financing activity would not be dilutive to its' stockholders.

We intend to attempt to take actions to restore our compliance with Nasdaq's listing requirements, but we can provide no assurance that we will be able to do so. Any perception that we may not regain compliance or a delisting of our common stock by Nasdaq could adversely affect our ability to attract new investors, decrease the liquidity of the outstanding shares of our common stock, reduce the price at which such shares trade and increase the transaction costs inherent in trading such shares with overall negative effects for our stockholder. In addition, delisting of our common stock from Nasdaq could deter broker-dealers from making a market in or otherwise seeking or generating interest in our common stock, and might deter certain institutions and persons from investing in our common stock. In the event of a de-listing, we would take actions to restore our compliance with the Nasdaq listing requirements, but we can provide no assurance that any such action taken by us would allow our common stock become listed again, stabilize the market price or improve the liquidity of our common stock, prevent our common stock from dropping below the Nasdaq listing requirements.

2022 Reverse Stock Split

At the 2022 annual meeting of BIOLASE stockholders (the "2022 Annual Meeting"), BIOLASE stockholders approved an amendment to BIOLASE's Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), to effect a reverse stock split of BIOLASE common stock, at a ratio ranging from one-for-two (1:2) to one-for-twenty-five (1:25), with the final ratio to be determined by the Board. Immediately after the 2022 Annual Meeting, the Board approved a one-for-twenty-five (1:25) reverse stock split of the outstanding shares of BIOLASE common stock (the "2022 Reverse Stock Split"). On April 28, 2022, BIOLASE filed an amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware to effect the Reverse Stock Split, which became effective on April 28, 2022. The amendment did not change the number of authorized shares of BIOLASE common stock.

2023 Reverse Stock Split

At a special meeting of BIOLASE stockholders held on July 20, 2023 (the "special meeting"), BIOLASE stockholders approved an amendment to BIOLASE's Restated Certificate of Incorporation, as amended, to effect a reverse stock split of BIOLASE common stock, at a ratio between one-for-two (1:2) and one-for-one hundred (1:100). Immediately after the special meeting, BIOLASE's board

of directors approved a one-for-one hundred (1:100) reverse stock split of the outstanding shares of BIOLASE common stock (the "2023 Reverse Stock Split"). On July 26, 2023, BIOLASE filed an amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware to effect the 2023 Reverse Stock Split, which became effective on July 27, 2023. The amendment did not change the number of authorized shares of BIOLASE common stock.

Except as the context otherwise requires, all common stock share numbers, share price amounts (including exercise prices, conversion prices, and closing market prices), shares issued upon the conversion of preferred shares, and shares issued upon the exercise of warrants contained in the consolidated financial statements and notes thereto have been retroactively adjusted to reflect the 2022 Reverse Stock Split and the 2023 Reverse Stock Split.

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Cash and Cash Equivalents

The Company considers all highly liquid investments with maturities of three months or less when purchased, as cash equivalents. Cash equivalents are carried at cost, which approximates fair market value.

Inventory

The Company values inventory at the lower of cost or net realizable value, with cost determined using the first-in, first-out method. The carrying value of inventory is evaluated periodically for excess quantities and obsolescence. Management evaluates quantities on hand, physical condition, and technical functionality as these characteristics may be impacted by anticipated customer demand for current products and new product introductions. The allowance is adjusted based on such evaluation, with a corresponding provision included in cost of revenue. Abnormal amounts of idle facility expenses, freight, handling costs and wasted material are recognized as current period charges, and the Company's allocation of fixed production overhead is based on the normal capacity of its production facilities.

Property, Plant, and Equipment

Property, plant, and equipment is stated at acquisition cost less accumulated depreciation. Maintenance and repairs are expensed as incurred. Upon sale or disposition of assets, any gain or loss is included in the consolidated statements of operations.

The cost of property, plant, and equipment is depreciated using the straight-line method over the following estimated useful lives of the respective assets, except for leasehold improvements, which are depreciated over the lesser of the estimated useful lives of the respective assets or the related lease terms.

Building	30 years
Leasehold improvements	3 to 5 years
Equipment and computers	3 to 5 years
Furniture and fixtures	5 years

Depreciation expense for the years ended December 31, 2023, 2022, and 2021 totaled $2.8 million, $0.5 million and $0.4 million, respectively. Refer to *Note 3 - Supplementary Balance Sheet Information* for further details.

Goodwill and Other Intangible Assets

Goodwill is not subject to amortization but is evaluated for impairment annually or whenever events or changes in circumstances indicate that the asset might be impaired. The Company operates in one reporting segment and reporting unit; therefore, goodwill is tested for impairment at the consolidated level against the fair value of the Company. The fair value of a reporting unit refers to the amount at which the unit as a whole could be bought or sold in a current transaction between willing parties. Quoted market prices in active markets are the best evidence of fair value and are used as the basis for measurement, if available. Management assesses potential impairment on an annual basis and compares the Company's market capitalization to its carrying amount, including goodwill. A significant decrease in the Company's stock price could indicate a material impairment of goodwill which, after further analysis, could result in a material charge to operations. Inherent in the Company's fair value determinations are certain judgments and estimates, including projections of future cash flows, the discount rate reflecting the inherent risk in future cash flows, the interpretation of current economic indicators and market valuations, and strategic plans with regard to operations. A change in these underlying assumptions could cause a change in the results of the tests, which could cause the fair value of the reporting unit to be less than its respective carrying amount.

Costs incurred to acquire and successfully defend patents, and costs incurred to acquire trademarks and trade names are capitalized. Costs related to the internal development of technologies that are ultimately patented are expensed as incurred. Intangible assets, except those determined to have an indefinite life, are amortized using the straight-line method or over management's best estimate of the pattern of economic benefit over the estimated useful life of the assets. Intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable.

Long-Lived Assets

The carrying values of long-lived assets are reviewed when indicators of impairment, such as reductions in demand or significant economic slowdowns, are present. Reviews are performed to determine whether carrying value of an asset is impaired based on comparisons to undiscounted expected future cash flows. If this comparison indicates that there is impairment, the impaired asset is written down to fair value, which is typically calculated using discounted expected future cash flows. Impairment is based on the excess of the carrying amount over the fair value of those assets.

Convertible Redeemable Preferred Stock

The Company classifies convertible preferred stock that is redeemable at the stockholder's discretion as mezzanine equity. On May 24, 2023, the Company consummated the sale of 175,000 Units (the "Units") with each Unit consisting of (A) one share of BIOLASE Series H Convertible Redeemable Preferred Stock, par value $0.001 per share and a stated value equal to $50.00 (the "Series H Convertible Preferred Stock"), and (B) one warrant (the "Series H Warrants") to purchase one-half of one (0.50) share of Series H Convertible Preferred Stock, at a price to the public of $26.00 per Unit, less underwriting discounts and commissions. Each share of the Series H Preferred Stock is convertible into approximately 3.58 shares of BIOLASE common stock upon exercise. During the year ended December 31, 2023 40,000 Series H Warrants were exercised to 20,000 Series H Convertible Preferred Stock, and 190,000 Series H Convertible Preferred Stock were converted into approximately 679,542 shares of BIOLASE common stock. Upon exercise of the Series H Warrants to Series H Convertible Preferred Stock, the Company recorded an increase to Mezzanine Equity of approximately $1.4 million. Upon conversion of the Series H Convertible Preferred Stock to BIOLASE common stock, the Company recorded approximately $13.2 million for common stock, with no charge in retained earnings. As of December 31, 2023, there were 5,000 shares of Series H Convertible Preferred Stock issued and outstanding, and an additional 67,500 Series H Convertible Preferred Stock issuable upon the exercise of Series H Warrants. Additional details are discussed further in Note 8 to these consolidated financial statements.

On September 13, 2023, the Company consummated the sale of 75,000 Units (the "Units") with each Unit consisting of (A) one share of BIOLASE Series J Convertible Redeemable Preferred Stock, par value $0.001 per share and a stated value equal to $100.00 (the "Series J Convertible Preferred Stock"), and (B) one warrant (the "Series J Warrants") to purchase one-half of one (0.50) share of Series J Convertible Preferred Stock, at a price to the public of $60.00 per Unit, less underwriting discounts and commissions. Each share of the Series J Preferred Stock is convertible into approximately 30.67 shares of BIOLASE common stock upon exercise. During the year ended December 31, 2023 5,960 Series J Warrants were exercised to 2,980 Series J Convertible Preferred Stock, 3,091 Series J Convertible Preferred Stock were issued upon PIK dividends, and 66,465 Series J Convertible Preferred Stock were converted into approximately 2,038,804 shares of BIOLASE common stock. Upon exercise of the Series J Warrants to Series J Convertible Preferred Stock, the Company recorded an increase to Mezzanine Equity of approximately $0.4 million. Upon conversion of the Series J Convertible Preferred Stock to BIOLASE common stock, the Company recorded approximately $8.9 million for common stock, with no charge in retained earnings. As of December 31, 2023, there were 14,606 shares of Series J Convertible

Preferred Stock issued and outstanding and an additional 34,520 Series J Convertible Preferred Stock issuable upon the exercise of Series J Warrants. Additional details are discussed further in Note 8 to these consolidated financial statements.

Other Comprehensive (Loss) Income

Other comprehensive (loss) income encompasses the change in equity from transactions and other events and circumstances from non-owner sources and is included as a component of stockholders' equity (deficit) but is excluded from net (loss) income. Accumulated other comprehensive (loss) income is comprised of foreign currency translation adjustments.

Foreign Currency Translation and Transactions

Transactions of the Company's German, Spanish, Australian, and Indian subsidiaries are denominated in their local currencies which have been determined to be their functional currencies. The results of operations and cash flows are translated at average exchange rates during the period, and assets and liabilities are translated at end-of-period exchange rates. Translation gains or losses are shown as a component of accumulated other comprehensive (loss) income in stockholders' equity (deficit). Income and losses resulting from foreign currency transactions which are denominated in a currency other than the entity's functional currency, are included in the consolidated statements of operations.

Revenue Recognition

Contracts with Customers

Revenue for sales of products and services is derived from contracts with customers. The products and services promised in customer contracts include delivery of laser systems and consumables as well as certain ancillary services such as training and extended warranties. Contracts with each customer generally state the terms of the sale, including the description, quantity and price of each product or service. Payment terms are stated in the contract and vary according to the arrangement. Because the customer typically agrees to a stated rate and price in the contract that does not vary over the life of the contract, the Company's contracts do not contain variable consideration. The Company establishes a provision for estimated warranty expense.

Performance Obligations

At contract inception, the Company assesses the products and services promised in its contracts with customers. The Company then identifies performance obligations to transfer distinct products or services to the customers. In order to identify performance obligations, the Company considers all of the products or services promised in contracts regardless of whether they are explicitly stated or are implied by customary business practices.

Revenue from products and services transferred to customers at a single point in time accounted for 89%, 88%, and 88% of net revenue for the years ended December 31, 2023, 2022, and 2021, respectively. The majority of the Company's revenue recognized at a point in time is for the sale of laser systems and consumables. Revenue from these contracts is recognized when the customer is able to direct the use of and obtain substantially all of the benefits from the product which generally coincides with title transfer during the shipping process.

Revenue from services transferred to customers over time accounted for 11%, 12%, and 12% of net revenue for the years ended December 31, 2023, 2022, and 2021, respectively. The majority of our revenue that is recognized over time relates to product training and extended warranties. Deferred revenue attributable to undelivered elements, which primarily consists of product training, totaled $0.4 million as of December 31, 2023 and 2022, respectively.

Transaction Price Allocation

The transaction price for a contract is allocated to each distinct performance obligation and recognized as revenue when, or as, each performance obligation is satisfied. For contracts with multiple performance obligations, the Company allocates the contract's transaction price to each performance obligation using the best estimate of the standalone selling price of each distinct good or service in a contract. The primary method used to estimate standalone selling price is the observable price when the good or service is sold separately in similar circumstances and to similar customers.

Significant Judgments

Revenue is recorded for extended warranties over time as the customer benefits from the warranty coverage. This revenue will be recognized equally throughout the contract period as the customer receives benefits from the Company's promise to provide such services. Revenue is recorded for product training as the customer attends a training program or upon the expiration of the obligation, which is generally after six months.

The Company also has contracts that include both the product sales and product training as performance obligations. In those cases, the Company records revenue for product sales at the point in time when the product has been shipped. The customer obtains control of the product when it is shipped, as all shipments are made FOB shipping point, and after the customer selects its shipping method and pays all shipping costs and insurance. The Company has concluded that control is transferred to the customer upon shipment.

Accounts Receivable

Accounts receivable are stated at estimated net realizable value. The allowance for doubtful accounts is based on an analysis of customer accounts and the Company's historical experience with accounts receivable write-offs.

Contract Liabilities

The Company performs its obligations under a contract with a customer by transferring products and/or services in exchange for consideration from the customer. The Company typically invoices its customers as soon as control of a good and/or service is transferred and a receivable for the Company is established. The Company, however, recognizes a contract liability when a customer prepays for goods and/or services and the Company has not transferred control of the goods and/or services. The opening and closing balances of the Company's contract liabilities are as follows (in thousands):

	December 31,	
	2023	2022
Undelivered elements (training and installation)	$ 449	$ 447
Extended warranty contracts	2,259	2,082
Total deferred revenue	2,708	2,529
Less: long-term portion of deferred revenue	(256)	(418)
Deferred revenue – current	$ 2,452	$ 2,111

The balance of contract assets was immaterial as the Company did not have a significant amount of uninvoiced receivables as of December 31, 2023 and 2022.

The amount of revenue recognized during the years ended December 31, 2023 and 2022 that was included in the opening contract liability balance related to undelivered elements was $0.4 million and $0.8 million, respectively. The revenue recognized during the year related to the opening extended warranty contracts balance was $1.3 million and $1.4 million, for the years ended December 31, 2023 and 2022, respectively.

Disaggregation of Revenue

The Company disaggregates revenue from contracts with customers into geographical regions and by the timing of when goods and services are transferred. The Company determined that disaggregating revenue into these categories depicts how the nature, amount, timing and uncertainty of revenue and cash flows are affected by regional economic factors.

The Company's revenues related to the following geographic areas were as follows (in thousands):

	Years Ended December 31,		
	2023	2022	2021
United States	$ 33,883	$ 33,876	$ 25,384
International	15,281	14,586	13,804
Net Revenue	$ 49,164	$ 48,462	$ 39,188

Information regarding revenues disaggregated by the timing of when goods and services are transferred is as follows (in thousands):

	Years Ended December 31,		
	2023	2022	2021
Revenue recognized over time	$ 5,525	$ 5,697	$ 4,709
Revenue recognized at a point in time	43,639	42,765	34,479
Net Revenue	$ 49,164	$ 48,462	$ 39,188

The Company's sales by end market is as follows (in thousands):

	Years Ended December 31,		
	2023	2022	2021
End-customer	$ 33,883	$ 33,876	$ 25,384
Distributors	15,281	14,586	13,804
Net Revenue	$ 49,164	$ 48,462	$ 39,188

Shipping and Handling Costs and Revenues

Shipping and freight costs are treated as fulfillment costs. For shipments to end-customers, the customer bears the shipping and freight costs and has control of the product upon shipment. For shipments to distributors, the distributor bears the shipping and freight costs, including insurance, tariffs and other import/export costs.

Provision for Warranty Expense

The Company provides warranties against defects in materials and workmanship of its laser systems for specified periods of time. For the years ended December 31, 2023, 2022, and 2021, domestic sales of the Waterlase laser systems were covered by the warranty for a period of up to one year and diode systems were covered by the warranty for a period of up to two years from the date of sale by the Company or the distributor to the end-user. Laser systems sold internationally are covered by the warranty for a period of up to 24 months from the date of sale to the international distributor. Estimated warranty expenses are recorded as an accrued liability with a corresponding provision to cost of revenue. This estimate is recognized concurrent with the recognition of revenue on the sale to the distributor or end-user. Warranty expenses expected to be incurred after one year from the time of sale to the distributor are classified as a long-term warranty accrual. The Company's overall accrual is based on its historical experience and management's expectation of future conditions, taking into consideration the location and type of customer and the type of laser, which directly correlate to the materials and components under warranty, the duration of the warranty period, and the logistical costs to service the warranty. Additional factors that may impact the Company's warranty accrual include changes in the quality of materials, leadership and training of the production and services departments, knowledge of the lasers and workmanship, training of customers, and adherence to the warranty policies. Additionally, an increase in warranty claims or in the costs associated with servicing those claims would likely result in an increase in the accrual and a decrease in gross profit.

The current portion of the warranty accrual is included within accrued liabilities. Changes in the initial product warranty accrual and the expenses incurred under the Company's initial and extended warranties were as follows (in thousands):

	Years Ended December 31,		
	2023	2022	2021
Balance, beginning of period	$ 1,653	$ 1,086	$ 1,132
Provision for estimated warranty cost	3,733	3,639	1,747
Warranty expenditures	(3,472)	(3,072)	(1,793)
Balance, end of period	1,914	1,653	1,086
Less: long-term portion of warranty accrual	593	360	521
Current portion of warranty accrual	$ 1,321	$ 1,293	$ 565

Advertising Costs

Advertising costs are expensed as incurred and totaled $0.8 million, $1.5 million and $1.4 million for the years ended December 31, 2023, 2022, and 2021, respectively.

Engineering and Development

Engineering and development expenses are generally expensed as incurred and consist of engineering personnel salaries and benefits, prototype supplies, contract services, and consulting fees related to product development.

Stock-Based Compensation

During the years ended December 31, 2023, 2022, and 2021, the Company recognized compensation cost related to share-based payments of $1.2 million, $2.3 million, and $1.7 million, respectively, based on the grant-date fair value. As of December 31, 2023 and December 31, 2022 approximately $0.6 million and $0.2 million of the stock compensation cost related to performance-based awards was recognized as a liability, respectively. The following table summarizes the income statement classification of compensation expense associated with share-based payments (in thousands):

	Years Ended December 31,		
	2023	2022	2021
Cost of revenue	$ 29	$ 154	$ 156
Sales and marketing	423	576	367
General and administrative	681	1,368	820
Engineering and development	99	205	319
Total	$ 1,232	$ 2,303	$ 1,662

As of December 31, 2023 and 2022, the Company had $0.4 million and $1.0 million, respectively, of total unrecognized compensation cost, net of estimated forfeitures, related to unvested share-based compensation arrangements granted under its existing plans. The expense is expected to be recognized over a weighted-average period of 1.1 years as of December 31, 2023.

Stock-based compensation expense is estimated at the grant date of the award, is based on the fair value of the award and is recognized ratably over the requisite service period of the award. For restricted stock units ("RSUs") the Company estimates the fair value of the award based on the number of awards and the fair value of BIOLASE common stock on the grant date, and applies an estimated forfeiture rate. For stock options, the Company estimates the fair value of the option award using the Black-Scholes option pricing model. This option-pricing model requires the Company to make several assumptions regarding the key variables used to calculate the fair value of its stock options. The risk-free interest rate used is based on the U.S. Treasury yield curve in effect for the expected lives of the options at their grant dates. Since July 1, 2005, the Company has used a dividend yield of zero, as it does not intend to pay cash dividends on its common stock in the foreseeable future. The most critical assumptions used in calculating the fair value of stock options is the expected life of the option and the expected volatility of BIOLASE common stock. The expected life is calculated in accordance with the simplified method, whereby for service-based awards the expected life is calculated as a midpoint between the vesting date and expiration date. The Company uses the simplified method, as there is not a sufficient history of share option exercises. For performance-based awards, the expected life equals the life of the award. Management believes that the historic volatility of the BIOLASE common stock is a reliable indicator of future volatility, and accordingly, a stock volatility factor based on the historical volatility of the BIOLASE common stock over a lookback period of the expected life is used in approximating the estimated volatility of new stock options. Compensation expense is recognized using the straight-line method for all service-based employee awards and graded amortization for all performance-based awards. Compensation expense is recognized only for those options expected to vest, with forfeitures estimated at the date of grant based on historical experience and future expectations. Forfeitures are estimated at the time of the grant and revised in subsequent periods as actual forfeitures differ from those estimates. The Company applied forfeiture rates of 7.87%, 30.38%, and 40.18% to awards granted during the year ended December 31, 2023 depending on the vesting terms and position of the grantee. The Company's forfeiture rates applied to awards granted during the year ended December 31, 2022 were 10.87%, 10.91%, 28.25% and 37.49% and during the year ended December 31, 2021, were 10.91%, 25.91%, 40.21% and 49.45%, respectively.

The stock option fair values were estimated using the Black-Scholes option-pricing model with the following weighted-average assumptions:

	Years Ended December 31,		
	2023	2022	2021
Expected term (years)	N/A	N/A	6.1
Volatility	N/A	N/A	111 %
Annual dividend per share	N/A	N/A	$ —
Risk-free interest rate	N/A	N/A	1.0 %

There were no stock options granted during the years ended December 31, 2023 and 2022.

Income Taxes

Based upon the Company's operating losses during 2023, 2022, and 2021 and the available evidence, management has determined that it is more likely than not that the deferred tax assets as of December 31, 2023 will not be realized in the near term. Consequently, we have established a valuation allowance against our net deferred tax asset totaling $35.8 million and $31.2 million as of December 31, 2023 and 2022, respectively. In this determination, we considered factors such as our earnings history, future projected earnings, and tax planning strategies. If sufficient evidence of our ability to generate sufficient future taxable income tax benefits becomes apparent, we may reduce our valuation allowance, resulting in tax benefits in our statement of operations and in additional paid-in-capital. Management evaluates the potential realization of our deferred tax assets and assesses the need for reducing the valuation allowance periodically.

The company has elected to treat interest any penalties associated with uncertain tax positions as a component of income tax expense.

Net Loss Per Share — Basic and Diluted

Basic net loss per share is computed by dividing loss attributable to common stockholders by the weighted-average number of common shares outstanding for the period. In computing diluted net loss per share, the weighted average number of shares outstanding is adjusted to reflect the effect of potentially dilutive securities. Net loss is adjusted for any deemed dividends to preferred stockholders to compute income available to common stockholders.

Outstanding stock options, restricted stock units, preferred shares, and warrants to purchase approximately 4,061,000, 27,000, and 9,000 shares were not included in the calculation of diluted loss per share amounts for the years ended December 31, 2023, 2022, and 2021, respectively, as their effect would have been anti-dilutive.

Recent Accounting Pronouncements

Changes to GAAP are established by the Financial Accounting Standards Board ("FASB") in the form of accounting standards updates ("ASUs") to the FASB's Accounting Standards Codification ("ASC").

The Company considers the applicability and impact of all ASUs. ASUs not listed below were assessed and determined not to be applicable or are expected to have minimal impact on the Company's consolidated financial position and results of operations.

Accounting Standards Recently Adopted

In June 2016, the FASB issued ASU 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. The standard's main goal is to improve financial reporting by requiring earlier recognition of credit losses on financing receivables and other financial assets in scope and to replace the incurred loss impairment methodology under current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The Company is required to use a forward-looking expected credit loss model for accounts receivables, loans, and other financial instruments. Credit losses relating to available-for-sale debt securities will also be recorded through an allowance for credit losses rather than as a reduction in the amortized cost basis of the securities. The Company adopted this guidance effective January 1, 2023, and the adoption of this standard did not have a significant impact on its consolidated financial statements.

Accounting Standards Not Yet Adopted

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 740) - Improvements to Income Tax Disclosures*, to require enhanced income tax disclosures to provide information to assess how an entity's operations and related tax risks, tax planning, and operational opportunities affect its tax rate and prospects for future cash flows. The amendments in this update provide that a business entity disclose (1) a tabular income tax rate reconciliation, using both percentages and amounts, (2) separate disclosure of any individual reconciling items that are equal to or greater than 5% of the amount computed by multiplying the income (loss) from continuing operations before income taxes by the applicable statutory income tax rate, and disaggregation of certain items that are significant and (3) amount of income taxes paid (net of refunds received) disaggregated by federal, state and foreign jurisdictions, including separate disclosure of any individual jurisdictions greater than 5% of total income taxes paid. These amendments are

effective for the Company for annual periods in 2025, applied prospectively, with early adoption and retrospective application permitted. The Company intends to adopt the amendments in this update prospectively in 2025. The impact of the adoption of the amendments in this update is not expected to be material to the Company's consolidated financial position and results of operations, since the amendments require only enhancement of existing income tax disclosures in the footnotes to the Company's consolidated financial statements.

NOTE 3 — SUPPLEMENTARY BALANCE SHEET INFORMATION

Accounts Receivable, net:

Accounts receivable is net of allowances for doubtful accounts of $0.2 million and $2.2 million as of December 31, 2023 and 2022, respectively, and net of sales returns of $0.3 million as of December 31, 2023 and 2022.

Inventory:

	December 31,	
(in thousands):	**2023**	**2022**
Raw materials	$ 6,168	$ 6,697
Work-in-process	1,299	1,871
Finished goods	3,966	7,316
Inventory	$ 11,433	$ 15,884

Inventory includes write-downs for excess and obsolete inventory totaling $2.5 million and $2.2 million as of December 31, 2023 and 2022, respectively. Write-downs for excess and obsolete inventory resulted in expense of $0.7 million, $2.8 million and $0.3 million during the years ended December 31, 2023, 2022, and 2021, respectively.

Prepaid expenses and other current assets:

	December 31,	
(in thousands):	**2023**	**2022**
Prepaid insurance	$ 588	$ 662
Prepaid inventory	238	1,225
Other	555	1,166
Prepaid expenses and other current assets	$ 1,381	$ 3,053

Property, Plant, and Equipment, net:

	December 31,	
(in thousands):	**2023**	**2022**
Building	$ 205	$ 199
Leasehold improvements	1,251	464
Equipment and computers	14,628	8,566
Furniture and fixtures	519	475
Construction in progress	92	2,957
Total property, plant, and equipment before depreciation and land	16,695	12,661
Less: accumulated depreciation	(11,330)	(8,538)
Total property, plant, and equipment, net before land	5,365	4,123
Land	160	155
Property, plant, and equipment, net	$ 5,525	$ 4,278

The Company did not recognize any impairments on property, plant, and equipment during the years ended December 31, 2023, 2022 and 2021.

During the year ended December 31, 2023, the Company revised its accounting for laser equipment transferred as part of its marketing efforts to potential customers and other sales representatives without any payment. As a result, a cumulative adjustment of $0.8 million was recorded to depreciation expense in the year ended December 31, 2023.

Accrued Liabilities:

	December 31,	
(in thousands):	**2023**	**2022**
Payroll and benefits	$ 3,343	$ 4,674
Preferred stock warrant liability	1,363	—
Warranty accrual, current portion	1,321	1,293
Operating lease liability	888	638
Accrued insurance premium	473	490
Taxes	452	432
Accrued professional services	422	591
Other	619	1,092
Accrued liabilities	$ 8,881	$ 9,210

NOTE 4 — INTANGIBLE ASSETS AND GOODWILL

The Company conducted its annual impairment test of goodwill as of September 30 and determined that there was no impairment. The Company also tests its intangible assets subject to amortization and goodwill between the annual impairment test if events occur or circumstances change that would more likely than not reduce the fair value of the Company or its assets below their carrying amounts. For intangible assets, the Company performs its impairment test when indicators, such as reductions in demand or significant economic slowdowns, are present. During the fourth quarter ended December 31, 2023, due to the sustained decrease in the stock price of BIOLASE common stock decreasing the implied fair value of the business, the Company performed a quantitative assessment of impairment over goodwill and determined that there was no impairment to our goodwill. Goodwill was valued using an equally weighted income approach and market approach. The unobservable inputs utilized in determining the fair value of the goodwill, which is categorized as a Level 3 instrument, are the discount rate of 19.1% and various revenue growth rates utilized in the financial forecast of future cash flows. There were no events that triggered further impairment testing of the Company's intangible assets and goodwill during the years ended December 31, 2022 and 2021.

As of December 31, 2023 and 2022, the Company had goodwill (indefinite life) of $2.9 million. As of December 31, 2023 and 2022, all intangible assets subject to amortization have been fully amortized and there was no amortization expense for the respective years.

The following table presents the details of the Company's intangible assets, related accumulated amortization and goodwill (in thousands):

	As of December 31, 2023 and 2022			
	Gross	**Accumulated Amortization**	**Impairment**	**Carrying Value**
Patents (4-10 years)	$ 1,914	$ (1,914)	$ —	$ —
Trademarks (6 years)	69	(69)	—	—
Other (4 to 6 years)	817	(817)	—	—
Total	$ 2,800	$ (2,800)	$ —	$ —
Goodwill (indefinite life)	$ 2,926			$ 2,926

NOTE 5 — INCOME TAXES

The Company accounts for income taxes under the asset and liability method, whereby deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. Management evaluates the need to establish a valuation allowance for deferred tax assets based upon the amount of existing temporary differences, the period in which they are expected to be recovered, and expected levels of taxable income. A valuation allowance to reduce deferred tax assets is established when it is "more likely than not" that some or all of the deferred tax assets will not be realized. Management has determined that a full valuation allowance against the Company's net deferred tax assets is appropriate.

The following table presents the current and deferred provision for income taxes for the years ended December 31 (in thousands):

	2023	2022	2021
Current:			
Federal	$ —	$ —	$ —
State	15	40	17
Foreign	15	70	47
	30	110	64
Deferred:			
Federal	—	—	—
State	—	—	—
Foreign	1	(1)	1
	1	(1)	1
	$ 31	$ 109	$ 65

The provision for income taxes differs from the amount that would result from applying the federal statutory rate as follows for the years ended December 31:

	2023	2022	2021
Statutory regular federal income tax rate	(21.0) %	(21.0) %	(21.0) %
Change in valuation allowance	21.9 %	(92.8) %	34.2 %
State tax benefit (net of federal benefit)	(4.0) %	(3.9) %	(4.8) %
Research credits	— %	— %	(0.6) %
Foreign amounts with no tax benefit	0.1 %	0.1 %	— %
Non-deductible expenses	2.4 %	0.6 %	(4.2) %
Effect of change in rate	(0.4) %	4.5 %	— %
Expired net operating loss carryforwards	— %	— %	— %
Net operating loss 382 write-offs	— %	113.4 %	— %
Effect of prior year true-ups	0.1 %	(1.2) %	(4.3) %
Other	1.0 %	0.6 %	1.1 %
Total	0.1 %	0.3 %	0.4 %

The components of the deferred income tax assets and liabilities as of December 31 (in thousands):

	2023	2022
Capitalized intangible assets for tax purposes	$ (38)	$ (38)
Reserves not currently deductible	1,353	2,409
Deferred revenue	65	106
Stock options	1,382	1,500
State taxes	5	6
Income tax credits	1,498	1,496
Inventory	1,179	1,024
Property and equipment	(591)	186
Unrealized gain on foreign currency	(10)	113
Disallowed interest	2,726	2,167
Lease liability	416	475
Capitalized research or experimental expenses	1,601	1,456
Net operating losses	27,476	21,665
Total deferred tax assets	37,062	32,565
Valuation allowance	(35,806)	(31,235)
Net deferred tax assets	1,256	1,330
Capitalized intangible assets	(668)	(664)
Right of use asset	(380)	(442)
Other	(167)	(190)
Total deferred tax liabilities	(1,215)	(1,296)
Net deferred tax assets	$ 41	$ 34

Based upon the Company's operating losses incurred for each of the years ended December 31, 2023, 2022, and 2021 and the available evidence, the Company has established a valuation allowance against its net deferred tax assets in the amount of $35.8 million as of December 31, 2023. Management considered factors such as the Company's earnings history, future projected earnings, and tax planning strategies. If sufficient evidence of the Company's ability to generate sufficient future taxable income tax benefits becomes apparent, the valuation allowance may be reduced, thereby resulting in tax benefits in the statement of operations and additional paid-in-capital. Management evaluates the potential realization of the Company's deferred tax assets and assesses the need for reducing the valuation allowance periodically.

As of December 31, 2023, the Company had net operating loss ("NOL") carryforwards for federal and state purposes of approximately $110 million and $80 million, respectively. For NOLs generated before December 31, 2018, the carryforward period is 20 years while NOLs generated after December 31, 2018 can be carried forward indefinitely. All NOLs generated before December 31, 2018 will expire by 2038. The Company's ability to utilize its net operating loss carryforwards, tax credits, and built-in items of deduction, including capitalized start-up costs and research and development costs, has been, and may continue to be substantially limited due to ownership changes. These ownership changes limit the amount of net operating loss carryforwards, credits and built-in items of deduction that can be utilized annually to offset future taxable income. In general, an ownership change, as defined in IRC Section 382, results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50% of the outstanding stock of a company by certain stockholders or public groups. The amount of the annual limitation is determined based on the value of the Company immediately prior to the ownership change. Subsequent ownership changes may further affect the limitation in future years. If limited, the related tax asset would be removed from the deferred tax asset schedule with a corresponding reduction in the valuation allowance. The Company has established a valuation allowance as the realization of such deferred tax assets has not met the more likely than not threshold requirement. Due to the existence of the valuation allowance, further changes in the Company's unrecognized tax benefits will not impact the Company's effective tax rate.

For the year ended December 31, 2022, the Company completed an assessment of the available net operating loss and tax credit carryforwards under Section 382 and 383 and determined that the Company underwent three ownership changes during the period from 2000 to 2022 on (i) August 8, 2016, (ii) June 8, 2020 and (iii) January 20, 2021. As a result, net operating loss and tax credit carryforwards attributable to the pre-ownership changes are subject to substantial annual limitations under Section 382 and 383 of Code due to the ownership changes. This resulted in a reduction of available gross federal and state net operating loss carryforwards of approximately $123.3 million and $72.6 million, respectively. This also resulted in a reduction of federal tax R&D credit carryforwards of approximately $2 million related to the years ended December 31, 2021 and prior.

The Company is in process of completing an assessment of the available net operating loss and tax credit carryforwards as of December 31, 2023 to account for the ownership changes that occurred during the year. Upon finalization of the assessment, the Company will record adjustments to its NOL and credit carryforwards to the extent required. Considering the indefinite carryforward periods of its remaining NOLs and tax credits, it is not anticipated that there would be a material adjustment to its NOL and tax credit balance. Any reduction of such tax attributes would be offset by a reduction of a valuation allowance.

As of December 31, 2023, the Company had research and development tax credit carryforwards for state purposes of approximately $2.1 million which will carry forward indefinitely for state purposes.

The following table summarizes the activity related to the Company's unrecognized tax benefits (in thousands):

Balance at January 1, 2021	$ 509
Additions for tax positions related to the prior year	—
Lapse of statute of limitations	(159)
Balance at January 1, 2022	350
Additions for tax positions related to the prior year	—
Lapse of statute of limitations	—
Reduction due to section 382 limitation	(131)
Balance at January 1, 2023	219
Additions for tax positions related to the prior year	—
Lapse of statute of limitations	—
Balance at December 31, 2023	$ 219

The Company does not expect to have any unrecognized tax benefits that, if recognized, would affect the effective tax rate. As of December 31, 2023 and 2022, the Company does not have liability for potential penalties or interest. The Company does not expect its unrecognized tax benefits to change significantly over the next 12 months.

The Company files U.S., state and foreign income tax returns in jurisdictions with varying statutes of limitations. The 2020 through 2023 tax years generally remain subject to examination by federal and most state tax authorities. In foreign jurisdictions, the 2020 through 2023 tax years remain subject to examination by their respective tax authorities.

The 2017 Act subjects a U.S, stockholder to current tax on global intangible low-taxed income (GILTI) earned by certain foreign subsidiaries. The FASB Staff Q&A, Topic 740 No. 5, Accounting for Global Intangible Low-Taxed Income, states that an entity can make an accounting policy election to either recognize deferred taxes for temporary differences expected to reverse as GILTI in future years or provide for the tax expense related to GILTI in the year the tax is incurred. We have elected to recognize the tax on GILTI as a period expense in the period the tax is incurred. There is no inclusion of income related to GILTI in 2023.

NOTE 6 — DEBT

The following table presents the details of the principal outstanding and unamortized discount (in thousands):

	December 31,	
	2023	**2022**
SWK Loan	$ 14,560	$ 14,650
EIDL Loan	150	150
Discount and debt issuance costs on SWK Loan	(663)	(1,009)
Total	14,047	13,791
Current term loans	2,265	700
Non current term loans, net of discount	$ 11,782	$ 13,091

EIDL Loan

On May 22, 2020, the Company executed the standard loan documents required for securing a loan (the "EIDL Loan") from the Small Business Administration (the "SBA") under its Economic Injury Disaster Loan assistance program in light of the impact of the COVID-19 pandemic on the Company's business. The principal amount of the EIDL Loan is $150,000, with proceeds to be used for working capital purposes. Interest on the EIDL Loan accrues at the rate of 3.75% per annum and installment payments, including principal and interest, are due monthly beginning in July 2021 and are payable through July 2050. In April 2021, the SBA announced that it was extending the first payment due date for all loans until 2022, or 24 months from the loan execution date. In March 2022, the SBA announced that it was extending the first payment due date for all loans an additional six months, or 30 months from the loan execution date. The Company began making payments on this EIDL Loan starting in November 2022. Fixed payments are first applied to any accrued interest.

Term Loan

On November 9, 2018, the Company entered into a five-year secured Credit Agreement (as amended, restated, and supplemented from time to time, the "Credit Agreement") with SWK Funding, LLC ("SWK"), pursuant to which the Company has outstanding principal of $13.1 million (the "SWK Loan"). The Company's obligations under the Credit Agreement are secured by substantially all of the Company's assets. Under the terms of the Credit Agreement, repayment of the loan was interest-only for the first two years, paid quarterly with the option to extend the interest-only period. Principal repayments were to begin in the first quarter of 2021 and were approximately $0.7 million quarterly until the loan matured in the fourth quarter of 2023 (see below for extension discussion). The loan bore interest at the London Interbank Offered Rate ("LIBOR") plus 10% or another index that approximates LIBOR as close as possible if and when LIBOR no longer exists. Approximately $0.9 million of the proceeds from the SWK Loan were used to pay off all amounts owed to Western Alliance Bank under a previous Business Financing Agreement. The Company used the remaining proceeds to provide additional working capital to fund its growth initiatives.

The Credit Agreement contains financial and non-financial covenants requiring the Company to, among other things, (i) maintain unencumbered liquid assets of (A) no less than $1.5 million or (B) the sum of aggregate cash flow from operations less capital expenditures, (ii) achieve certain revenue and EBITDA levels during the first two years of the loan, (iii) limit future borrowing, investments and dividends, and (iv) submit monthly and quarterly financial reporting.

In connection with the SWK Loan, the Company paid approximately $1.0 million in debt issuance costs, for the year ended December, 31, 2018. These costs were recognized as a discount on the SWK Loan and are being amortized on a straight-line basis over the loan term which approximates the effective-interest method. In addition, as part of the SWK Loan, the Company committed to certain exit fees to be paid upon the loan maturity date in the amount of 8.0% of the aggregate amount borrowed.

As of March 31, 2019, the Company was not in compliance with certain covenants in the Credit Agreement and in May 2019, SWK granted the Company a waiver of such covenants. On May 7, 2019, the Company and SWK agreed to amend the Credit Agreement (the "First Amendment") to increase the total commitment from $12.5 million to $15.0 million, and to revise the financial covenants to (i) adjust minimum revenue and EBITDA levels, (ii) require the Company to have a shelf registration statement declared effective by the Securities and Exchange Commission before September 30, 2019, with a proposed maximum aggregate offering price of at least $10.0 million if the Company does not reach set minimum revenue levels for the three-month period ended September 30, 2019, and (iii) require minimum liquidity of $1.5 million at all times. The First Amendment provided that if aggregate minimum revenue and EBITDA levels were not achieved by September 30, 2019, the minimum liquidity requirement would be increased to $3.0 million, until the Company has obtained additional equity or debt funding of no less than $5.0 million. The Company borrowed the additional $2.5 million during the year ended December 31, 2019.

In connection with the First Amendment, the Company paid to SWK loan origination and other fees of approximately $0.1 million payable in cash and approximately $0.2 million in additional SWK Warrants (as defined below) to purchase the BIOLASE common stock. The Company paid an additional finder's fee to Deal Partners Group ("DPG") of approximately $0.1 million in cash and $0.1 million in additional DPG Warrants (the "DPG Warrants") to purchase BIOLASE common stock. The Company accounted for the First Amendment as a modification to existing debt and as a result, recognized the amounts paid to SWK in cash and warrants as additional debt issuance costs. Amounts paid to DPG in cash and warrants relating to the First Amendment were expensed as incurred in the Company's consolidated statement of operations for the year ended December 31, 2019. In addition, the Company committed to approximately $0.2 million in fees to be paid upon the loan maturity date.

On September 30, 2019, the Company entered into the Second Amendment to the Credit Agreement with SWK (the “Second Amendment”), in connection with that certain Credit Agreement, by and among the Company, SWK, and the lender parties thereto. The Second Amendment amends the Credit Agreement to provide for a permitted inventory and accounts receivable revolving loan facility, secured by a first lien security interest in the Company’s inventory and accounts receivable, with a maximum principal amount of $5 million and with such other material terms and conditions acceptable to SWK in its commercially reasonable discretion. In addition, SWK agreed to waive the effect of the Company’s non-compliance with certain unencumbered liquid assets financial operating covenants as set forth in the Credit Agreement, and SWK agreed to forbear from exercising rights and remedies otherwise available to it in the event of such non-compliance through October 31, 2019, or earlier in the event that an additional equity or subordinated debt financing was consummated with gross proceeds of not less than $5 million, or in the event of a default under the Credit Agreement.

On November 6, 2019, the Company agreed to further amend the Credit Agreement (the “Third Amendment”). Pursuant to the Third Amendment, SWK granted the Company a waiver of the Company’s non-compliance with certain financial covenants in the Credit Agreement. Also pursuant to the Third Amendment, the Company and SWK agreed to (i) revise financial covenants to adjust minimum revenue and EBITDA levels and (ii) remove the automatic increase of the minimum liquidity requirement based on certain aggregate minimum revenue and EBITDA levels as of September 30, 2019 (which was added pursuant to the First Amendment). In connection with the Third Amendment, the Company consolidated the SWK Warrants issued to SWK on November 9, 2018 and May 7, 2019. The price was adjusted to $1.00, the impact of this was immaterial.

As of December 31, 2019, the Company was not in compliance with debt covenants, and in March 2020, the Company obtained a waiver as part of a Fourth Amendment to the Credit Agreement (the “Fourth Amendment”).

On May 15, 2020, the Company entered into a Fifth Amendment to the Credit Agreement (the “Fifth Amendment”). The Fifth Amendment modified the Credit Agreement by providing for minimum consolidated unencumbered liquid assets of $1.5 million prior to June 30, 2020 and $3.0 million on or after June 30, 2020; providing for a minimum aggregate revenue target of $41.0 million for the 12-month period ending June 30, 2020, a related waiver of such minimum revenue target in the event that the Company raised equity capital or issued subordinated debt of not less than $10.0 million on or prior to June 30, 2020, and quarterly revenue targets; and providing for a minimum EBITDA target of ($7.0 million) for the 12-month period ending June 30, 2020, a related waiver of such minimum EBIDTA target in the event that the Company raised equity capital or issued subordinated debt of not less than $10.0 million on or prior to June 30, 2020, and quarterly EBITDA targets.

On August 12, 2020, the Company entered into a Sixth Amendment (the “Sixth Amendment”) to the Credit Agreement. Under the Sixth Amendment, the interest only period on the SWK Loan was extended through May 2022, the loan maturity date was extended to May 9, 2024, the financial covenants were amended and restated to exclude the remainder of 2020, and a $0.7 million repayment of the principal amount was required upon execution of the Sixth Amendment.

In light of the Company's increase in working capital from the Equity Offering (as defined in *Note 8 – Convertible Redeemable Preferred Stock and Stockholders' Equity (Deficit)*) and cash received from warrants exercised, the Company entered into the Seventh Amendment to the Credit Agreement (the “Seventh Amendment”) with SWK on February 24, 2021, which provided for adjusted minimum aggregate revenue and EBITDA requirements at the end of certain periods, to the extent that the Company's liquid assets are less than $15 million. While the Company's liquid assets are at or above $15 million, no financial maintenance covenants are applicable.

On November 18, 2021, the Company entered into the Eighth Amendment to the Credit Agreement (the “Eighth Amendment”) with SWK. The Eighth Amendment amended the Credit Agreement by providing for a new maturity date of May 31, 2025, extending the interest-only period to May 2023, reducing the effective interest rate by 200 basis points, deleting the definitions of "Key Person" and "Key Person Event", and modifying the minimum aggregate revenue and EBITDA requirements at the end of certain periods, to the extent that liquid assets are less than $7.5 million.

On June 30, 2022, the Company entered into the Ninth Amendment to the Credit Agreement (the "Ninth Amendment") with SWK, which extended the interest-only period by two quarters from May 2023 to November 2023 and lowered the required minimum unencumbered liquid assets. In connection with the Ninth Amendment, the Company prepaid $1.0 million of the outstanding loan balance.

On December 30, 2022, the Company entered into the Tenth Amendment to the Credit Agreement (the "Tenth Amendment") with SWK, which lowered the required minimum unencumbered liquid assets.

On November 15, 2023, the Company entered into the Eleventh Amendment to the Credit Agreement (the "Eleventh Amendment") with SWK, which lowered the first principal payment due on November 15, 2023 and February 15, 2024 from $700,000 to $165,000 and lowered the required minimum unencumbered liquid assets. In connection with the Eleventh Amendment, the Company committed to certain exit fees of approximately $0.1 million to be paid upon the loan maturity date.

In connection with amendments One through Seven to the Credit Agreement, the Company paid certain amendment fees per amendment payable up-front. These fees are being amortized over the remaining life of the SWK Loan as of the date of each amendment.

As of December 31, 2023, the Company was in compliance with debt covenants of the Credit Agreement.

The Company recognized approximately $1.8 million, $2.8 million, and $1.7 million in interest expense related to outstanding loans for the years ended December 31, 2023, 2022 and 2021, respectively. The interest expense for the year ended December 31, 2022 includes an immaterial out of period adjustment related to certain exit fees on the term loan. The weighted-average interest rate for the year ended December 31, 2023 was approximately 14.3%.

The future principal and interest payments as of December 31, 2023, are as follows (in thousands):

	Principal	Interest [1]
2024	$ 2,265	$ 1,867
2025	12,295	917
2026	—	9
2027	3	6
2028 and thereafter	147	83
Total future payments	$ 14,710	$ 2,882

(1) Estimated using LIBOR rates as at December 31, 2023

NOTE 7 — COMMITMENTS AND CONTINGENCIES

Leases

The Company enters into operating leases primarily for real estate, office equipment, and fleet vehicles. Lease terms generally range from one to five years, and often include options to renew for one year. The Company leases its corporate headquarters pursuant to a lease that expires on December 31, 2025 and leases a manufacturing facility located in Corona, California, which expires on June 30, 2025. The Company also leases additional office space and certain office equipment under various operating lease arrangements.

Because the rate implicit in each lease is not readily determinable, the Company uses its incremental borrowing rate (“IBR”) to determine the present value of the lease payments.

On January 22, 2020, the Company entered into a five-year real property lease agreement for an approximately 11,000 square foot facility in Corona, California for its manufacturing operations. The lease commenced on July 1, 2020. On December 10, 2021, the Company entered a lease for an additional 15,000 square feet at this facility. This additional lease commenced on February 1, 2022 and ends on June 30, 2025.

On February 4, 2020, the Company also entered into a 66-month real property lease agreement for office space of approximately 12,000 square feet of office space in Lake Forest, California. The lease commenced on July 1, 2020. On May 26, 2022, the Company entered into an additional lease at this location to expand the leased space by an additional 8,000 square feet for an additional training facility and model dental office. The additional lease commenced on March 9, 2023.

Information related to the Company's right-of-use assets and related liabilities were as follows (in thousands):

	December 31,	
	2023	2022
Cash paid for operating lease liabilities	$ 302	$ 254
Right-of-use assets obtained in exchange for new operating lease obligations	$ 483	$ 574
Weighted-average remaining lease term	1.8	2.7
Weighted-average discount rate	12.3 %	12.3 %

Lease expense consists of payments for real property, office copiers, and IT equipment. The Company recognizes payments for non-lease components such as common area maintenance in the period incurred. As of December 31, 2023, the only lease that had not commenced was for the additional training facility and model dental office lease in Foothill Ranch, California.

Future minimum rental commitments under lease agreements, as of December 31, 2023, with non-cancelable terms greater than one year for each of the years ending December 31 are as follows (in thousands):

	December 31,
2024	$ 1,049
2025	817
2026	3
2027	—
2028 and thereafter	—
	1,869
Less imputed interest	(209)
Total lease liabilities	$ 1,660

	December 31,	
	2023	2022
Current operating lease liabilities, included in accrued liabilities	$ 888	$ 638
Non current lease liabilities	772	1,259
Total lease liabilities	$ 1,660	$ 1,897

Rent expense totaled $1.2 million, $1.0 million and $0.9 million for the years ended December 31, 2023, 2022, and 2021, respectively.

Employee Arrangements and Other Compensation

Certain members of management are entitled to severance benefits payable upon termination following a change in control, which would approximate $2.2 million and $2.8 million at December 31, 2023 and 2022, respectively. The Company also has agreements with certain employees and consultants to pay bonuses based on targeted performance criteria. As of December 31, 2023 and 2022, $0.1 million and $1.4 million was accrued for performance bonuses, which is included in accrued liabilities in the consolidated balance sheets. Refer to *Note 8 – Convertible Redeemable Preferred Stock and Stockholders' Equity (Deficit)* for additional information relating to specific stock-based compensation awards.

Purchase Commitments

The Company generally purchases components and subassemblies for its products from a limited group of third-party suppliers through purchase orders. The Company had $12.6 million of purchase commitments as of December 31, 2023, for which the Company has not received the goods or services and which is expected to be purchased primarily within one year. These purchase commitments were made to secure better pricing and to ensure the Company will have the necessary parts to meet anticipated near term demand. Although open purchase orders are considered enforceable and legally binding, the Company may be able to cancel, reschedule, or adjust requirements prior to supplier fulfillment.

Litigation

The Company discloses material loss contingencies deemed to be reasonably possible and accrues for loss contingencies when, in consultation with its legal advisors, management concludes that a loss is probable and reasonably 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.

Patent Litigation

On January 4, 2023, Plaintiff PIPStek, LLC (a wholly-owned subsidiary of Sonendo, Inc.) filed a lawsuit against BIOLASE, Inc. in the Federal District Court for the District of Delaware, alleging that BIOLASE's Waterlase dental laser product infringes two PIPStek patents. A third patent was subsequently added to the case. The Complaint seeks unspecified damages and injunctive relief, as well as costs and attorneys' fees against BIOLASE. BIOLASE has answered denying all of PIPStek's allegations and also asserting that the asserted patents are invalid and not infringed. BIOLASE intends to continue to vigorously and fully defend itself against PIPStek's claims. The parties have exchanged preliminary contentions. Trial in this matter is currently set for May 12, 2025.

Intellectual Property Litigation

On April 24, 2012, CAO Group, Inc. ("CAO") filed a lawsuit against BIOLASE in the District of Utah alleging that BIOLASE's ezlase dental laser infringes on U.S. Patent No. 7,485,116 (the "116 Patent"). On September 9, 2012, CAO amended its complaint, adding claims for (1) business disparagement/injurious falsehood under common law and (2) unfair competition under 15 U.S.C. Section 1125(a). The additional claims stemmed from a press release that BIOLASE issued on April 30, 2012, which CAO claimed contained false statements that were disparaging to CAO and its diode product. The amended complaint sought injunctive relief, treble damages, attorneys' fees, punitive damages, and interest. Until January 24, 2018, this lawsuit was stayed in connection with United States Patent and Trademark Office proceedings relating to the 116 Patent, which proceedings ultimately culminated in a January 27, 2017 decision by the United States Court of Appeals for the Federal Circuit, affirming the findings of the Patent Trial and Appeal Board, which were generally favorable to the Company. On January 25, 2018, CAO moved for leave to file a second amended complaint to add certain claims, which filing the Company did not oppose.

On January 23, 2018, CAO filed a lawsuit against BIOLASE in the Central District of California alleging that BIOLASE's diode lasers infringe on U.S. Patent Nos. 8,337,097, 8,834,497, 8,961,040 and 8,967,883. The complaint sought injunctive relief, treble damages, attorneys' fees, punitive damages, and interest.

On January 25, 2019 (the "Effective Date"), BIOLASE entered into a settlement agreement (the "Settlement Agreement") with CAO. Pursuant to the Settlement Agreement, CAO agreed to dismiss with prejudice the lawsuits filed by CAO against the Company in April 2012 and January 2018. In addition, CAO granted to the Company and its affiliates a non-exclusive, non-transferable (except as provided in the Settlement Agreement), royalty-free, fully-paid, worldwide license to the licensed patents for use in the licensed products and agreed not to sue the Company, its affiliates or any of its manufacturers, distributors, suppliers or customers for use of the licensed patents in the licensed products, and the parties agreed to a mutual release of claims. The Company agreed (i) to pay to CAO, within five days of the Effective Date, $500,000 in cash, (ii) to issue to CAO, within 30 days of the Effective Date, 500,000 restricted shares of BIOLASE common stock (the "Stock Consideration"), and (iii) to pay to CAO, within 30 days of December 31, 2021, an amount in cash equal to the difference (if positive) between $1,000,000 and the value of the Stock Consideration as of December 31, 2021. The Stock Consideration vests on December 31, 2021, the measurement date, and is payable in January 2021, subject to the terms of a restricted stock agreement to be entered into between the parties. The Company recognized a $1.5 million contingent loss on patent litigation settlement in its statement of operations for the year ended December 31, 2018. In January 2019, the Company paid CAO $500,000 in cash. On January 31, 2019, the case was dismissed with prejudice. During the three-month period ended March 31, 2019, the Company recorded an additional loss on patent litigation of $0.2 million which represented the change in fair value of the restricted stock to be issued to CAO at March 31, 2019. Subsequent to March 31, 2019, the Company reversed the additional loss commensurate with the fluctuations in the Company's share price. In August 2020, the Company signed a Letter Agreement to terminate the Manufacturing Agreement and purchase from CAO raw materials and other inventory held by CAO as part of the original Settlement Agreement. During the year ended December 31, 2021, the Company recorded an additional loss on patent litigation of $0.3 million which represented the change in fair value of the liability to be paid to CAO.

In February 2021, the Company issued 200 restricted shares of common stock in satisfaction of its obligation to issue the Stock Consideration to CAO under the Settlement Agreement and reduced the accrued liability to $0.6 million. As of December 31, 2021, the remaining accrued liability related to the Settlement Agreement was included in current accrued liabilities in the amount of $0.8 million. In January 2022, the Company paid all amounts due to CAO and removed the liability.

NOTE 8 — CONVERTIBLE REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)

BIOLASE's board of directors (the "Board"), without further stockholder authorization, may authorize the issuance from time to time of up to 1,000,000 shares of the Company's preferred stock. Of the 1,000,000 shares of preferred stock, as of December 31, 2023, 370,000 shares were designated as Series H, par value $0.001 per share, 160,000 shares were designated as Series J, par value $0.001 per share, and 125,000 shares were designated as Series I, par value $0.001 per share.

Preferred Stock

Series J Preferred Stock

On September 13, 2023, the Company consummated the sale of 75,000 Units (the "Units") with each Unit consisting of (A) one share of BIOLASE Series J Convertible Redeemable Preferred Stock, par value $0.001 per share and a stated value equal to $100.00 (the "Series J Convertible Preferred Stock"), and (B) one warrant (the "Series J Warrants") to purchase one-half of one (0.50) share of Series J Convertible Preferred Stock, at a price to the public of $60.00 per Unit, less underwriting discounts and commissions. The public offering price of $60.00 per Unit reflects the issuance of the Series J Convertible Preferred Stock with an original issue discount of 40%. The Company filed a registration statement on Form S-1 in September 2023, which registered the Units, the Series J Convertible Preferred Stock, the Series J Warrants and the shares of Series J Convertible Preferred Stock and common stock underlying such securities and additional shares of Series J Convertible Preferred Stock that will be issued, if and when the Board declares such dividends, as paid in-kind dividends ("PIK dividends") at a rate of 20% per annum and the shares of Common Stock issuable upon conversion of the Series J Convertible Preferred Stock issued as PIK dividends. The registration statement was declared effective on September 13, 2023 and the offering closed on September 18, 2023. Each Warrant has an exercise price of $30.00 per share, is exercisable for one-half of one (0.5) share of Series J Convertible Preferred Stock, is immediately exercisable and will expire one (1) year from the date of issuance.

Each share of Series J Convertible Preferred Stock is convertible at the option of the holder at any time into the number of shares of BIOLASE common stock determined by dividing the $100.00 stated value per share by a conversion price of $3.26. Each outstanding share of Series J Convertible Preferred Stock is mandatorily redeemable by the Company in cash on September 13, 2024 (the "Series J Maturity Date").

Upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary, prior and in preference to the common stock, holders of the Series J Convertible Preferred Stock shall be entitled to receive out of the assets available for distribution to stockholders an amount equal in cash to 100% of the aggregate Stated Value of $100.00 per share of all shares of Series J Convertible Preferred Stock held by such holder, and if the assets of the Company shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the holders shall be ratably distributed among the holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full.

Gross proceeds from the offering were $4.5 million before broker fees and related expenses of approximately $1.0 million. In accordance with applicable accounting standards, the $4.5 million gross proceeds were allocated to the Series J Convertible Preferred Stock and the Series J Warrants in the amount of $3.5 million and $1.0 million, respectively. The allocation was based on the fair value of the Series J Warrants of $1.0 million as of the commitment date, with the residual proceeds of $3.5 million allocated to the Series J Convertible Preferred Stock. Net proceeds allocated to the Series J Convertible Preferred Stock and Series J warrants was $2.7 million and $0.8 million respectively.

The Series J Convertible Preferred stock was classified as mezzanine equity on the consolidated balance sheet as they are contingently redeemable prior to the Series J Maturity Date and the conversion from preferred shares to shares of BIOLASE common stock is at the option of the holder at any time before the Series J Maturity Date. The Series J warrants were classified as accrued liabilities on the consolidated balance sheet as the warrants are convertible into preferred shares, which are mandatorily redeemable in cash upon the Series J Maturity Date if they are not converted to shares of BIOLASE common stock before such date.

The Series J Convertible Preferred Stock was issued at a discount with the total redemption value of the Series J Convertible Preferred Shares and PIK Dividends of $10.3 million. The redemption value in excess of the net proceeds received allocated to the Series J Convertible Preferred Shares was $7.6 million and was recognized as a decrease in additional paid-in-capital at the commitment date. Upon conversion of Series J warrants to Series J Convertible Preferred shares, the value of the Series J Convertible Preferred shares issued is the stated value per share plus the PIK dividend. The redemption value in excess of the net proceeds received from the exercise of warrants and the fair value of such warrants is recognized as a decrease in additional paid-in-capital at the conversion date.

During the twelve months ended December 31, 2023, 5,960 of the Series J warrants were exercised to 2,980 Series J Convertible Preferred shares, 3,091 Series J Convertible Preferred shares were issued as part of a PIK dividend, and 66,465 Series J Convertible Preferred shares were converted to approximately 2.0 million shares of BIOLASE common stock.

The mezzanine classified Series J Convertible Preferred Stock are presented at their maximum redemption value that includes accretion related to the PIK dividends.

Series I Preferred Stock

On June 5, 2023, the Board declared a dividend of one one-thousandth of a share of Series I Preferred Stock, par value $0.001 per share ("Series I Preferred Stock"), for each share of BIOLASE common stock outstanding as of June 16, 2023 (as calculated on a pre 2023 Reverse Stock Split basis). The certificate of designation for the Series I Preferred Stock provided that all shares of Series I Preferred Stock not present in person or by proxy at any meeting of stockholders held to vote on the 2023 Reverse Stock Split immediately prior to the opening of the polls at such meeting would be automatically redeemed (the “Series I Initial Redemption”) and that any outstanding shares of Series I Preferred Stock that have not been redeemed pursuant to the Series I Initial Redemption would be redeemed in whole, but not in part, (i) if and when ordered by the Board or (ii) automatically upon the effectiveness of the amendment to the Certificate of Incorporation effecting the 2023 Reverse Stock Split that was subject to the vote (the "Series I Subsequent Redemption"). On July 20, 2023, the Series I Initial Redemption occurred, and on July 27, 2023, the Series I Subsequent Redemption occurred. As a result, no shares of Series I Preferred Stock remain outstanding as of July 27, 2023.

Series H Preferred Stock

On May 24, 2023, the Company consummated the sale of 175,000 Units (the "Units") with each Unit consisting of (A) one share of BIOLASE Series H Convertible Redeemable Preferred Stock, par value $0.001 per share and a stated value equal to $50.00 (the “Series H Convertible Preferred Stock”), and (B) one warrant (the “Series H Warrants”) to purchase one-half of one (0.50) share of Series H Convertible Preferred Stock, at a price to the public of $26.00 per Unit, less underwriting discounts and commissions. The public offering price of $26.00 per Unit reflects the issuance of the Series H Convertible Preferred Stock with an original issue discount of 48%. The Company filed a registration statement on Form S-1 in May 2023, which registered the Units, the Series H Convertible Preferred Stock, the Series H Warrants and the shares of Series H Convertible Preferred Stock and common stock underlying such securities and additional shares of Series H Convertible Preferred Stock that will be issued, if and when the Board declares such dividends, as paid in-kind dividends (“PIK dividends”) at a rate of 20% and the shares of Common Stock issuable upon conversion of the Series H Convertible Preferred Stock issued as PIK dividends. The registration statement was declared effective on May 24, 2023 and the offering closed on May 26, 2023. Each Warrant has an exercise price of $13.00 per share, is exercisable for one-half of one (0.5) share of Series H Convertible Preferred Stock, is immediately exercisable and will expire two (2) years from the date of issuance.

Each share of Series H Convertible Preferred Stock is convertible at the option of the holder at any time into the number of shares of BIOLASE common stock determined by dividing the $50.00 stated value per share by a conversion price of $13.98 (as adjusted for the 2023 Reverse Stock Split). Each outstanding share of Series H Convertible Preferred Stock is mandatorily redeemable by the Company in cash on May 24, 2025 (the "Series H Maturity Date").

Upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary, prior and in preference to the common stock, holders of the Series H Convertible Preferred Stock shall be entitled to receive out of the assets available for distribution to stockholders an amount equal in cash to 100% of the aggregate Stated Value of $50.00 per share of all shares of Series H Convertible Preferred Stock held by such holder, and if the assets of the Company shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the holders shall be ratably distributed among the holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full.

Gross proceeds from the offering were $4.6 million before broker fees and related expenses of approximately $0.9 million. In accordance with applicable accounting standards, the $4.6 million gross proceeds were allocated to the Series H Convertible Preferred Stock and the Series H Warrants in the amount of $3.4 million and $1.2 million, respectively. The allocation was based on the fair value of the Series H Warrants of $1.2 million as of the commitment date, with the residual proceeds of $3.4 million allocated to the Series H Convertible Preferred Stock. Net proceeds allocated to the Series H Convertible Preferred Stock and Series H warrants was $2.7 million and $1.0 million respectively.

The Series H Convertible Preferred stock was classified as mezzanine equity on the consolidated balance sheet as they are contingently redeemable prior to the Series H Maturity Date and the conversion from preferred shares to shares of BIOLASE common stock is at the option of the holder at any time before the Series H Maturity Date. The Series H warrants were classified as accrued

liabilities on the consolidated balance sheet as the warrants are convertible into preferred shares, which are mandatorily redeemable in cash upon the Series H Maturity Date if they are not converted to shares of BIOLASE common stock before such date.

The Series H Convertible Preferred Stock was issued at a discount with the total redemption value of the Series H Convertible Preferred Shares and PIK Dividends of $10.5 million. The redemption value in excess of the net proceeds received allocated to the Series H Convertible Preferred Shares was $7.8 million and was recognized as a decrease in additional paid-in-capital at the commitment date. Upon conversion of Series H warrants to Series H Convertible Preferred shares, the value of the Series H Convertible Preferred shares issued is the stated value per share plus the PIK dividend. The redemption value in excess of the net proceeds received from the exercise of warrants and the fair value of such warrants is recognized as a decrease in additional paid-in-capital at the conversion date.

During the twelve months ended December 31, 2023, 40,000 of the Series H warrants were exercised to 20,000 Series H Convertible Preferred shares and 190,000 Series H Convertible Preferred shares were converted to approximately 0.7 million shares of BIOLASE common stock.

The mezzanine classified Series H Convertible Preferred Stock are presented at their maximum redemption value that includes accretion related to the PIK dividends.

Series G Preferred Stock

On March 1, 2022, the Board declared a dividend of one one-thousandth of a share of Series G Preferred Stock, par value $0.001 per share ("Series G Preferred Stock"), of BIOLASE common stock outstanding as of March 25, 2022 (as calculated on a pre-Reverse Stock Split basis). The certificate of designation for the Series G Preferred Stock provided that all shares of Series G Preferred Stock not present in person or by proxy at the 2022 Annual Meeting immediately prior to the opening of the polls at the 2022 Annual Meeting would be automatically redeemed (the “Initial Redemption”) and that any outstanding shares of Series G Preferred Stock that have not been redeemed pursuant to the Initial Redemption would be redeemed in whole, but not in part, (i) if and when ordered by the Board or (ii) automatically upon the effectiveness of the amendment to the Certificate of Incorporation effecting the Reverse Stock Split that was subject to the vote at the 2022 Annual Meeting (the “Subsequent Redemption”). On April 28, 2022, both the Initial Redemption and the Subsequent Redemption occurred. As a result, no shares of Series G Preferred Stock remain outstanding. On June 6, 2022, the Series G Preferred Stock was eliminated.

Series F Convertible Preferred Stock

On July 23, 2020, the Company consummated the sale of an aggregate of 18,000 shares of Series F Preferred Stock, par value $0.001 per share ("Series F Preferred Stock"), and 45,000,000 warrants (the “July 2020 Warrants”), exercisable to 18,000 shares of BIOLASE common stock, through a registered rights offering the Company completed on July 22, 2020 (the “Rights Offering”). Each share of Series F Preferred Stock was convertible at the Company’s option at any time on or after July 22, 2021 or at the option of the holder at any time, into the number of shares of BIOLASE common stock determined by dividing the $1,000 stated value per share of the Series F Preferred Stock by a conversion price of $1,000 per share. Each share of Series F Preferred Stock was convertible into one share of common stock, and each 2,500 of these July 2020 Warrant entitles the holder thereof to purchase one share of BIOLASE common stock at a conversion price of $1,000 per share.

The gross proceeds from the sale of Series F Preferred Stock and July 2020 Warrants were $18.0 million, before broker fees and related expenses of approximately $1.9 million.

In accordance with applicable accounting standards, the $18.0 million gross proceeds from the Rights Offering were allocated to the Series F Preferred Stock and the July 2020 Warrants in the amount of $2.7 million and $15.3 million, respectively. The allocation was based on the fair value of the July 2020 Warrants of $15.3 million as of the commitment date, with the residual proceeds of $2.7 million allocated to the Series F Preferred Stock.

The Series F Preferred Stock contained a beneficial conversion feature which resulted in a deemed dividend to preferred stockholders of approximately $2.7 million, upon immediate accretion. Additionally, the July 2020 Warrants were recognized as a discount to the Series F Preferred Stock, and upon conversion of approximately 1,000 Series F Preferred Stock to common stock for the year ended December 31, 2021. Upon conversion, this discount was accreted and also recognized as a deemed dividend to preferred stockholders in the amount of $0.2 million, and $0.5 million for the years ended December 31, 2022 and 2021, respectively.

The remaining shares of Series F Preferred Stock were converted into shares of BIOLASE common stock during 2022. Approximately 251 Series F Preferred Stock remained outstanding as of December 31, 2021. On March 3, 2022, the Series F Preferred Stock was eliminated.

Common Stock

At the Company's 2020 annual meeting of stockholders, the Company's stockholders approved a proposal to amend the Company's Restated Certificate of Incorporation to increase the number of authorized shares of BIOLASE common stock from 40,000,000 shares to 180,000,000 shares. On May 28, 2020, the Company filed the amendment with the Secretary of State of the State of Delaware to effect such increase.

As of December 31, 2023, 3,415,948 shares of BIOLASE common stock were issued and 3,415,930 were outstanding.

2022 Direct Offering and Private Placement

On June 27, 2022, BIOLASE entered into a Securities Purchase Agreement with certain accredited institutional investors, pursuant to which BIOLASE agreed to issue, (i) in a registered direct offering, 6,787 shares of BIOLASE common stock, par value $0.001 per share, and pre-funded warrants to purchase 7,266 shares of BIOLASE common stock with an exercise price of $0.1 per share, and (ii) in a concurrent private placement, warrants to purchase 14,054 shares of BIOLASE common stock. The combined purchase price for one share of common stock and one Common Warrant was determined to be $462.5, and the combined purchase price for one Pre-Funded Warrant and one Common Warrant was determined to be $462.4. BIOLASE received aggregate gross proceeds from the transactions of approximately $6.5 million, before deducting fees to the placement agent and other transaction expenses payable by BIOLASE. The shares of BIOLASE's common stock, the Pre-Funded Warrants and the shares of BIOLASE common stock issuable upon exercise of the Pre-Funded Warrants were offered by BIOLASE pursuant to a shelf registration statement on Form S-3, which was declared effective on August 23, 2019.

2021 Equity Offering

On February 10, 2021, BIOLASE issued and sold in an underwritten offering an aggregate of 5,600 shares of common stock at a price of $2,575 per share less underwriting discounts and commissions. The Company received gross proceeds of approximately $14.4 million before deducting underwriting discounts and commissions and estimated offering expenses of $1.1 million.

Dividends

There were no cash dividends paid or declared in 2023, 2022 or 2021.

Warrants

The Company issues warrants for the sale of its common stock as approved by the Board.

January 2023 Offering

On January 9, 2023, the Company completed a public offering and issued an aggregate of 171,678 shares of BIOLASE common stock at a price of $35.00 per share and pre-funded warrants to purchase 114,035 shares of BIOLASE common stock with an exercise price of $1.00 per share at a price of $34.00 per share. The Company received gross proceeds of approximately $9.9 million, before deducting underwriting discounts and commissions and estimated offering expenses.

May 2023 Offering

On May 26, 2023, the Company completed a public offering and issued, 175,000 units, with each Unit consisting of (A) one share of the Company's Series H Convertible Redeemable Preferred Stock, par value $0.001 per share, and (B) one warrant to purchase one-half of one (0.50) share of Series H Convertible Preferred Stock, at a price to the public of $26.00 per Unit, less underwriting discounts and commissions. Each Warrant has an exercise price of $13.00 per share, is exercisable for one-half of one (0.5) share of Series H Convertible Preferred Stock, is immediately exercisable and will expire two (2) years from the date of issuance. The Company received gross proceeds of approximately $4.6 million, before deducting underwriting discounts and commissions, estimated offering expenses, and before the exercise of warrants.

September 2023 Offering

On September 18, 2023, the Company completed a public offering and issued, 75,000 units, with each Unit consisting of (A) one share of the Company's Series J Convertible Redeemable Preferred Stock, par value $0.001 per share, and (B) one warrant to purchase one-half of one (0.50) share of Series J Convertible Preferred Stock, at a price to the public of $60.00 per Unit, less underwriting discounts and commissions. Each Warrant has an exercise price of $30.00 per share, is exercisable for one-half of one (0.5) share of Series J Convertible Preferred Stock, is immediately exercisable and will expire one (1) year from the date of issuance. The Company received gross proceeds of approximately $4.5 million, before deducting underwriting discounts and commissions, estimated offering expenses, and before the exercise of warrants.

December 2023 Registered Direct Offering

On December 6, 2023, the Company entered into a Securities Purchase Agreement Purchase Agreement with a single institutional investor Purchaser, pursuant to which the Company issued in a registered direct offering, 331,000 shares of the Company's common stock Shares), par value $0.001 per share Common Stock, and pre-funded warrants to purchase 779,940 shares of Common Stock with an exercise price of $0.001 per share, and in a concurrent private placement, warrants to purchase an aggregate of 2,221,880 shares of Common Stock Common Warrants with an exercise price of $1.23. The combined purchase price for one Share and two Common Warrants was $1.23, and the combined purchase price for one Pre-Funded Warrant and two Common Warrants was $1.229.The Company received gross proceeds of approximately $1.2 million, before deducting underwriting discounts and commissions, estimated offering expenses, and before the exercise of warrants.

June 2022 Direct Offering and Private Placement

On June 27, 2022, the Company entered into a Securities Purchase Agreement with certain accredited institutional investors, pursuant to which the Company agreed to issue to the Purchasers (as defined therein), (i) in a registered direct offering, 6,787 shares of BIOLASE common stock, and pre-funded warrants to purchase 7,266 shares of BIOLASE common stock (the "June 2022 Pre-Funded Warrants") with an exercise price of $0.1 per share, and (ii) in a concurrent private placement, warrants to purchase 14,054 shares of BIOLASE common stock (each a "Common Warrant" and together with the June 2022 Pre-Funded Warrants, the "June 2022 Warrants"). The combined purchase price for one share of BIOLASE common stock and one Common Warrant was $462.5, and the combined purchase price for one June 2022 Pre-Funded Warrant and one Common Warrant was $462.4. In the offering and concurrent private placement, the Company received aggregate gross proceeds of approximately $6.5 million before deducting fees to the placement agent and other transaction expenses.

Based on the terms and conditions of the June 2022 Warrants, the Company determined that equity classification was appropriate and recognized the net proceeds in excess of par of $5.6 million in Additional Paid-In Capital.

July 2020 Rights Offering

On July 23, 2020, the Company consummated the Rights Offering issuing (i) 18,000 shares of Series F Preferred Stock and (ii) 45,000,000 July 2020 Warrants, exercisable to 18,000 shares of BIOLASE Common Stock, with an exercise price of $1,000 per share of BIOLASE common stock. The initial fair value of the July 2020 Warrants was estimated to be at $850 per share of BIOLASE common stock using the Black-Scholes pricing model with an expected term of 5 years, market price of $1,100 per share, which was the last closing price of BIOLASE common stock prior to the transaction date, volatility of 109.8%, a risk free rate of 0.27% and an expected dividend yield of 0. Based on the terms and conditions of the July 2020 Warrants, the Company initially determined that liability classification was appropriate and recognized the fair value of the July 2020 Warrants as a liability. Based on the fair value of the July 2020 Warrants, the Company allocated approximately $2.7 million to the Series F Preferred Stock and $15.3 million to the July 2020 Warrants before issuance costs. Issuance costs of $1.6 million relating to the July 2020 Warrants were recognized as an expense and were recorded in Other income, net in the consolidated statement of operations for the year ended December 31, 2020.

On September 28, 2020, the warrant agreement with respect to the July 2020 Warrants was amended. The amended terms of the July 2020 Warrants meet the requirements for the July 2020 Warrants' classification as equity. The fair value upon the amendment was estimated to be $525 per share of BIOLASE common stock using the Black-Scholes pricing model with an expected term of 5 years, a market price of $700 per share of BIOLASE common stock, which was the last closing price of BIOLASE common stock prior to the amendment date, volatility of 109.5%, a risk free rate of 0.26% and an expected dividend yield of 0. On the effective date of the amendment to the warrant agreement, the Company remeasured the fair value of the July 2020 Warrants as described above, reclassified the value of $9.5 million to equity, and recognized the change in fair value as a gain of approximately $5.8 million in the consolidated statement of operations in Other income, net for the year ended December 31, 2020.

None of the July 2020 warrants were exercised during the years ended December 31, 2023 and December 31, 2022. During the year ended December 31, 2021, 28.1 million of the July 2020 warrants were exercised, which converted to approximately 11,225 shares of BIOLASE Common Stock. 2,500 of these warrants are exercisable for one share of BIOLASE common stock

2020 Registered Direct Offering and Concurrent Private Placement

On June 8, 2020, the Company entered into a Securities Purchase Agreement with certain accredited institutional investors, pursuant to which the Company agreed to issue to the Purchasers in a registered direct offering and concurrent private placement, 4,320 shares of BIOLASE common stock, and 10,800,000 Warrants (the "June 2020 Warrants"), exercisable to 4,320 shares of BIOLASE common stock, with an exercise price of $1,288 per share. The June 2020 Warrants are exercisable commencing on the date of their issuance and will expire on June 10, 2025. The combined purchase price for one share of common stock and one June 2020 Warrant in the offering was $1,600 per share. The Company received aggregate gross proceeds of approximately $6.9 million in the concurrent offerings, before deducting fees to the placement agents and other offering expenses of approximately $0.7 million.

Based on the terms and conditions of the June 2020 Warrants, the Company determined that equity classification was appropriate and recognized the values of the common stock and June 2020 Warrants in excess of par in Additional Paid-In Capital. The Company allocated the net proceeds of $6.2 million to the common stock and June 2020 Warrants based on their relative fair values. The fair value of the June 2020 Warrants was estimated to be at $1,050 per share using the Black-Scholes pricing model with an expected term of 5 years, market price of $1,350 which is the last closing price of our common stock prior to the transaction date, volatility of 109.8% and a risk free rate of 0.45% and an expected dividend yield of 0. Based on the relative fair value of the common stock and the June 2020 Warrants, the Company allocated approximately $3.9 million to the common stock and $3.0 million to the June 2020 Warrants before issuance costs.

During the year ended December 31, 2021, 7.5 million of the June 2020 warrants were exercised, which converted to approximately 2,980 shares to BIOLASE common stock. No warrants were exercised in 2023 and 2022. 2,500 of these warrants are exercisable for one share of BIOLASE common stock.

Western Alliance Warrants

On March 6, 2018, in connection with the execution of a business financing agreement with Western Alliance Bank ("Western Alliance"), the Company issued to Western Alliance warrants (the "Original Western Alliance Warrants") to purchase up to the number of shares of BIOLASE common stock equal to $120,000 divided by the applicable exercise price at the time such warrants are exercised. The Original Western Alliance Warrants are fully vested and exercisable. The Original Western Alliance Warrants may be exercised with a cash payment from Western Alliance, or, in lieu of a cash payment, Western Alliance may convert the warrants into a number of shares, in whole or in part. The initial exercise price of the warrants was $5,875 per share. On September 27, 2018, the Company entered into the Second Modification Agreement to amend the Original Business Financing Agreement. In connection with the Second Modification Agreement, the Original Western Alliance Warrants were terminated, and the Company issued new warrants (the "Western Alliance Warrants") to purchase up to the number of shares of BIOLASE common stock equal to $120,000 divided by the exercise price of $5,325, which was the closing price of BIOLASE common stock on September 27, 2018 (as adjusted for the Reverse Stock Split). The Western Alliance Warrants were immediately exercisable and expire on September 27, 2028. These warrants contain down-round features that require the Company to adjust the exercise price proportionately should the Company issue shares at a price per share less than the exercise price. The sale of common stock in the second quarter of 2020 triggered an adjustment to the exercise price to approximately $1,500.00 per share. The impact of the adjustment to the exercise price was not material. These warrants are recognized in equity in the consolidated balance sheets as of December 31, 2023 and 2022. 2,500 of these warrants are exercisable for one share of BIOLASE common stock

SWK Warrants

On November 9, 2018, in connection with the Credit Agreement, BIOLASE issued to SWK, LLC or its assignees (collectively with SWK, the "Holder") 372,023 warrants to purchase shares of common stock (the "SWK Warrants"), exercisable to approximately 148 shares of BIOLASE common stock. The initial exercise price of the SWK Warrants was $3,350 per share, which was the average closing price of common stock for the ten trading days immediately preceding November 9, 2018. The SWK Warrants were immediately exercisable, expire on November 9, 2026 and contain a "cashless exercise feature." Subject to certain limitations, the Holder has certain piggyback registration rights with respect to the shares that are issued upon exercise of the SWK Warrants. These warrants contain down-round features that require the Company to adjust the exercise price proportionately should the Company issue shares at a price per share less than the exercise price. The fair value of the SWK Warrants was estimated using the Black-Scholes option-pricing model with the following assumptions: expected term of 8 years; volatility of 81.79%; annual dividend per share of $0.00; and risk-free interest rate of 3.13%; and resulted in an estimated fair value of $0.4 million. These warrants are recognized in equity in the consolidated balance sheets as of December 31, 2023 and 2022.

In November 2019, the SWK Warrants were consolidated, and the exercise price was adjusted to $2,500 as part of the Fourth Amendment to the Credit Agreement; and in March 2020, the exercise price was adjusted a second time to $1,225. The impact of both reprice events was de minimis to the consolidated financial statements. In connection with the Fifth Amendment, the Company entered into a Third Amendment to the SWK Warrant Agreement. Under this amendment, the Company granted to SWK 63,779 additional common stock warrants, exercisable to 25 shares of BIOLASE common stock, at an exercise price of approximately $975. All other terms and conditions to the additional warrants were the same as those previously granted. The Company also revised the exercise price of the 487,198 common stock warrants held by SWK, which are exercisable to approximately 194 shares of BIOLASE common stock, to $975. The Company measured the fair value of the 63,779 warrants granted using the Black-Scholes option-pricing model. The fair value of the additional warrants and the aggregate impact of the exercise price adjustments in previous amendments to the Warrant Agreement were less than $0.1 million and not material to the consolidated financial statements. Due to the repricing that occurred in the second quarter of 2020, the down round features of these warrants was not triggered by the Company's June 2020 sale of common stock. 2,500 of these warrants are exercisable for one share of BIOLASE common stock

DPG Warrants

On November 14, 2018, in connection with the SWK Loan, the Company paid a finder's fee to DPG of $0.4 million cash and issued DPG 279,851 warrants, exercisable to approximately 111 shares of BIOLASE common stock. The DPG Warrants were exercisable immediately and expire on November 9, 2026. The initial exercise price of the DPG Warrants was $3,350 per share, which was the average closing price of common stock for the ten trading days immediately preceding November 9, 2018. The DPG Warrants were immediately exercisable, expire on November 9, 2026 and contain a "cashless exercise feature." Subject to certain limitations, the Holder has certain piggyback registration rights with respect to the shares that are issued upon exercise of the DPG Warrants. These warrants contain down-round features that require the Company to adjust the exercise price proportionately should the Company issue shares at a price per share less than the exercise price. The fair value of the DPG Warrants of $0.3 million was estimated using the Black-Scholes option pricing model with the following assumptions: expected term of 8 years; volatility of 81.79%; annual dividend per share of $0.00; and risk-free interest rate of 3.13%. In 2019 the Company issued 149,727 warrants to purchase common, exercisable to 59 shares of BIOLASE common stock at a weighted average exercise price of $5,425 to SWK and DPG. These warrants are recognized in equity in the consolidated balance sheet as of December 31, 2023 and 2022.

In November 2019, the exercise price of the DPG Warrants issued on November 14, 2018 was adjusted from $3,350 per share to $2,200 per share and the exercise price of the DPG Warrants issued on May 7, 2019 was adjusted from $5,425 per share to $3,550 per share. The June 2020 sale of common stock triggered the down round features of these warrants, and in August 2020, the Company adjusted the exercise price of these warrants to $1,550 and $950 per share respectively.2,500 of these warrants are exercisable for one share of BIOLASE common stock

The repricing did not have a material impact on the Company's consolidated financial statements for the years ended December 31, 2023, 2022 and 2021.

The following table summarizes the activity in shares of BIOLASE common stock that warrants are exercisable to (in thousands, except per share data):

	Shares		Weighted-Average Exercise Price Per Share
Warrants outstanding at January 1, 2021	21	$	1,550.00
Granted or Issued	—	$	—
Exercised	(14)	$	1,075.00
Forfeited, cancelled, or expired	—	$	25,000.00
Warrants outstanding at December 31, 2021	7	$	1,998.00
Granted or Issued	21	$	305.00
Exercised	(7)	$	—
Forfeited, cancelled, or expired	—	$	22,500.00
Warrants outstanding at December 31, 2022	21	$	656.23
Granted or Issued	4,579	$	9.05
Exercised	(277)	$	13.67
Forfeited, cancelled, or expired	—	$	—
Warrants outstanding at December 31, 2023	4,323	$	11.88
Warrants exercisable at December 31, 2023	4,323	$	11.88
Vested warrants expired during the 12 months ended December 31, 2023	—	$	—

Stock-Based Compensation

Stock Options

2002 Stock Incentive Plan

The 2002 Stock Incentive Plan (as amended effective as of May 26, 2004, November 15, 2005, May 16, 2007, May 5, 2011, June 6, 2013, October 30, 2014, April 27, 2015, and May 6, 2017, the “2002 Plan”) was replaced by the 2018 Plan (as defined below) with respect to future equity awards. Persons eligible to receive awards under the 2002 Plan included officers, employees, and directors of the Company, as well as consultants. As of December 31, 2023, a total of 1,244 shares have been authorized for issuance under the 2002 Plan, of which approximately 908 shares of common stock have been issued pursuant to options that were exercised and restricted stock units ("RSUs") that were vested, approximately 140 shares of common stock have been reserved for options that are outstanding, and no shares of common stock remain available for future grants.

2018 Stock Incentive Plan

At the 2018 annual meeting of stockholders, the Company’s stockholders approved the 2018 Long-Term Incentive Plan (as amended effective as of September 21, 2018, May 15, 2019, May 13, 2020, June 11, 2021, and April 27, 2023, the “2018 Plan”). The purposes of the 2018 Plan are (i) to align the interests of the Company’s stockholders and recipients of awards under the 2018 Plan by increasing the proprietary interest of such recipients in the Company’s growth and success; (ii) to advance the interests of the Company by attracting and retaining non-employee directors, officers, other employees, consultants, independent contractors and agents; and (iii) to motivate such persons to act in the long-term best interests of the Company and its stockholders.

Under the terms of the 2018 Plan, 49,372 shares of BIOLASE common stock are available for issuance as of December 31, 2023. As of December 31, 2023, a total of 112,268 shares of common stock have been authorized for issuance under the 2018 Plan, of which approximately 55,081 shares of the Company’s common stock have been reserved for issuance upon the exercise of outstanding options or stock appreciation rights ("SARs"), and/or settlement of unvested RSUs or phantom awards under the 2018 Plan.

Stock options may be granted as incentive or non-qualified options; however, no incentive stock options have been granted to date. The exercise price of options is at least equal to the market price of the stock as of the date of grant. Options may vest over various periods but typically vest on a quarterly basis over four years. Options expire after five years, ten years, or within a specified time from termination of employment, if earlier. The Company issues new shares of common stock upon the exercise of stock options. The following table summarizes option activity under the 2002 Plan and the 2018 Plan (in thousands, except per share data):

	Shares	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value(1)
Options outstanding at January 1, 2021	1	$ 7,400.00		
Granted at fair market value (1)	—	$ 2,000.00		
Exercised (1)	—	$ 950.00		
Forfeited, cancelled, or expired (1)	—	$ 17,925.00		
Options outstanding at December 31, 2021	1	$ 6,201.00	7.1	$ 15
Granted at fair market value	—	$ —		
Exercised	—	$ —		
Forfeited, cancelled, or expired (1)	—	$ 2,282.00		
Options outstanding at December 31, 2022	1	$ 7,254.45	5.8	$ —
Granted at fair market value	—	$ —		
Exercised	—	$ —		
Forfeited, cancelled, or expired	(1)	$ 11,718.01		
Options outstanding at December 31, 2023	—	$ 6,293.55	5.1	$ —
Options exercisable at December 31, 2023	—	$ 6,293.55	5.1	$ —
Vested options expired during the twelve months ended December 31, 2023	—	$ —		

(1)The intrinsic value calculation does not include negative values. This can occur when the fair market value on the reporting date is less than the exercise price of a grant.
(2)Shares rounded to less than 1,000 as adjusted for the 2023 reverse stock split.

The following table summarizes additional information for those options that are outstanding and exercisable as of December 31, 2023 (in thousands, except per share data):

	Options Outstanding			Exercisable	
Range of Exercise Prices	Number of Shares (1)	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Life (Years)	Number of Shares (1)	Weighted-Average Exercise Price Per Share
$725.00 - $831.25	—	$ 725.00	7.0	—	$ 725.00
$831.26 - $1,193.75	—	$ 937.50	6.4	—	$ 937.50
$1,193.76 - $5,200.00	—	$ 2,772.31	5.7	—	$ 2,772.31
$5,200.01 - $12,937.50	—	$ 6,069.33	4.0	—	$ 6,069.33
$12,937.51 - $33,000.00	—	$ 25,625.00	1.7	—	$ 25,625.00
Total	—	$ 6,293.55	5.1	—	$ 6,293.55

(1)Shares rounded to less than 1,000 as adjusted for the 2023 reverse stock split.

Cash proceeds, along with fair value disclosures related to grants, exercises, and vesting options, are as follows for the years ended December 31 (in thousands, except per share amounts):

	Years Ended December 31,		
	2023	2022	2021
Proceeds from stock options exercised	N/A	N/A	$ 132
Tax benefit related to stock options exercised	N/A	N/A	N/A
Intrinsic value of stock options exercised (1)	N/A	N/A	$ 82
Weighted-average fair value of options granted per share	N/A	N/A	$ 0.66
Total fair value of shares vested during the year	$ 1	$ 42	$ 404

(1)The intrinsic value of stock options exercised is the amount by which the market price of the stock on the date of exercise exceeded the exercise price of the stock on the date of grant.

Stock Option Activity

There were no option grants in 2023 and 2022, and approximately 30 option grants in 2021.

Restricted Stock Units

2023 Restricted Stock Units Activity

•Under the 2018 Plan, the Company granted approximately 21,700 RSUs to certain employees of the Company as part of the Company's bonus programs. Substantially all of these RSUs are subject to time-based vesting and were valued at the closing share price on the date of grant. The remaining awards vest based on certain Company performance criteria.

•In 2023, the Compensation Committee of the Board granted approximately 32,500 RSUs to Board members.

•Additional RSUs were granted for new hires and promotions during 2023, none of which were material individually.

2022 Restricted Stock Units Activity

•Under the 2018 Plan, the Company granted approximately 2,170 RSUs to certain employees of the Company as part of the Company's bonus programs. Substantially all of these RSUs are subject to time-based vesting and were valued at the closing share price on the date of grant. The remaining awards vest based on certain Company performance criteria.

•In 2022, the Compensation Committee of the Board granted approximately 2,650 RSUs to Board members.

•Additional RSUs were granted for promotions during 2022, none of which were material individually.

2021 Restricted Stock Units Activity

•Under the 2018 Plan, the Company granted approximately 1,210 RSUs to certain employees of the Company as part of the Company's bonus programs. Substantially all of these RSUs are subject to time-based vesting and were valued at the closing share price on the date of grant. The remaining awards vest based on certain Company performance criteria.

•Additional RSUs were granted to certain new hires during 2021, none of which was individually material.

The following table summarize RSU activity under the 2018 Plan (in thousands):

	Shares
Unvested RSUs at January 1, 2021	2
Granted	1
Vested	(2)
Forfeited or cancelled	—
Unvested RSUs at December 31, 2021	1
Granted	5
Vested	(2)
Forfeited or cancelled	—
Unvested RSUs at December 31, 2022	4
Granted	57
Vested	(10)
Forfeited or cancelled	(7)
Unvested RSUs at December 31, 2023	44

Phantom Awards and Stock Appreciation Rights

As of December 31, 2023, there are approximately 1,119 outstanding phantom RSUs granted in lieu of stock-settled RSUs historically granted for leadership bonuses and non-employee director service. The phantom RSUs have either time-based or performance-based vesting conditions and will be settled in cash in 2024 with the Company's option to settle the award in BIOLASE common stock at the sole discretion of the Board. At inception, these phantom RSUs were included as a component of long-term liability on the consolidated balance sheet and were not considered stock-based compensation due to the cash-settlement feature of the award and the then current limitation on the number of remaining shares authorized for issuance. In 2022, as a result of the Reverse Stock Split, the phantom awards were reclassed to equity and included as a component of additional paid-in-capital in the amount of $0.1 million, with a portion remaining as a component of long-term liability on the consolidated balance sheet due to certain guaranteed minimums, and the expense subsequent to the remeasurement date considered stock-based compensation. The expense recognized during the years ended December 31, 2023 and December 31, 2022 was $0.3 million and $0.2 million respectively. As of December 31, 2023 $0.5 million was included in accrued liabilities and $0.2 million was included in additional paid-in-capital on the consolidated balance sheet. The balance included in long-term liabilities and additional paid-in-capital as of December 31, 2022, was $0.3 million, and $0.1 million, respectively.

As of December 31, 2023, there are approximately 236 outstanding SARs granted in 2021 in lieu of stock-settled RSUs historically granted for non-employee director service. Upon exercise, the SARs could be settled in cash with the Company's option to settle in BIOLASE common stock at the sole discretion of the Board. In 2021, these SARS were included in accrued liabilities on the consolidated balance sheet and not considered stock-based compensation due to the cash-settlement feature of the award and limitation on the number of remaining shares authorized for issuance. In 2022, as a result of the Reverse Stock Split, the SARs were reclassed to equity and included as a component of additional paid-in-capital on the consolidated balance sheet in the amount of $0.5 million. These SARs were fully vested in 2022. No expense was recognized during the year ended December 31, 2023 and the expense recognized during the year ended December 31, 2022 was $0.3 million and was included in additional paid-in-capital on the consolidated balance sheet as of December 31, 2022.

Deferred Compensation Plan

In July 2019, the Company introduced a Deferred Compensation Plan pursuant to the IRC Section 409A. The purpose of the plan is to provide income deferral opportunities to certain eligible employees. As of December 31, 2023, the Company had seven individuals enrolled. For individuals enrolled for the year ended December 31, 2023, all of the RSUs that granted in 2023 were eligible for this program. As of December 31, 2023, there were approximately 7,000 vested and releasable RSUs and approximately 18,000 unvested and outstanding RSUs.

NOTE 9 — SEGMENT INFORMATION

The Company currently operates in a single business segment. Management uses one measurement of profitability and does not segregate its business for internal reporting. Sales to customers located in the United States accounted for approximately 69%, 70%, and 65% of net revenue and international sales accounted for approximately 31%, 30%, and 35% of net revenue for the years ended December 31, 2023, 2022, and 2021, respectively. The Company’s basis for attributing revenues to external customers is based on the customer’s location. No individual international country outside the United States represented more than 10% of net revenue during the years ended December 31, 2023, 2022, and 2021.

Long-lived assets by geographic location were as follows (in thousands):

	Years Ended December 31,		
	2023	2022	2021
United States	$ 5,283	$ 4,032	$ 797
International	242	246	270
	$ 5,525	$ 4,278	$ 1,067

NOTE 10 — CONCENTRATIONS

Revenue from the Company's products are as follows ($ in thousands):

	Years Ended December 31,					
	2023		2022		2021	
Laser systems	$ 30,043	61.1 %	$ 31,443	64.8 %	$ 25,023	63.9 %
Consumables and other	13,596	27.7 %	11,322	23.4 %	9,456	24.1 %
Services	5,525	11.2 %	5,697	11.8 %	4,709	12.0 %
Total revenue	$ 49,164	100.0 %	$ 48,462	100.0 %	$ 39,188	100.0 %

The Company maintains its cash and cash equivalent accounts with established commercial banks. Such cash deposits periodically exceed the Federal Deposit Insurance Corporation insured limit.

For the years ended December 31, 2023, 2022, and 2021, sales to our largest distributor worldwide accounted for approximately 5%, 4%, and 5%, respectively, of our net revenue. As of December 31, 2023 accounts receivable from one customer totaled approximately 11% of total gross accounts receivable. The entire balance is either current or outstanding for less than 180 days. As of December 31, 2022 accounts receivable from one customer totaled approximately 12% of total gross accounts receivable. The entire balance was received in 2023.

The Company currently purchases certain key components of its products from single suppliers. Although there are a limited number of manufacturers of these key components, management believes that other suppliers could provide similar key components on comparable terms. A change in suppliers, however, could cause delays in manufacturing and a possible loss of sales, which could adversely affect the Company's business, results of operations and financial condition.

NOTE 11 — REVISION OF PREVIOUSLY ISSUED FINANCIAL STATEMENTS (UNAUDITED)

In connection with the preparation of the Company's financial statements as of December 31, 2023, management identified an error related to the calculation of net loss per share attributable to common stockholders. As discussed in Note 8, the Company presents Series H Convertible Preferred Stock and Series J convertible Preferred Stock as mezzanine equity on balance sheet as these are contingently redeemable stock. Further, as discussed in Note 8, Series H and Series J Convertible Preferred Stock have been accreted to their redemption value in the period of their issuance following the SEC staff guidance on redeemable preferred stock.

Per accounting guidance, the increases or decreases in the carrying amount of a redeemable preferred stock instrument should be treated in the same manner as dividends on nonredeemable stock. Therefore, increases or decreases in the carrying amount of preferred instruments subject to the SEC staff guidance above reduce or increase the EPS numerator. This adjustment to net loss attributable to common stockholders was not presented in previously furnished interim financial statements for periods ended June 30, 2023, and September 30, 2023. Management determined the impact of this error to be immaterial to the previously issued June 30, 2023, and September 30, 2023 interim financial statements.

The impact of this revision to the Company's previously furnished unaudited interim financial statements for the three and six months ended June 30, 2023 and for the three and nine months ended September 30, 2023 is reflected in the following tables:

BIOLASE, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(*In thousands, except per share data*)

	Three Months Ended June 30, 2023		
	As Previously Reported	Adjustment	As adjusted
		(Unaudited)	
Net loss	$ (4,868)	$ —	$ (4,868)
Deemed dividend on convertible preferred stock	—	(9,377)	(9,377)
Net loss attributable to common stockholders	$ (4,868)	$ (9,377)	$ (14,245)
Net loss per share attributable to common stockholders:			
Basic and Diluted	$ (8.93)	$ —	$ (26.14)
Shares used in the calculation of net loss per share:			
Basic and Diluted	545	—	545

	Six Months Ended June 30, 2023		
	As Previously Reported	Adjustment	As adjusted
		(Unaudited)	
Net loss	$ (10,717)	$ —	$ (10,717)
Deemed dividend on convertible preferred stock	—	(9,377)	(9,377)
Net loss attributable to common stockholders	$ (10,717)	$ (9,377)	$ (20,094)
Net loss per share attributable to common stockholders:			
Basic and Diluted	$ (24.52)	$ —	$ (45.98)
Shares used in the calculation of net loss per share:			
Basic and Diluted	437	—	437

	Three Months Ended September 30, 2023		
	As Previously Reported	Adjustment	As adjusted
		(Unaudited)	
Net loss	$ (4,589)	$ —	$ (4,589)
Deemed dividend on convertible preferred stock	—	(7,610)	(7,610)
Net loss attributable to common stockholders	$ (4,589)	$ (7,610)	$ (12,199)
Net loss per share attributable to common stockholders:			
Basic and Diluted	$ (3.89)	$ —	$ (10.35)
Shares used in the calculation of net loss per share:			
Basic and Diluted	1,179	—	1,179

	Nine Months Ended September 30, 2023		
	As Previously Reported	Adjustment	As adjusted
		(Unaudited)	
Net loss	$ (15,306)	$ —	$ (15,306)
Deemed dividend on convertible preferred stock	—	(16,987)	(16,987)
Net loss attributable to common stockholders	$ (15,306)	$ (16,987)	$ (32,293)
Net loss per share attributable to common stockholders:			
Basic and Diluted	$ (22.28)	$ —	$ (47.01)
Shares used in the calculation of net loss per share:			
Basic and Diluted	687	—	687

NOTE 12 — SUBSEQUENT EVENTS

Equity Raise

On February 15, 2024, the Company completed a public offering consisting of an aggregate of 7,795,000 units, with each Unit consisting of (A) one share of the Company's common stock, par value $0.001 per share, (B) one Class A warrant to purchase one share of common stock , each exercisable from time to time for one share of Common Stock at an exercise price of $0.66 per share, and (C) one Class B warrant to purchase one share of common stock, each exercisable from time to time for one share of Common Stock at an exercise price of $0.748 per share; and (ii) 8,205,000 pre-funded units, with each Pre-Funded Unit consisting of (A) one pre-funded warrant, each such Pre-Funded Warrant being exercisable from time to time for one share of Common Stock at an exercise price of $0.001 per share , (B) one Class A Common Warrant, and (C) one Class B Common Warrant. The Units were sold at the public offering price of $0.44 per Unit and the Pre-Funded Units were sold at the public offering price of $0.439 per Pre-Funded Unit. Gross proceeds were approximately $7.0 million.

As of March 14, 2024, all 8,205,000 pre-funded warrants were exercised to Common Stock, and approximately 12.3 million of the Class A warrants were exercised to Common Stock in cashless exercises.

Nasdaq deficiencies

On March 4, 2024, the Company received a deficiency letter from the Listing Qualifications Department (the "Staff") of Nasdaq notifying the Company that, for the last 30 consecutive business days, ending on March 1, 2024, the bid price for the Company's common stock had closed below the minimum $1.00 per share requirement for continued inclusion on the Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2) (the "Bid Price Rule"). In accordance with Nasdaq rules, the Company has been provided an initial period of 180 calendar days, or until September 3, 2024 (the "Compliance Date"), to regain compliance with the Bid Price Rule. Compliance is generally achieved if, at any time before the Compliance Date, the bid price for the Company's common stock closes at $1.00 or more for a minimum of 10 consecutive business days. However, the Staff may, in its discretion, require a Company to satisfy the applicable bid price requirement for a period in excess of 10 consecutive business days, but generally no more than 20 consecutive business days, before determining that the Company has demonstrated an ability to maintain long-term compliance. If the Company does not regain compliance with the Bid Price Rule by the Compliance Date, the Company may be eligible for an additional 180 calendar day compliance period. To qualify, the Company would need to provide written notice of its intention to cure the deficiency during the additional compliance period, by effecting a reverse stock split, if necessary, provided that it meets the continued listing requirement for the market value of publicly held shares and all other initial listing standards, with the exception of the bid price requirement. If the Company does not regain compliance with the Bid Price Rule by the Compliance Date and is not eligible for an additional compliance period at that time, the Staff will provide written notification to the Company that its common stock may be delisted. At that time, the Company may appeal the Staff's delisting determination to a Nasdaq Listing Qualifications Panel. The Company intends to monitor the closing bid price of its common stock and may, if appropriate, consider available options to regain compliance with the Bid Price Rule.

On November 14, 2023, the Staff notified the Company that it did not comply with the minimum $2.5 million stockholders' equity, $35 million market value of listed securities, or $500,000 of net income from continuing operations requirements for The Nasdaq Capital Market set forth in Listing Rules 5550(b)(1), 5550(b)(2), or 5550(b)(3), respectively. On February 13, 2024, the Staff notified the Company that the Staff had determined to grant the Company an extension of time to regain compliance with Rules 5550(b), provided that the Company evidences compliance upon filing its periodic report for the period ended March 31, 2024. On February 16, 2024, the Staff notified the Company that it had determined that the Company complies with the Listing Rule 5550(b)(1). However, if the Company fails to evidence compliance upon filing its next periodic report it may be subject to delisting. At that time, Staff will provide written notification to the Company, which may then appeal Staff's determination to a Hearings Panel.

PIK Dividend

Dividends on the Series J Convertible Preferred Stock are paid in-kind ("Series J PIK dividends") in additional shares of Series J Convertible Preferred Stock based on the stated value of $100.00 per share at the dividend rate of 5.0% per quarter. The PIK dividends are paid quarterly payable to holders of the Series J Convertible Preferred Stock of record at the close of business on record at the close of business on October 31, 2023, January 31, 2024, April 30, 2024 and July 31, 2024. We paid a total of 1,215 shares of Series J PIK dividends to holders of record on January 31, 2024.

BIOLASE, INC.

Schedule II — Consolidated Valuation and Qualifying Accounts and Reserves
For the Years Ended December 31, 2023, 2022, and 2021
(in thousands)

	Balance at Beginning of Year	Charges (Reversals) to Cost or Expenses	Deductions	Balance at End of Year
Year Ended December 31, 2021:				
Allowance for doubtful accounts	$ 4,017	$ (202)	$ (1,661)	$ 2,154
Allowance for sales returns	262	—	—	262
Allowance for tax valuation	21,743	5,518	—	27,261
Year Ended December 31, 2022:				
Allowance for doubtful accounts	$ 2,154	$ (12)	$ 22	$ 2,164
Allowance for sales returns	262	—	—	262
Allowance for tax valuation	27,261	(4)	3,978	31,235
Year Ended December 31, 2023:				
Allowance for doubtful accounts	$ 2,164	$ (2,034)	$ 114	$ 244
Allowance for sales returns	262	—	—	262
Allowance for tax valuation	31,235	(24)	4,595	35,806

Exhibit 4.1

DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

BIOLASE, Inc. ("BIOLASE," "we," "us" or "our") have two classes of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, namely our (i) common stock, par value $0.001 per share (the "Common Stock"), and (ii) Series I Preferred Stock, par value $0.001 per share ("Series I Preferred Stock"). This summary does not purport to be complete and is subject to the applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL"), as well as our Restated Certificate of Incorporation, as amended (our "Charter"), the Certificate of Designation for the Series I Preferred Stock (the "Certificate of Designation"), and our Eighth Amended and Restated Bylaws (our "Bylaws"), each of which is included as an exhibit to our Annual Report on Form 10-K and incorporated by reference herein.

Our Authorized Capital Stock

Under our Charter, we are authorized to issue 180,000,000 shares of our Common Stock and 1,000,000 shares of preferred stock, par value $0.001 per share.

Common Stock

Voting Rights. Holders of our Common Stock are entitled to one vote per share. Each of our directors is elected by the affirmative vote of a majority of the votes cast with respect to such director in uncontested elections. In a contested election, each of our directors is elected by an affirmative vote of a plurality of the votes cast by the shares represented and entitled to vote with respect to the election of such director. A "contested election" is defined in our Bylaws as an election with respect to which, as of the record date for the meeting at which directors are to be elected, the number of nominees exceeds the number of directors to be elected at such meeting. Vacancies on the BIOLASE board of directors (our "Board") may be filled by an affirmative vote of two-thirds of the remaining members of our Board or at a meeting of the stockholders in the manner set forth in the second preceding sentence.

Dividend Rights. Subject to any preferential rights of any outstanding shares of our preferred stock to receive dividends before any dividends may be paid on our Common Stock, the holders of our Common Stock will be entitled to share ratably in any dividends that may be declared by our Board out of funds legally available for the payment of dividends. Our ability to pay dividends on our Common Stock will be limited by restrictions on our ability to pay dividends or make distributions to our stockholders and on the ability of our subsidiaries to pay dividends or make distributions to us, in each case, under the terms of our current, and any future, agreements governing our indebtedness.

Other Rights. Each holder of our Common Stock is subject to, and may be adversely affected by, the rights of the holders of any series of preferred stock that our Board may designate and we may issue in the future. Holders of our Common Stock have no preemptive, conversion or other rights to subscribe for additional shares. Our Common Stock does not carry any redemption rights or any preemptive rights enabling a holder to subscribe for, or receive shares of, any class of our Common Stock or any other securities convertible into shares of any class of our Common Stock.

Liquidation Rights. Subject to any preferential rights of any outstanding shares of our preferred stock, in the event of our liquidation, dissolution or winding up, holders of our Common Stock are entitled to share ratably in the assets remaining after payment of liabilities and the liquidation preferences of any outstanding preferred stock.

Standstill Agreements. Pursuant to (1) a standstill agreement with Jack W. Schuler, Renate Schuler and the Schuler Family Foundation (collectively, the "Schuler Parties"), dated November 10, 2015 (as amended on August 1, 2016 and November 9, 2017, the "Schuler Standstill Agreement"), and (2) a standstill agreement with Larry N. Feinberg, Oracle Partners, L.P., Oracle Institutional Partners, L.P., Oracle Ten Fund Master, L.P., Oracle Associates, LLC and Oracle Investment Management, Inc. (collectively, the "Oracle Parties") dated November 10, 2015 (as

amended on August 1, 2016 and November 9, 2017, the "Oracle Standstill Agreement" and, together with the Schuler Standstill Agreement, the "Standstill Agreements"), each of the Schuler Parties and the Oracle Parties agreed with respect to itself and its associates and affiliates (i) not to purchase or acquire any shares of our Common Stock if such a purchase would result in aggregate beneficial ownership by it and its affiliates and associates in excess of 41% of the issued and outstanding shares of our Common Stock and (ii) not to sell, transfer or otherwise convey shares of our Common Stock (or warrants or other rights to acquire shares of our Common Stock) to anyone who will immediately thereafter beneficially own shares in excess of 20% of the issued and outstanding shares of our Common Stock, as a result of such transfer and other transfers from third parties.

Preferred Stock

Our Charter authorizes our Board to provide for the issuance of shares of preferred stock in one or more series without further authorization from stockholders. Prior to issuance of shares of each series, our Board is required by the DGCL and our Charter to fix the designation, powers, preferences and rights of the shares of such series and the qualifications, limitations or restrictions thereof.

Our Board has designated (i) 370,000 of these shares of preferred stock as the Series H Convertible Redeemable Preferred Stock, par value $0.001 per share, with a stated value of $50.00 per share; (ii) 125,000 of these shares of preferred stock as the Series I Preferred Stock, par value $0.001 per share; and (iii) 160,000 of these shares as the Series J Convertible Redeemable Preferred Stock, par value $0.001 per share, with a stated value of $100.00 per share.

Series I Preferred Stock

On June 5, 2023, the Board declared a dividend of one one-thousandth of a share of Series I Preferred Stock for each outstanding share of Common Stock to stockholders of record at 5:00 p.m. Eastern Time on June 16, 2023 (the "Record Date"). The Certificate of designation for the Series I Preferred Stock provided that all shares of Series I Preferred Stock not present in person or by proxy at any meeting of stockholders held to vote on the 2023 Reverse Stock Split (as defined below) immediately prior to the opening of the polls at such meeting would be automatically redeemed (the "Series I Initial Redemption") and that any outstanding shares of Series I Preferred Stock that have not been redeemed pursuant to the Series I Initial Redemption would be redeemed in whole, but not in part, (i) if and when ordered by the Board or (ii) automatically upon the effectiveness of the amendment to the Certificate of Incorporation effecting the 2023 Reverse Stock Split that was subject to the vote (the "Series I Subsequent Redemption"). On July 20, 2023, the Series I Initial Redemption occurred, and on July 27, 2023, the Series I Subsequent Redemption occurred. As a result, no shares of Series I Preferred Stock remain outstanding as of July 27, 2023.

General; Transferability. Shares of Series I Preferred Stock are uncertificated and represented in book-entry form. No shares of Series I Preferred Stock may be transferred by the holder thereof except in connection with a transfer by such holder of any shares of Common Stock held by such holder, in which case a number of one one-thousandths (1/1,000ths) of a share of Series I Preferred Stock equal to the number of shares of Common Stock to be transferred by such holder will be automatically transferred to the transferee of such shares of Common Stock.

Voting Rights. Each share of Series I Preferred Stock will entitle the holder thereof to 1,000,000 votes per share (and, for the avoidance of doubt, each fraction of a share of Series I Preferred Stock will have a ratable number of votes). Thus, each one-thousandth of a share of Series I Preferred Stock would entitle the holder thereof to 1,000 votes. The outstanding shares of Series I Preferred Stock will vote together with the outstanding shares of Common Stock of the Company as a single class exclusively with respect to (i) any proposal to adopt an amendment to the Company's Charter to reclassify the outstanding shares of Common Stock into a smaller number of shares of Common Stock at a ratio specified in or determined in accordance with the terms of such amendment (the "2023 Reverse Stock Split") and (ii) any proposal to adjourn any meeting of stockholders called for the purpose of voting on the Reverse Stock Split (the "Adjournment Proposal"). The Series I Preferred Stock will not be entitled to vote on any other matter, except to the extent required under the Delaware General Corporation Law.

Unless otherwise provided on any applicable proxy or ballot with respect to the voting on the Reverse Stock Split and the Adjournment Proposal, the vote of each share of Series I Preferred Stock (or fraction thereof) entitled

to vote on the Reverse Stock Split and the Adjournment Proposal or any other matter brought before any meeting of stockholders held to vote on the Reverse Stock Split will be cast in the same manner as the vote, if any, of the share of Common Stock in respect of which such share of Series I Preferred Stock (or fraction thereof) was issued as a dividend is cast on the Reverse Stock Split, the Adjournment Proposal or such other matter, as applicable, and the proxy or ballot with respect to shares of Common Stock held by any holder on whose behalf such proxy or ballot is submitted will be deemed to include all shares of Series I Preferred Stock (or fraction thereof) held by such holder. Holders of Series I Preferred Stock will not receive a separate ballot or proxy to cast votes with respect to the Series I Preferred Stock on the Reverse Stock Split, the Adjournment Proposal or any other matter brought before any meeting of stockholders held to vote on the Reverse Stock Split.

Dividend Rights. The holders of Series I Preferred Stock, as such, will not be entitled to receive dividends of any kind.

Liquidation Preference. The Series I Preferred Stock will rank senior to the Common Stock as to any distribution of assets upon a liquidation, dissolution or winding up of the Company, whether voluntarily or involuntarily (a "Dissolution"). Upon any Dissolution, each holder of outstanding shares of Series I Preferred Stock will be entitled to be paid out of the assets of the Company available for distribution to stockholders, prior and in preference to any distribution to the holders of Common Stock, an amount in cash equal to $0.001 per outstanding share of Preferred Stock.

Redemption. All shares of Series I Preferred Stock that are not present in person or by proxy at any meeting of stockholders held to vote on the Reverse Stock Split as of immediately prior to the opening of the polls at such meeting (the "Initial Redemption Time") will automatically be redeemed in whole, but not in part, by the Company at the Initial Redemption Time without further action on the part of the Company or the holder of shares of Preferred Stock. Any outstanding shares of Series I Preferred Stock that have not been redeemed pursuant to the Series I Initial Redemption will be redeemed in whole, but not in part, (i) if such redemption is ordered by the Board in its sole discretion, automatically and effective on such time and date specified by the Board in its sole discretion or (ii) automatically upon the effectiveness of the amendment to the Certificate of Incorporation implementing the Reverse Stock Split.

Each share of Series I Preferred Stock redeemed in any redemption described above will be redeemed in consideration for the right to receive an amount equal to $0.01 in cash for each ten whole shares of Series I Preferred Stock that are "beneficially owned" by the "beneficial owner" (as such terms are defined in the Certificate of Designation thereof as of immediately prior to the applicable redemption time and redeemed pursuant to such redemption. However, the redemption consideration in respect of the shares of Series I Preferred Stock (or fractions thereof) redeemed in any redemption described above: (i) will entitle the former beneficial owners of less than ten whole shares of Series I Preferred Stock redeemed in any redemption to no cash payment in respect thereof and (y) will, in the case of a former beneficial owner of a number of shares of Series I Preferred Stock (or fractions thereof) redeemed pursuant to any redemption that is not equal to a whole number that is a multiple of ten, entitle such beneficial owner to the same cash payment, if any, in respect of such redemption as would have been payable in such redemption to such beneficial owner if the number of shares (or fractions thereof) beneficially owned by such beneficial owner and redeemed pursuant to such redemption were rounded down to the nearest whole number that is a multiple of ten (such, that for example, the former beneficial owner of 25 shares of Series I Preferred Stock redeemed pursuant to any redemption will be entitled to receive the same cash payment in respect of such redemption as would have been payable to the former beneficial owner of 20 shares of Series I Preferred Stock redeemed pursuant to such redemption).

Miscellaneous. The distribution of the Series I Preferred Stock is not expected to be taxable to stockholders or to the Company. However, stockholders may, depending upon the circumstances, recognize taxable income in the event of the redemption of the Series I Preferred Stock as described above. The Series I Preferred Stock is not be convertible into, or exchangeable for, shares of any other class or series of stock or other securities of the Company. The Preferred Stock has no stated maturity and is not subject to any sinking fund. The Series I Preferred Stock is not subject to any restriction on the redemption or repurchase of shares by the Company while there is any arrearage in the payment of dividends or sinking fund installments.

Anti-Takeover Provisions of Delaware Law and Our Governing Documents

Delaware Law

We are incorporated in the State of Delaware. As a result, we are subject to Section 203 of the DGCL, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the time that such stockholder became an interested stockholder, with the following exceptions:

- before such time, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (1) by persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to such time, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines a "business combination" to include the following:

- any merger or consolidation involving the corporation or a direct or indirect majority-owned subsidiary of the corporation and the interested stockholder;
- any sale, lease, mortgage, pledge transfer, or other disposition of the assets of the corporation or direct or indirect majority-owned a subsidiary of the corporation to or with the interested stockholder, which assets have an aggregate value equal to 10% or more of the fair value of the assets on a consolidated basis or the aggregate market value of the outstanding stock of the corporation;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation or a direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or subsidiary to the interested stockholder;
- any transaction involving the corporation or direct or indirect majority-owned subsidiary of the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation or the subsidiary beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation or direct or indirect majority-owned subsidiary of the corporation.

In general, under Section 203 defines an "interested stockholder" include an entity or person (other than the corporation any direct or indirect majority-owned subsidiary of the corporation) who, together with the person's affiliates and associates, beneficially owns, 15% or more of the outstanding voting stock of the corporation. A Delaware corporation may "opt out" of these provisions with an express provision in its certificate of incorporation. Since we have not opted out of Section 203, Section 203 may discourage or prevent mergers or other takeover or change of control attempts of us.

Undesignated Preferred Stock

The ability to authorize undesignated preferred stock makes it possible for our Board to issue one or more series of preferred stock with voting or other rights or preferences. Thus, our Board could authorize the issuance of shares of preferred stock that have priority over our Common Stock with respect to dividends or rights upon liquidation or with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change of

control of our Company that might involve a premium price for holders of our Common Stock or otherwise be in their best interests.

Requirements for Advance Notification of Stockholder Nominations and Proposals

Our Bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the Board or a committee of the Board.

Stockholder Action by Written Consent; Special Meetings of Stockholders

Our stockholders may take action by written consent in lieu of a meeting as provided in our Bylaws. Our Bylaws provide that certain procedures, including notifying the Board and awaiting a record date, must be followed for stockholders to act by written consent. A special meeting of our stockholders may be called only by our Board, the Chairman of the Board, the Chief Executive Officer or the President. A special meeting may also be called at the request of stockholders holding a majority of the aggregate number of shares of capital stock of the Company issued and outstanding and entitled to vote at that meeting (subject to certain timeliness and content requirements of the demand).

Amendment of Charter and Bylaws

Our Charter may be amended by the affirmative vote of a majority of the aggregate number of shares of each class of our capital stock issued and outstanding after a resolution of our Board declaring the advisability of such amendment has been adopted in accordance with Delaware law. Our Bylaws may be amended by the affirmative vote of a majority of the aggregate number of shares of each class of our capital stock issued and outstanding (and entitled to vote on the subject matter) present in person or represented by proxy at a meeting of stockholders provided that notice thereof is stated in the written notice of the meeting. Our Bylaws may also be amended by a majority of the Board in accordance with Delaware law and our Charter, except that certain sections of our Bylaws (including but not limited to certain provisions regarding special meetings, voting, officers and approval of securities issuances) require either the affirmative vote of two-thirds of the persons then serving as directors on the Board or our stockholders.

Forum Selection

Unless the Board acting on behalf of the Company selects an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees to the Company or our stockholders, (iii) any action asserting a claim against the Company or any of our directors, officers or other employees arising pursuant to any provision of the DGCL, our Charter or our Bylaws or (iv) any action asserting a claim against the Company or any of our directors, officers or other employees governed by the internal affairs doctrine of the State of Delaware.

Listing of Common Stock on the Nasdaq Capital Market

Our Common Stock is listed on the Nasdaq Capital Market under the symbol “BIOL.”

Transfer Agent and Registrar

The transfer agent and registrar for our Common Stock is Computershare Trust Company, N.A.

Exhibit 10.20

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is entered into as of March 21, 2024 (the "Effective Date"), by and between BIOLASE, INC., a Delaware corporation (the "Company"), and Jennfier Bright ("Indemnitee").

RECITALS

A. Indemnitee is either a member of the board of directors of the Company (the "Board of Directors") or an officer of the Company, or both, and in such capacity or capacities, or otherwise as an Agent (as hereinafter defined), is performing a valuable service for the Company.

B. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he or she be indemnified as herein provided.

C. It is intended that Indemnitee shall be paid promptly by the Company all amounts necessary to effectuate in full the indemnity provided herein.

NOW, THEREFORE, in consideration of the premises and the covenants in this Agreement, and of Indemnitee continuing to serve the Company as a director or officer of the Company, or both, or an Agent, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Services by Indemnitee. Indemnitee agrees to serve or continue to serve as a director or officer of the Company, or both, or as an Agent. Indemnitee may from time to time also perform other services at the request or for the convenience of, or otherwise benefiting, the Company. Indemnitee may at any time and for any reason resign or be removed from such position (subject to any other contractual obligation or other obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in any such position

2. Indemnification. Subject to the limitations set forth herein and in Section 7 hereof, the Company hereby agrees to indemnify Indemnitee as follows:

The Company shall, with respect to any Proceeding (as hereinafter defined) associated with Indemnitee's serving as a director or officer of the Company, or both, or as an Agent, indemnify Indemnitee to the fullest extent permitted by applicable law and the Certificate of Incorporation of the Company in effect on the date hereof or as such law or Certificate of Incorporation may from time to time be amended (but, in the case of any such amendment, only to the extent such amendment permits the Company to provide broader indemnification rights than the law or Certificate of Incorporation permitted the Company to provide before such amendment). The right to indemnification conferred herein and in the Certificate of Incorporation shall be presumed to have been relied upon by Indemnitee in serving or continuing to serve the Company as a director or officer of the Company, or both, or as an Agent and shall be enforceable as a contract right. Without in any way diminishing the scope of the indemnification provided by this Section 2, the Company will indemnify Indemnitee to the full extent permitted by law if and wherever Indemnitee is or was a party or is threatened to be made a party to any Proceeding, including any Proceeding brought by or in the right of the Company, by reason of the fact that Indemnitee is or was a director or officer or an Agent or by reason of anything done or not done by Indemnitee in any such capacity, against Expenses (as hereinafter defined) and Liabilities (as hereinafter defined) actually and reasonably incurred by Indemnitee or on his or her behalf in connection with the investigation, defense, settlement or appeal of such Proceeding. In addition to, and not as a limitation of, the foregoing, the rights of indemnification of Indemnitee provided under this Agreement shall include those rights set forth in Sections 3 and 9 below. Notwithstanding the foregoing, the Company shall not be required to indemnify Indemnitee in connection with a Proceeding (or part thereof) commenced by Indemnitee (other than a Proceeding commenced by Indemnitee to enforce Indemnitee's rights under this Agreement) unless the commencement of such Proceeding (or part thereof) was authorized by the Board of Directors.

3. Advancement of Expenses. All reasonable Expenses incurred by or on behalf of Indemnitee (including costs of enforcement of this Agreement) in connection with a Proceeding for which Indemnitee is entitled to indemnification pursuant to Section 2, or due to being a witness or being made (or asked to) respond to discovery requests in any Proceeding involving the Company, its officers, directors, shareholders or creditors to which Indemnitee is not a party or as a consequence or in connection with Indemnitee's being a director or officer of the Company, shall be advanced from time to time by the Company to Indemnitee within thirty (30) days after the receipt by the Company of a written request for an advance of Expenses, whether prior to or after final disposition of such Proceeding (except to the extent that there has been a Final Adverse Determination (as hereinafter defined) that Indemnitee is not entitled to be indemnified for such Expenses), including any Proceeding brought by or in the right of the Company but excluding, for the avoidance of doubt, any Proceeding (or part thereof) commenced by Indemnitee (other than a Proceeding commenced by Indemnitee to enforce Indemnitee's rights under this Agreement) unless the commencement of such Proceeding (or part thereof) was authorized by the Board of Directors. The right to advances under this section shall in all events continue until final disposition of any Proceeding, including any appeal therein. Indemnitee's right to such advancement is not subject to the satisfaction of any standard of conduct. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay. Advances shall be made without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. Without limiting the generality or effect of the foregoing, within thirty days after any request by Indemnitee, the Company shall, in accordance with such request (but without duplication), (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of expenses under this Agreement. In the event that a written request for the advancement of any or all Expenses under this paragraph shall be accompanied by an affidavit of counsel to Indemnitee to the effect that such counsel has reviewed such Expenses and that such Expenses are reasonable in such counsel's view, then such expenses shall be deemed reasonable in the absence of clear and convincing evidence to the contrary. In the event that the Company shall breach its obligation to advance Expenses under this Section 3, the parties hereto agree that Indemnitee's remedies available at law would not be adequate and that Indemnitee would be entitled to specific performance. The Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement, which shall constitute an undertaking providing that the Indemnitee undertakes to the fullest extent permitted by law to repay the advance (without interest) if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to further appeal, that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement.

4. Surety Bond.

(a) In order to secure the obligations of the Company to indemnify and advance Expenses to Indemnitee pursuant to this Agreement, the Company shall obtain at the time of any Change in Control (as hereinafter defined) a surety bond (the "Bond"). The Bond shall be in an appropriate amount not less than one million dollars ($1,000,000), shall be issued by a commercial insurance company or other financial institution headquartered in the United States having assets in excess of $10 billion and capital according to its most recent published reports equal to or greater than the then applicable minimum capital standards promulgated by such entity's primary federal regulator and shall contain terms and conditions reasonably acceptable to Indemnitee. The Bond shall provide that Indemnitee may from time to time file a claim for payment under the Bond, upon written certification by Indemnitee to the issuer of the Bond that (i) Indemnitee has made written request upon the Company for an amount not less than the amount Indemnitee is drawing under the Bond and that the Company has failed or refused to provide Indemnitee with such amount in full within thirty (30) days after receipt of the request, and (ii) Indemnitee believes that he or she is entitled under the terms of this Agreement to the amount that Indemnitee is drawing upon under the Bond. The issuance of the Bond shall not in any way diminish the Company's obligation to indemnify Indemnitee against Expenses and Liabilities to the full extent required by this Agreement.

(b) Once the Company has obtained the Bond, the Company shall maintain and renew the Bond or a substitute Bond meeting the criteria of Section 4(a) during the term of this Agreement so that the Bond shall have an initial term of five (5) years, be renewed for successive five-year terms, and always have at least one (1) year of its term remaining.

5. Presumptions and Effect of Certain Proceedings. Upon making a request for indemnification, Indemnitee shall be presumed to be entitled to indemnification under this Agreement and the Company shall have the burden of proof to overcome that presumption by clear and convincing evidence in reaching any contrary determination. The termination of any Proceeding by judgment, order, settlement, arbitration award or conviction, or upon a plea of nolo contendere or its equivalent shall not affect this presumption or, except as determined by a judgment or other final adjudication adverse to Indemnitee, establish a presumption with regard to any factual matter relevant to determining Indemnitee's rights to indemnification hereunder. If the person or persons so empowered to make a determination pursuant to Section 6 hereof shall have failed to make the requested determination within ninety (90) days after any judgment, order, settlement, dismissal, arbitration award, conviction, acceptance of a plea of nolo contendere or its equivalent, or other disposition or partial disposition of any Proceeding or any other event that could enable the Company to determine Indemnitee's entitlement to indemnification, the requisite determination that Indemnitee is entitled to indemnification shall be deemed to have been made.

6. Procedure for Determination of Entitlement to Indemnification.

(a) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the extent that Indemnitee is a party to or a participant in any Proceeding and is successful in such Proceeding or in defense of any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on his or her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, motion for summary judgment, settlement (with or without court approval), or upon a plea of nolo contendere or its equivalent shall be deemed to be a successful result as to such claim, issue or matter

(b) Whenever Indemnitee believes that Indemnitee is entitled to indemnification pursuant to this Agreement, Indemnitee shall submit a written request for indemnification to the Company. Any request for indemnification shall include sufficient documentation or information reasonably available to Indemnitee for the determination of entitlement to indemnification. In any event, Indemnitee shall submit Indemnitee's claim for indemnification within a reasonable time, not to exceed five (5) years after any judgment, order, settlement, dismissal, arbitration award, conviction, acceptance of a plea of nolo contendere or its equivalent, or final determination, whichever is the later date for which Indemnitee requests indemnification. The Secretary or other appropriate officer shall, promptly upon receipt of Indemnitee's request for indemnification, advise the Board of Directors in writing that Indemnitee has made such request. Determination of Indemnitee's entitlement to indemnification shall be made not later than ninety (90) days after the Company's receipt of Indemnitee's written request for such indemnification, provided that any request for indemnification for Liabilities, other than amounts paid in settlement, shall have been made after a determination thereof in a Proceeding.

(c) The Company shall be entitled to select the forum in which Indemnitee's entitlement to indemnification will be heard; provided, however, that if there is a Change in Control of the Company, Independent Legal Counsel (as hereinafter defined) shall determine whether Indemnitee is entitled to indemnification. The forum shall be any one of the following:

(i) a majority vote of Disinterested Directors (as hereinafter defined), even though less than a quorum;

(ii) Independent Legal Counsel, whose determination shall be made in a written opinion; or

(iii) a panel of three (3) arbitrators, one selected by the Company, another by Indemnitee and the third by the first two arbitrators; or if for any reason three (3) arbitrators are not selected within thirty (30) days after the

appointment of the first arbitrator, then selection of additional arbitrators shall be made by the American Arbitration Association. If any arbitrator resigns or is unable to serve in such capacity for any reason, the American Arbitration Association shall select such arbitrator's replacement. The arbitration shall be conducted pursuant to the commercial arbitration rules of the American Arbitration Association now in effect.

(d) Determination of Good Faith/Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be presumed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or the Board or counsel selected by any committee of the Board or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser, investment banker, compensation consultant, or other expert selected with reasonable care by the Company or the Board or any committee of the Board. The provisions of this Section 6(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct. Whether or not the foregoing provisions of this Section are satisfied, it shall in any event be presumed that Director has at all times acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company.

7. Specific Limitations on Indemnification. Notwithstanding anything in this Agreement to the contrary, the Company shall not be obligated under this Agreement to make any payment to Indemnitee with respect to any Proceeding:

(a) To the extent that payment was actually made to Indemnitee under any insurance policy purchased by the Company or was made to Indemnitee by the Company or an affiliate otherwise than pursuant to this Agreement. Notwithstanding the availability of such insurance, Indemnitee also may claim indemnification from the Company pursuant to this Agreement by assigning to the Company any claims under such insurance to the extent Indemnitee is paid by the Company;

(b) Provided there has been no Change in Control, for Liabilities in connection with Proceedings settled without the Company's consent, which consent, however, shall not be unreasonably withheld, conditioned or delayed;

(c) For an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or similar provisions of any state statutory or common law;

(d) Based upon or attributable to Indemnitee gaining in fact any personal profit or advantage to which Indemnitee is not entitled or resulting from Indemnitee's knowingly fraudulent, dishonest or willful misconduct; or

(e) To the extent it would be otherwise prohibited by law, if so established by a judgment or other final adjudication adverse to Indemnitee.

8. Fees and Expenses of Independent Legal Counsel or Arbitrators. The Company agrees to pay the reasonable fees and expenses of Independent Legal Counsel or a panel of three arbitrators should such Independent Legal Counsel or such arbitrators be retained to make a determination of Indemnitee's entitlement to indemnification pursuant to Section 6(b) of this Agreement, and to fully indemnify such Independent Legal Counsel or arbitrators against any and all expenses and losses incurred by any of them arising out of or relating to this Agreement or their engagement pursuant hereto.

9. Remedies of Indemnitee.

(a) In the event that (i) a determination pursuant to Section 6 hereof is made that Indemnitee is not entitled to indemnification, (ii) advances of Expenses are not made pursuant to this Agreement, (iii) payment has not been timely made following a determination of entitlement to indemnification pursuant to this Agreement or (iv) Indemnitee otherwise seeks enforcement of this Agreement, Indemnitee shall be entitled to a final adjudication in the Court of Chancery of the State of Delaware of the remedy sought. Alternatively, unless (x) the determination

was made by a panel of arbitrators pursuant to Section 6(b)(iv) hereof, or (y) court approval is required by law for the indemnification sought by Indemnitee, Indemnitee at Indemnitee's option may seek an award in arbitration to be conducted by a single arbitrator pursuant to the commercial arbitration rules of the American Arbitration Association now in effect, which award is to be made within ninety (90) days following the filing of the demand for arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or arbitration award. In any such proceeding or arbitration, Indemnitee shall be presumed to be entitled to indemnification and advancement of Expenses under this Agreement and the Company shall have the burden of proof to overcome that presumption by clear and convincing evidence to the contrary.

(b) In the event that a determination that Indemnitee is not entitled to indemnification, in whole or in part, has been made pursuant to Section 6 hereof, the decision in the judicial proceeding or arbitration provided in paragraph (a) of this Section 9 shall be made *de novo* and Indemnitee shall not be prejudiced by reason of a determination that Indemnitee is not entitled to indemnification.

(c) If a determination that Indemnitee is entitled to indemnification has been made pursuant to Section 6 hereof, or is deemed to have been made pursuant to Section 5 hereof or otherwise pursuant to the terms of this Agreement, the Company shall be bound by such determination in the absence of a misrepresentation or omission of a material fact by Indemnitee in connection with such determination.

(d) The Company shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding and enforceable. The Company shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement and is precluded from making any assertion to the contrary.

(e) Expenses reasonably incurred by Indemnitee in connection with Indemnitee's request for indemnification under, seeking enforcement of or to recover damages for breach of this Agreement shall be borne by the Company when and as incurred by Indemnitee irrespective of any Final Adverse Determination that Indemnitee is not entitled to indemnification.

10. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (a) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (b) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

11. Maintenance of Insurance.

(a) Upon the Company's purchase of directors' and officers' liability insurance policies covering its directors and officers, then, subject only to the provisions within this Section 11, the Company agrees that so long as Indemnitee shall have consented to serve or shall continue to serve as a director or officer of the Company, or both, or as an Agent, and thereafter so long as Indemnitee shall be subject to any possible Proceeding (such periods being hereinafter sometimes referred to as the "Indemnification Period"), the Company will use all reasonable efforts to maintain in effect for the benefit of Indemnitee one or more valid, binding and enforceable policies of directors' and officers' liability insurance from established and reputable insurers, providing, in all respects, coverage both in scope and amount which is no less favorable than that provided by such preexisting policies. Notwithstanding the foregoing, the Company shall not be required to maintain said policies of directors' and officers' liability insurance during any time period if during such period such insurance is not reasonably available or if it is determined in good faith by the then directors of the Company either that:

(i) The premium cost of maintaining such insurance is substantially disproportionate to the amount of coverage provided thereunder; or

(ii) The protection provided by such insurance is so limited by exclusions, deductions or otherwise that there is insufficient benefit to warrant the cost of maintaining such insurance.

(b) If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has D&O Insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies. The Company will instruct the insurers and their brokers that they may communicate directly with Indemnitee regarding such claim.

(c) In the event of a Change in control or the Company's becoming insolvent, the Company shall maintain in force any and all insurance policies then maintained by the Company in providing insurance--directors' and officers' liability, fiduciary, employment practices or otherwise--in respect of the individual directors and officers of the Company, for a fixed period of six years thereafter (a "Tail Policy"). Such coverage shall be non-cancellable and shall be placed and serviced for the duration of its term by the Company's incumbent insurance broker. Such broker shall place the Tail policy with the incumbent insurance carriers using the policies that were in place at the time of the change of control event (unless the incumbent carriers will not offer such policies, in which case the Tail Policy placed by the Company's insurance broker shall be substantially comparable in scope and amount as the expiring policies, and the insurance carriers for the Tail Policy shall have an AM Best rating that is the same or better than the AM Best ratings of the expiring policies.

12. Modification, Waiver, Termination and Cancellation. No supplement, modification, termination, cancellation or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

13. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

14. Notice by Indemnitee and Defense of Claim. Indemnitee shall promptly notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding, but the omission so to notify the Company will not relieve it from any liability that it may have to Indemnitee if such omission does not prejudice the Company's rights. If such omission does prejudice the Company's rights, the Company will be relieved from liability only to the extent of such prejudice. Notwithstanding the foregoing, such omission will not relieve the Company from any liability that it may have to Indemnitee otherwise than under this Agreement. With respect to any Proceeding as to which Indemnitee notifies the Company of the commencement thereof:

(a) The Company will be entitled to participate therein at its own expense; and

(b) The Company jointly with any other indemnifying party similarly notified will be entitled to assume the defense thereof, with counsel reasonably satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense of any Proceeding, the Company shall not be liable to Indemnitee under this Agreement or otherwise for any Expenses subsequently incurred by Indemnitee in connection with the defense of such Proceeding other than reasonable costs of investigation or as otherwise provided below. The Company shall not be entitled to assume the defense of any Proceeding if (i) the employment of legal counsel by Indemnitee has been authorized by the Company, (ii) there has been a Change in Control, (iii) if Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee with respect to such Proceeding, (iv) the fees and expenses are non-duplicative and reasonably incurred in connection with Indemnitee's role in the Proceeding despite the Company's assumption of the defense; or (v) the Company shall not in fact have employed counsel to assume the defense of such Proceeding or shall not in fact have assumed such defense and be acting in connection therewith with reasonable diligence, in each of which cases all Expenses of the Proceeding shall be borne by the Company. The Company shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Company, or as to which Indemnitee shall have made the determination

provided for in (ii) above or under the circumstances provided for in (iii) and (iv) above. Indemnitee agrees that any such separate counsel retained by indemnitee will be a member of any approved list of panel counsel under the Company's applicable directors' and officers' insurance policy, should the applicable policy provide for a panel of approved counsel and should such approve panel list comprise law firms with well-established reputations in the type of litigation at issue. Indemnitee agrees that any such separate counsel retained by indemnitee will be a member of any approved list of panel counsel under the Company's applicable directors' and officers' insurance policy, should the applicable policy provide for a panel of approved counsel and should such approve panel list comprise law firms with well-established reputations in the type of litigation at issue.

(c) The Company shall not settle any Proceeding in any manner that would impose any penalty or limitation on Indemnitee without Indemnitee's written consent, which may be given or withheld in Indemnitee's sole discretion. The Company shall not, on its own behalf, settle any part of any Proceeding to which Indemnitee is party with respect to other parties (including the Company) without the written consent of Indemnitee if any portion of such settlement is to be funded from corporate insurance proceeds unless approved by (i) the written consent of Indemnitee or (ii) a majority of the independent directors of the board; provided, however, that the right to constrain the Company's use of corporate insurance as described in this section shall terminate at the time the Company concludes (per the terms of this Agreement) that (i) Indemnitee is not entitled to indemnification pursuant to this agreement, or (ii) such indemnification obligation to Indemnitee has been fully discharged by the Company.

15. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) delivered by facsimile with telephone confirmation of receipt or (c) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed:

(i) If to Indemnitee, to the address or facsimile number set forth on the signature page hereto.

(ii) If to the Company, to:
Biolase, Inc.
27042 Towne Centre Drive, #270
Foothill Ranch, California 92610
Attn: Corporate Secretary

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

16. Nonexclusivity. The rights of Indemnitee hereunder shall not be deemed exclusive of any other rights to which Indemnitee may be entitled under applicable law, the Company's Certificate of Incorporation or bylaws, or any agreements, vote of stockholders, resolution of the Board of Directors or otherwise, and to the extent that during the Indemnification Period the rights of the then existing directors and officers are more favorable to such directors or officers than the rights currently provided to Indemnitee thereunder or under this Agreement, Indemnitee shall be entitled to the full benefits of such more favorable rights.

17. Certain Definitions.

(a) "Agent" shall mean any person who is or was, or who has consented to serve as, a director, officer, employee, agent, fiduciary, joint venture, partner, manager or other official of the Company or a subsidiary or an affiliate of the Company, or any other entity (including an employee benefit plan) either at the request of, for the convenience of, or otherwise to benefit the Company or a subsidiary of the Company. References to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company or any other entity which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries, including as a deemed fiduciary thereto.

(b) "Change in Control" shall mean the occurrence of any of the following:

(i) Both (A) any "person" (as defined below) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing at least twenty percent (20%) of the total voting power represented by the Company's then outstanding voting securities and (B) the beneficial ownership by such person of securities representing such percentage has not been approved by a majority of the "continuing directors" (as defined below);

(ii) Any "person" is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing at least fifty percent (50%) of the total voting power represented by the Company's then outstanding voting securities;

(iii) A change in the composition of the Board of Directors occurs, as a result of which fewer than two-thirds of the incumbent directors are directors who either (A) had been directors of the Company on the "look-back date" (as defined below) (the "Original Directors") or (B) were elected, or nominated for election, to the Board of Directors with the affirmative votes of at least a majority in the aggregate of the Original Directors who were still in office at the time of the election or nomination and directors whose election or nomination was previously so approved (the "continuing directors");

(iv) The stockholders of the Company approve a merger or consolidation of the Company with any other corporation, if such merger or consolidation would result in the voting securities of the Company outstanding immediately prior thereto representing (either by remaining outstanding or by being converted into voting securities of the surviving entity) fifty percent (50%) or less of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or

(v) The stockholders of the Company approve (A) a plan of complete liquidation of the Company or (B) an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets.

For purposes of Subsection (i) above, the term "person" shall have the same meaning as when used in Sections 13(d) and 14(d) of the Exchange Act, but shall exclude (x) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a parent or subsidiary of the Company or (y) a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the common stock of the Company.

For purposes of Subsection (iii) above, the term "look-back date" shall mean the later of (x) the Effective Date and (y) the date twenty-four (24) months prior to the date of the event that may constitute a "Change in Control."

Any other provision of this Section 17(b) notwithstanding, the term "Change in Control" shall not include a transaction, if undertaken at the election of the Company, the result of which is to sell all or substantially all of the assets of the Company to another corporation (the "surviving corporation"); provided that the surviving corporation is owned directly or indirectly by the stockholders of the Company immediately following such transaction in substantially the same proportions as their ownership of the Company's common stock immediately preceding such transaction; and provided, further, that the surviving corporation expressly assumes this Agreement.

(c) "Disinterested Director" shall mean a director of the Company who is not or was not a party to or otherwise involved in the Proceeding in respect of which indemnification is being sought by Indemnitee.

(d) "Expenses" shall mean all direct and indirect costs (including attorneys' fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or out-of-pocket expenses and reasonable compensation for time spent by Indemnitee for which Indemnitee is otherwise not compensated by the Company or any third party) actually and reasonably incurred in connection with either the investigation, defense, settlement or appeal of a Proceeding or establishing or enforcing a right to indemnification under this Agreement, applicable law or otherwise; provided, however, that "Expenses" shall not include any Liabilities.

(e) "Final Adverse Determination" shall mean that a determination that Indemnitee is not entitled to indemnification shall have been made pursuant to Section 6 hereof and either (1) a final adjudication in the Court of

Chancery of the State of Delaware or decision of an arbitrator pursuant to Section 9(a) hereof shall have denied Indemnitee's right to indemnification hereunder, or (2) Indemnitee shall have failed to file a complaint in a Delaware court or seek an arbitrator's award pursuant to Section 9(a) for a period of one hundred twenty (120) days after the determination made pursuant to Section 5 hereof.

(f) "Independent Legal Counsel" shall mean a law firm or a member of a firm selected by the Company and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) or, if there has been a Change in Control, selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld, conditioned or delayed), that neither is presently nor in the past five (5) years has been retained to represent: (i) the Company or any of its subsidiaries or affiliates, or Indemnitee or any corporation of which Indemnitee was or is a director, officer, employee or agent, or any subsidiary or affiliate of such a corporation, in any material matter, or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Legal Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's right to indemnification under this Agreement.

(g) "Liabilities" shall mean liabilities of any type whatsoever that Indemnitee is legally obligated to pay as a result of a Proceeding including any judgments, fines, ERISA excise taxes and penalties, penalties and amounts paid in settlement (including all interest assessments and other charges paid or payable in connection with or in respect of such judgments, fines, penalties or amounts paid in settlement) of any Proceeding.

(h) "Proceeding" shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding whether civil, criminal, administrative or investigative, and whether formal or informal that is associated with Indemnitee's being an Agent.

18. Binding Effect; Duration and Scope of Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), heirs, executors and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement to the fullest extent permitted by law. This Agreement shall continue in effect during the Indemnification Period, regardless of whether Indemnitee continues to serve as an Agent.

19. Information Sharing. If Indemnitee is the subject of or is implicated in any way during an investigation, whether formal or informal, the Company shall promptly notify the Indemnitee of such investigation. The Company shall further share with Indemnitee any information it has turned over to any third parties concerning the investigation ("Shared Information") at the time such information is so furnished. By executing this agreement, Indemnitee agrees that such Shared Information is material non-public information that Indemnitee is obligated to hold in confidence and may not disclose publicly; provided, however, that Indemnitee is permitted to use the Shared Information and to disclose such Shared information to Indemnitee's legal counsel and third parties solely in connection with defending Indemnitee from legal liability.

20. No Imputation. The knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Corporation or the Corporation itself shall not be imputed to Indemnitee for purposes of determining any rights under this Agreement.

21. Severability. If any provision or provisions of this Agreement (or any portion thereof) shall be held to be invalid, illegal or unenforceable for any reason whatsoever:

(a) the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby; and

(b) to the fullest extent legally possible, the provisions of this Agreement shall be construed so as to give effect to the intent of any provision held invalid, illegal or unenforceable.

222. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within the State of Delaware, without regard to conflict of laws rules.

232. Consent to Jurisdiction. The Company and Indemnitee each irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action or proceeding that arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the state courts of the State of Delaware.

24. Entire Agreement. This Agreement represents the entire agreement between the parties hereto, and there are no other agreements, contracts or understandings between the parties hereto with respect to the subject matter of this Agreement, except as specifically referred to herein or as provided in Section 16 hereof.

25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by a duly authorized officer and Indemnitee has executed this Agreement as of the date first above written.

BIOLASE, INC.

By: _/s/ John R. Beaver_____
Name: John R. Beaver
Title: President and Chief Executive Officer

INDEMNITEE:

_____/s/ Jennifer Bright_____

Print Name: Jennifer Bright

Exhibit 10.21

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is entered into as of March 21, 2024 (the "Effective Date"), by and between BIOLASE, INC., a Delaware corporation (the "Company"), and Steven Sandor ("Indemnitee").

RECITALS

A. Indemnitee is either a member of the board of directors of the Company (the "Board of Directors") or an officer of the Company, or both, and in such capacity or capacities, or otherwise as an Agent (as hereinafter defined), is performing a valuable service for the Company.

B. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he or she be indemnified as herein provided.

C. It is intended that Indemnitee shall be paid promptly by the Company all amounts necessary to effectuate in full the indemnity provided herein.

NOW, THEREFORE, in consideration of the premises and the covenants in this Agreement, and of Indemnitee continuing to serve the Company as a director or officer of the Company, or both, or an Agent, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Services by Indemnitee. Indemnitee agrees to serve or continue to serve as a director or officer of the Company, or both, or as an Agent. Indemnitee may from time to time also perform other services at the request or for the convenience of, or otherwise benefiting, the Company. Indemnitee may at any time and for any reason resign or be removed from such position (subject to any other contractual obligation or other obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in any such position

2. Indemnification. Subject to the limitations set forth herein and in Section 7 hereof, the Company hereby agrees to indemnify Indemnitee as follows:

The Company shall, with respect to any Proceeding (as hereinafter defined) associated with Indemnitee's serving as a director or officer of the Company, or both, or as an Agent, indemnify Indemnitee to the fullest extent permitted by applicable law and the Certificate of Incorporation of the Company in effect on the date hereof or as such law or Certificate of Incorporation may from time to time be amended (but, in the case of any such amendment, only to the extent such amendment permits the Company to provide broader indemnification rights than the law or Certificate of Incorporation permitted the Company to provide before such amendment). The right to indemnification conferred herein and in the Certificate of Incorporation shall be presumed to have been relied upon by Indemnitee in serving or continuing to serve the Company as a director or officer of the Company, or both, or as an Agent and shall be enforceable as a contract right. Without in any way diminishing the scope of the indemnification provided by this Section 2, the Company will indemnify Indemnitee to the full extent permitted by law if and wherever Indemnitee is or was a party or is threatened to be made a party to any Proceeding, including any Proceeding brought by or in the right of the Company, by reason of the fact that Indemnitee is or was a director or officer or an Agent or by reason of anything done or not done by Indemnitee in any such capacity, against Expenses (as hereinafter defined) and Liabilities (as hereinafter defined) actually and reasonably incurred by Indemnitee or on his or her behalf in connection with the investigation, defense, settlement or appeal of such Proceeding. In addition to, and not as a limitation of, the foregoing, the rights of indemnification of Indemnitee provided under this Agreement shall include those rights set forth in Sections 3 and 9 below. Notwithstanding the foregoing, the Company shall not be required to indemnify Indemnitee in connection with a Proceeding (or part thereof) commenced by Indemnitee (other than a Proceeding commenced by Indemnitee to enforce Indemnitee's rights under this Agreement) unless the commencement of such Proceeding (or part thereof) was authorized by the Board of Directors.

3. Advancement of Expenses. All reasonable Expenses incurred by or on behalf of Indemnitee (including costs of enforcement of this Agreement) in connection with a Proceeding for which Indemnitee is entitled to indemnification pursuant to Section 2, or due to being a witness or being made (or asked to) respond to discovery requests in any Proceeding involving the Company, its officers, directors, shareholders or creditors to which Indemnitee is not a party or as a consequence or in connection with Indemnitee's being a director or officer of the Company, shall be advanced from time to time by the Company to Indemnitee within thirty (30) days after the receipt by the Company of a written request for an advance of Expenses, whether prior to or after final disposition of such Proceeding (except to the extent that there has been a Final Adverse Determination (as hereinafter defined) that Indemnitee is not entitled to be indemnified for such Expenses), including any Proceeding brought by or in the right of the Company but excluding, for the avoidance of doubt, any Proceeding (or part thereof) commenced by Indemnitee (other than a Proceeding commenced by Indemnitee to enforce Indemnitee's rights under this Agreement) unless the commencement of such Proceeding (or part thereof) was authorized by the Board of Directors. The right to advances under this section shall in all events continue until final disposition of any Proceeding, including any appeal therein. Indemnitee's right to such advancement is not subject to the satisfaction of any standard of conduct. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay. Advances shall be made without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. Without limiting the generality or effect of the foregoing, within thirty days after any request by Indemnitee, the Company shall, in accordance with such request (but without duplication), (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of expenses under this Agreement. In the event that a written request for the advancement of any or all Expenses under this paragraph shall be accompanied by an affidavit of counsel to Indemnitee to the effect that such counsel has reviewed such Expenses and that such Expenses are reasonable in such counsel's view, then such expenses shall be deemed reasonable in the absence of clear and convincing evidence to the contrary. In the event that the Company shall breach its obligation to advance Expenses under this Section 3, the parties hereto agree that Indemnitee's remedies available at law would not be adequate and that Indemnitee would be entitled to specific performance. The Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement, which shall constitute an undertaking providing that the Indemnitee undertakes to the fullest extent permitted by law to repay the advance (without interest) if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to further appeal, that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement.

4. Surety Bond.

(a) In order to secure the obligations of the Company to indemnify and advance Expenses to Indemnitee pursuant to this Agreement, the Company shall obtain at the time of any Change in Control (as hereinafter defined) a surety bond (the "Bond"). The Bond shall be in an appropriate amount not less than one million dollars ($1,000,000), shall be issued by a commercial insurance company or other financial institution headquartered in the United States having assets in excess of $10 billion and capital according to its most recent published reports equal to or greater than the then applicable minimum capital standards promulgated by such entity's primary federal regulator and shall contain terms and conditions reasonably acceptable to Indemnitee. The Bond shall provide that Indemnitee may from time to time file a claim for payment under the Bond, upon written certification by Indemnitee to the issuer of the Bond that (i) Indemnitee has made written request upon the Company for an amount not less than the amount Indemnitee is drawing under the Bond and that the Company has failed or refused to provide Indemnitee with such amount in full within thirty (30) days after receipt of the request, and (ii) Indemnitee believes that he or she is entitled under the terms of this Agreement to the amount that Indemnitee is drawing upon under the Bond. The issuance of the Bond shall not in any way diminish the Company's obligation to indemnify Indemnitee against Expenses and Liabilities to the full extent required by this Agreement.

(b) Once the Company has obtained the Bond, the Company shall maintain and renew the Bond or a substitute Bond meeting the criteria of Section 4(a) during the term of this Agreement so that the Bond shall have an initial term of five (5) years, be renewed for successive five-year terms, and always have at least one (1) year of its term remaining.

5. Presumptions and Effect of Certain Proceedings. Upon making a request for indemnification, Indemnitee shall be presumed to be entitled to indemnification under this Agreement and the Company shall have the burden of proof to overcome that presumption by clear and convincing evidence in reaching any contrary determination. The termination of any Proceeding by judgment, order, settlement, arbitration award or conviction, or upon a plea of nolo contendere or its equivalent shall not affect this presumption or, except as determined by a judgment or other final adjudication adverse to Indemnitee, establish a presumption with regard to any factual matter relevant to determining Indemnitee's rights to indemnification hereunder. If the person or persons so empowered to make a determination pursuant to Section 6 hereof shall have failed to make the requested determination within ninety (90) days after any judgment, order, settlement, dismissal, arbitration award, conviction, acceptance of a plea of nolo contendere or its equivalent, or other disposition or partial disposition of any Proceeding or any other event that could enable the Company to determine Indemnitee's entitlement to indemnification, the requisite determination that Indemnitee is entitled to indemnification shall be deemed to have been made.

6. Procedure for Determination of Entitlement to Indemnification.

(a) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the extent that Indemnitee is a party to or a participant in any Proceeding and is successful in such Proceeding or in defense of any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on his or her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, motion for summary judgment, settlement (with or without court approval), or upon a plea of nolo contendere or its equivalent shall be deemed to be a successful result as to such claim, issue or matter

(b) Whenever Indemnitee believes that Indemnitee is entitled to indemnification pursuant to this Agreement, Indemnitee shall submit a written request for indemnification to the Company. Any request for indemnification shall include sufficient documentation or information reasonably available to Indemnitee for the determination of entitlement to indemnification. In any event, Indemnitee shall submit Indemnitee's claim for indemnification within a reasonable time, not to exceed five (5) years after any judgment, order, settlement, dismissal, arbitration award, conviction, acceptance of a plea of nolo contendere or its equivalent, or final determination, whichever is the later date for which Indemnitee requests indemnification. The Secretary or other appropriate officer shall, promptly upon receipt of Indemnitee's request for indemnification, advise the Board of Directors in writing that Indemnitee has made such request. Determination of Indemnitee's entitlement to indemnification shall be made not later than ninety (90) days after the Company's receipt of Indemnitee's written request for such indemnification, provided that any request for indemnification for Liabilities, other than amounts paid in settlement, shall have been made after a determination thereof in a Proceeding.

(c) The Company shall be entitled to select the forum in which Indemnitee's entitlement to indemnification will be heard; provided, however, that if there is a Change in Control of the Company, Independent Legal Counsel (as hereinafter defined) shall determine whether Indemnitee is entitled to indemnification. The forum shall be any one of the following:

(i) a majority vote of Disinterested Directors (as hereinafter defined), even though less than a quorum;

(ii) Independent Legal Counsel, whose determination shall be made in a written opinion; or

(iii) a panel of three (3) arbitrators, one selected by the Company, another by Indemnitee and the third by the first two arbitrators; or if for any reason three (3) arbitrators are not selected within thirty (30) days after the

appointment of the first arbitrator, then selection of additional arbitrators shall be made by the American Arbitration Association. If any arbitrator resigns or is unable to serve in such capacity for any reason, the American Arbitration Association shall select such arbitrator's replacement. The arbitration shall be conducted pursuant to the commercial arbitration rules of the American Arbitration Association now in effect.

(d) Determination of Good Faith/Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be presumed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or the Board or counsel selected by any committee of the Board or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser, investment banker, compensation consultant, or other expert selected with reasonable care by the Company or the Board or any committee of the Board. The provisions of this Section 6(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct. Whether or not the foregoing provisions of this Section are satisfied, it shall in any event be presumed that Director has at all times acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company.

7. Specific Limitations on Indemnification. Notwithstanding anything in this Agreement to the contrary, the Company shall not be obligated under this Agreement to make any payment to Indemnitee with respect to any Proceeding:

(a) To the extent that payment was actually made to Indemnitee under any insurance policy purchased by the Company or was made to Indemnitee by the Company or an affiliate otherwise than pursuant to this Agreement. Notwithstanding the availability of such insurance, Indemnitee also may claim indemnification from the Company pursuant to this Agreement by assigning to the Company any claims under such insurance to the extent Indemnitee is paid by the Company;

(b) Provided there has been no Change in Control, for Liabilities in connection with Proceedings settled without the Company's consent, which consent, however, shall not be unreasonably withheld, conditioned or delayed;

(c) For an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or similar provisions of any state statutory or common law;

(d) Based upon or attributable to Indemnitee gaining in fact any personal profit or advantage to which Indemnitee is not entitled or resulting from Indemnitee's knowingly fraudulent, dishonest or willful misconduct; or

(e) To the extent it would be otherwise prohibited by law, if so established by a judgment or other final adjudication adverse to Indemnitee.

8. Fees and Expenses of Independent Legal Counsel or Arbitrators. The Company agrees to pay the reasonable fees and expenses of Independent Legal Counsel or a panel of three arbitrators should such Independent Legal Counsel or such arbitrators be retained to make a determination of Indemnitee's entitlement to indemnification pursuant to Section 6(b) of this Agreement, and to fully indemnify such Independent Legal Counsel or arbitrators against any and all expenses and losses incurred by any of them arising out of or relating to this Agreement or their engagement pursuant hereto.

9. Remedies of Indemnitee.

(a) In the event that (i) a determination pursuant to Section 6 hereof is made that Indemnitee is not entitled to indemnification, (ii) advances of Expenses are not made pursuant to this Agreement, (iii) payment has not been timely made following a determination of entitlement to indemnification pursuant to this Agreement or (iv) Indemnitee otherwise seeks enforcement of this Agreement, Indemnitee shall be entitled to a final adjudication in the Court of Chancery of the State of Delaware of the remedy sought. Alternatively, unless (x) the determination

was made by a panel of arbitrators pursuant to Section 6(b)(iv) hereof, or (y) court approval is required by law for the indemnification sought by Indemnitee, Indemnitee at Indemnitee's option may seek an award in arbitration to be conducted by a single arbitrator pursuant to the commercial arbitration rules of the American Arbitration Association now in effect, which award is to be made within ninety (90) days following the filing of the demand for arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or arbitration award. In any such proceeding or arbitration, Indemnitee shall be presumed to be entitled to indemnification and advancement of Expenses under this Agreement and the Company shall have the burden of proof to overcome that presumption by clear and convincing evidence to the contrary.

(b) In the event that a determination that Indemnitee is not entitled to indemnification, in whole or in part, has been made pursuant to Section 6 hereof, the decision in the judicial proceeding or arbitration provided in paragraph (a) of this Section 9 shall be made *de novo* and Indemnitee shall not be prejudiced by reason of a determination that Indemnitee is not entitled to indemnification.

(c) If a determination that Indemnitee is entitled to indemnification has been made pursuant to Section 6 hereof, or is deemed to have been made pursuant to Section 5 hereof or otherwise pursuant to the terms of this Agreement, the Company shall be bound by such determination in the absence of a misrepresentation or omission of a material fact by Indemnitee in connection with such determination.

(d) The Company shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding and enforceable. The Company shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement and is precluded from making any assertion to the contrary.

(e) Expenses reasonably incurred by Indemnitee in connection with Indemnitee's request for indemnification under, seeking enforcement of or to recover damages for breach of this Agreement shall be borne by the Company when and as incurred by Indemnitee irrespective of any Final Adverse Determination that Indemnitee is not entitled to indemnification.

10. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (a) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (b) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

11. Maintenance of Insurance.

(a) Upon the Company's purchase of directors' and officers' liability insurance policies covering its directors and officers, then, subject only to the provisions within this Section 11, the Company agrees that so long as Indemnitee shall have consented to serve or shall continue to serve as a director or officer of the Company, or both, or as an Agent, and thereafter so long as Indemnitee shall be subject to any possible Proceeding (such periods being hereinafter sometimes referred to as the "Indemnification Period"), the Company will use all reasonable efforts to maintain in effect for the benefit of Indemnitee one or more valid, binding and enforceable policies of directors' and officers' liability insurance from established and reputable insurers, providing, in all respects, coverage both in scope and amount which is no less favorable than that provided by such preexisting policies. Notwithstanding the foregoing, the Company shall not be required to maintain said policies of directors' and officers' liability insurance during any time period if during such period such insurance is not reasonably available or if it is determined in good faith by the then directors of the Company either that:

(i) The premium cost of maintaining such insurance is substantially disproportionate to the amount of coverage provided thereunder; or

(ii) The protection provided by such insurance is so limited by exclusions, deductions or otherwise that there is insufficient benefit to warrant the cost of maintaining such insurance.

(b) If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has D&O Insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies. The Company will instruct the insurers and their brokers that they may communicate directly with Indemnitee regarding such claim.

(c) In the event of a Change in control or the Company's becoming insolvent, the Company shall maintain in force any and all insurance policies then maintained by the Company in providing insurance--directors' and officers' liability, fiduciary, employment practices or otherwise--in respect of the individual directors and officers of the Company, for a fixed period of six years thereafter (a "Tail Policy"). Such coverage shall be non-cancellable and shall be placed and serviced for the duration of its term by the Company's incumbent insurance broker. Such broker shall place the Tail policy with the incumbent insurance carriers using the policies that were in place at the time of the change of control event (unless the incumbent carriers will not offer such policies, in which case the Tail Policy placed by the Company's insurance broker shall be substantially comparable in scope and amount as the expiring policies, and the insurance carriers for the Tail Policy shall have an AM Best rating that is the same or better than the AM Best ratings of the expiring policies.

12. Modification, Waiver, Termination and Cancellation. No supplement, modification, termination, cancellation or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

13. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

14. Notice by Indemnitee and Defense of Claim. Indemnitee shall promptly notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding, but the omission so to notify the Company will not relieve it from any liability that it may have to Indemnitee if such omission does not prejudice the Company's rights. If such omission does prejudice the Company's rights, the Company will be relieved from liability only to the extent of such prejudice. Notwithstanding the foregoing, such omission will not relieve the Company from any liability that it may have to Indemnitee otherwise than under this Agreement. With respect to any Proceeding as to which Indemnitee notifies the Company of the commencement thereof:

(a) The Company will be entitled to participate therein at its own expense; and

(b) The Company jointly with any other indemnifying party similarly notified will be entitled to assume the defense thereof, with counsel reasonably satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense of any Proceeding, the Company shall not be liable to Indemnitee under this Agreement or otherwise for any Expenses subsequently incurred by Indemnitee in connection with the defense of such Proceeding other than reasonable costs of investigation or as otherwise provided below. The Company shall not be entitled to assume the defense of any Proceeding if (i) the employment of legal counsel by Indemnitee has been authorized by the Company, (ii) there has been a Change in Control, (iii) if Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee with respect to such Proceeding, (iv) the fees and expenses are non-duplicative and reasonably incurred in connection with Indemnitee's role in the Proceeding despite the Company's assumption of the defense; or (v) the Company shall not in fact have employed counsel to assume the defense of such Proceeding or shall not in fact have assumed such defense and be acting in connection therewith with reasonable diligence, in each of which cases all Expenses of the Proceeding shall be borne by the Company. The Company shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Company, or as to which Indemnitee shall have made the determination

provided for in (ii) above or under the circumstances provided for in (iii) and (iv) above. Indemnitee agrees that any such separate counsel retained by indemnitee will be a member of any approved list of panel counsel under the Company's applicable directors' and officers' insurance policy, should the applicable policy provide for a panel of approved counsel and should such approve panel list comprise law firms with well-established reputations in the type of litigation at issue. Indemnitee agrees that any such separate counsel retained by indemnitee will be a member of any approved list of panel counsel under the Company's applicable directors' and officers' insurance policy, should the applicable policy provide for a panel of approved counsel and should such approve panel list comprise law firms with well-established reputations in the type of litigation at issue.

(c) The Company shall not settle any Proceeding in any manner that would impose any penalty or limitation on Indemnitee without Indemnitee's written consent, which may be given or withheld in Indemnitee's sole discretion. The Company shall not, on its own behalf, settle any part of any Proceeding to which Indemnitee is party with respect to other parties (including the Company) without the written consent of Indemnitee if any portion of such settlement is to be funded from corporate insurance proceeds unless approved by (i) the written consent of Indemnitee or (ii) a majority of the independent directors of the board; provided, however, that the right to constrain the Company's use of corporate insurance as described in this section shall terminate at the time the Company concludes (per the terms of this Agreement) that (i) Indemnitee is not entitled to indemnification pursuant to this agreement, or (ii) such indemnification obligation to Indemnitee has been fully discharged by the Company.

15. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) delivered by facsimile with telephone confirmation of receipt or (c) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed:

(i) If to Indemnitee, to the address or facsimile number set forth on the signature page hereto.

(ii) If to the Company, to:
Biolase, Inc.
27042 Towne Centre Drive, #270
Foothill Ranch, California 92610
Attn: Corporate Secretary

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

16. Nonexclusivity. The rights of Indemnitee hereunder shall not be deemed exclusive of any other rights to which Indemnitee may be entitled under applicable law, the Company's Certificate of Incorporation or bylaws, or any agreements, vote of stockholders, resolution of the Board of Directors or otherwise, and to the extent that during the Indemnification Period the rights of the then existing directors and officers are more favorable to such directors or officers than the rights currently provided to Indemnitee thereunder or under this Agreement, Indemnitee shall be entitled to the full benefits of such more favorable rights.

17. Certain Definitions.

(a) "Agent" shall mean any person who is or was, or who has consented to serve as, a director, officer, employee, agent, fiduciary, joint venture, partner, manager or other official of the Company or a subsidiary or an affiliate of the Company, or any other entity (including an employee benefit plan) either at the request of, for the convenience of, or otherwise to benefit the Company or a subsidiary of the Company. References to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company or any other entity which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries, including as a deemed fiduciary thereto.

(b) "Change in Control" shall mean the occurrence of any of the following:

(i) Both (A) any "person" (as defined below) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing at least twenty percent (20%) of the total voting power represented by the Company's then outstanding voting securities and (B) the beneficial ownership by such person of securities representing such percentage has not been approved by a majority of the "continuing directors" (as defined below);

(ii) Any "person" is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing at least fifty percent (50%) of the total voting power represented by the Company's then outstanding voting securities;

(iii) A change in the composition of the Board of Directors occurs, as a result of which fewer than two-thirds of the incumbent directors are directors who either (A) had been directors of the Company on the "look-back date" (as defined below) (the "Original Directors") or (B) were elected, or nominated for election, to the Board of Directors with the affirmative votes of at least a majority in the aggregate of the Original Directors who were still in office at the time of the election or nomination and directors whose election or nomination was previously so approved (the "continuing directors");

(iv) The stockholders of the Company approve a merger or consolidation of the Company with any other corporation, if such merger or consolidation would result in the voting securities of the Company outstanding immediately prior thereto representing (either by remaining outstanding or by being converted into voting securities of the surviving entity) fifty percent (50%) or less of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or

(v) The stockholders of the Company approve (A) a plan of complete liquidation of the Company or (B) an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets.

For purposes of Subsection (i) above, the term "person" shall have the same meaning as when used in Sections 13(d) and 14(d) of the Exchange Act, but shall exclude (x) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a parent or subsidiary of the Company or (y) a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the common stock of the Company.

For purposes of Subsection (iii) above, the term "look-back date" shall mean the later of (x) the Effective Date and (y) the date twenty-four (24) months prior to the date of the event that may constitute a "Change in Control."

Any other provision of this Section 17(b) notwithstanding, the term "Change in Control" shall not include a transaction, if undertaken at the election of the Company, the result of which is to sell all or substantially all of the assets of the Company to another corporation (the "surviving corporation"); provided that the surviving corporation is owned directly or indirectly by the stockholders of the Company immediately following such transaction in substantially the same proportions as their ownership of the Company's common stock immediately preceding such transaction; and provided, further, that the surviving corporation expressly assumes this Agreement.

(c) "Disinterested Director" shall mean a director of the Company who is not or was not a party to or otherwise involved in the Proceeding in respect of which indemnification is being sought by Indemnitee.

(d) "Expenses" shall mean all direct and indirect costs (including attorneys' fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or out-of-pocket expenses and reasonable compensation for time spent by Indemnitee for which Indemnitee is otherwise not compensated by the Company or any third party) actually and reasonably incurred in connection with either the investigation, defense, settlement or appeal of a Proceeding or establishing or enforcing a right to indemnification under this Agreement, applicable law or otherwise; provided, however, that "Expenses" shall not include any Liabilities.

(e) "Final Adverse Determination" shall mean that a determination that Indemnitee is not entitled to indemnification shall have been made pursuant to Section 6 hereof and either (1) a final adjudication in the Court of

Chancery of the State of Delaware or decision of an arbitrator pursuant to Section 9(a) hereof shall have denied Indemnitee's right to indemnification hereunder, or (2) Indemnitee shall have failed to file a complaint in a Delaware court or seek an arbitrator's award pursuant to Section 9(a) for a period of one hundred twenty (120) days after the determination made pursuant to Section 5 hereof.

(f) "Independent Legal Counsel" shall mean a law firm or a member of a firm selected by the Company and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) or, if there has been a Change in Control, selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld, conditioned or delayed), that neither is presently nor in the past five (5) years has been retained to represent: (i) the Company or any of its subsidiaries or affiliates, or Indemnitee or any corporation of which Indemnitee was or is a director, officer, employee or agent, or any subsidiary or affiliate of such a corporation, in any material matter, or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Legal Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's right to indemnification under this Agreement.

(g) "Liabilities" shall mean liabilities of any type whatsoever that Indemnitee is legally obligated to pay as a result of a Proceeding including any judgments, fines, ERISA excise taxes and penalties, penalties and amounts paid in settlement (including all interest assessments and other charges paid or payable in connection with or in respect of such judgments, fines, penalties or amounts paid in settlement) of any Proceeding.

(h) "Proceeding" shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding whether civil, criminal, administrative or investigative, and whether formal or informal that is associated with Indemnitee's being an Agent.

18. Binding Effect; Duration and Scope of Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), heirs, executors and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement to the fullest extent permitted by law. This Agreement shall continue in effect during the Indemnification Period, regardless of whether Indemnitee continues to serve as an Agent.

19. Information Sharing. If Indemnitee is the subject of or is implicated in any way during an investigation, whether formal or informal, the Company shall promptly notify the Indemnitee of such investigation. The Company shall further share with Indemnitee any information it has turned over to any third parties concerning the investigation ("Shared Information") at the time such information is so furnished. By executing this agreement, Indemnitee agrees that such Shared Information is material non-public information that Indemnitee is obligated to hold in confidence and may not disclose publicly; provided, however, that Indemnitee is permitted to use the Shared Information and to disclose such Shared information to Indemnitee's legal counsel and third parties solely in connection with defending Indemnitee from legal liability.

20. No Imputation. The knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Corporation or the Corporation itself shall not be imputed to Indemnitee for purposes of determining any rights under this Agreement.

21. Severability. If any provision or provisions of this Agreement (or any portion thereof) shall be held to be invalid, illegal or unenforceable for any reason whatsoever:

(a) the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby; and

(b) to the fullest extent legally possible, the provisions of this Agreement shall be construed so as to give effect to the intent of any provision held invalid, illegal or unenforceable.

222. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within the State of Delaware, without regard to conflict of laws rules.

232. Consent to Jurisdiction. The Company and Indemnitee each irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action or proceeding that arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the state courts of the State of Delaware.

24. Entire Agreement. This Agreement represents the entire agreement between the parties hereto, and there are no other agreements, contracts or understandings between the parties hereto with respect to the subject matter of this Agreement, except as specifically referred to herein or as provided in Section 16 hereof.

25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by a duly authorized officer and Indemnitee has executed this Agreement as of the date first above written.

BIOLASE, INC.

By: _/s/ John R. Beaver_____
Name: John R. Beaver
Title: President and Chief Executive Officer

INDEMNITEE:

_____/s/ Steven Sandor_____

Print Name: Steven Sandor

Exhibit 10.27

ELEVENTH AMENDMENT TO
CREDIT AGREEMENT

THIS ELEVENTH AMENDMENT TO CREDIT AGREEMENT (this "**Amendment**"), dated as of November 15, 2023, is entered into by and among **BIOLASE, INC.**, a Delaware corporation ("**Borrower**"), each of the undersigned financial institutions (individually each a "**Lender**" and collectively "**Lenders**") and **SWK FUNDING LLC,** a Delaware limited liability company, in its capacity as administrative agent for the other Lenders (in such capacity, "**Agent**").

RECITALS

WHEREAS, Borrower, Agent and Lenders entered into that certain Credit Agreement dated as of November 9, 2018 (as heretofore amended and as the same may be further amended, modified or restated from time to time, being hereinafter referred to as the "**Credit Agreement**"); and

WHEREAS, Borrower, Agent and Lenders have agreed to amend certain provisions of the Credit Agreement as more fully set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

ARTICLE I

Definitions

1.1 Capitalized terms used in this Amendment are defined in the Credit Agreement, as amended hereby, unless otherwise stated.

ARTICLE II

Amendments to Credit Agreement

2.1 Effective as of the date hereof, the Credit Agreement is hereby amended (a) to delete the red or green stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) and (b) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text), in each case, as set forth in the changed-page, marked copy of the Credit Agreement attached as Exhibit A hereto and made a part hereof for all purposes.

2.2 Effective as of the date hereof, Exhibit B hereto contains the Credit Agreement incorporating all changes set forth in this Amendment as well as all prior amendments to the Credit Agreement.

ARTICLE III

Conditions Precedent and Post-Closing Obligations

3.1Conditions Precedent. The effectiveness of this Amendment is subject to the satisfaction of the following conditions precedent in a manner satisfactory to Agent, unless specifically waived in writing by Agent in its sole discretion:

(A).Agent shall have received this Amendment duly executed by Borrower.

(B).The representations and warranties contained herein and in the Credit Agreement and the other Loan Documents, as each is amended hereby, shall be true and correct as of the date hereof, as if made on the date hereof, except for such representations and warranties as are by their express terms limited to a specific date.

(C).No Default or Event of Default under the Credit Agreement, as amended hereby, shall have occurred and be continuing, unless such Default or Event of Default has been otherwise specifically waived in writing by Agent.

(D).Borrower shall have paid the invoiced expenses of Agent's counsel incurred in connection with this Amendment.

3.2Post-Closing Obligations.

(A).On the first Business Day of each week, Borrower shall provide to Agent (i) an updated cash flow and revenue forecast for Borrower, in form and substance acceptable to Agent (which shall include, in each case a cumulative comparison of actual results to prior cash flow projections delivered by Borrower) and (ii) an update on Borrower's efforts to raise additional Equity Interests, efforts raise additional Subordinated Debt and efforts to enter into a material strategic transaction with a counterparty in an effort to improve Borrower's balance sheet (collectively referred to herein as a "**Strategic Transaction**"). Notwithstanding the forgoing, Borrower shall promptly inform Agent (and in any event within one (1) Business Day) of any development in relation to any such Strategic Transaction.

(B).Borrower shall (i) continue to engage with an investment banker, reasonably acceptable to Agent (the "**Banker**"), to pursue one or more Strategic Transaction, (ii) make itself available for a weekly status update call with Agent regarding the progress of the Strategic Transactions, (iii) promptly provide to Agent copies of all material communications, reports, market summaries or similar items received by Borrower from the Banker from time to time, and (iv) request such additional information from the Banker as Agent may request from time to time.

ARTICLE IV

No Waiver, Ratifications, Representations and Warranties

4.1No Waiver. Nothing contained in this Amendment or any other communication between Agent, any Lender, Borrower or any other Loan Party shall be a waiver of any past, present or future non-compliance, violation, Default or Event of Default of Borrower under the Credit Agreement or any Loan Document. Agent and each Lender hereby expressly reserves any rights, privileges and remedies under the Credit Agreement and each Loan Document that Lender may have with respect to any non-compliance, violation, Default or Event of Default, and any failure by Agent or any Lender to exercise any right, privilege or remedy as a result of the violations set forth above shall not directly or indirectly in any way whatsoever either (i) impair, prejudice or otherwise adversely affect the rights of Agent or any Lender, except as set forth herein, at any time to exercise any right, privilege or remedy in connection with the Credit Agreement or any Loan Document, (ii) amend or alter any provision of the Credit Agreement or any Loan Document or any other contract or instrument or (iii) constitute any course of dealing or other basis for altering any obligation of Borrower or any rights, privilege or remedy of Agent or any Lender under the Credit Agreement or any Loan Document or any other contract or instrument. Nothing in this Amendment shall be construed to be a consent by Agent or any Lender to any prior, existing or future violations of the Credit Agreement or any Loan Document.

4.2Ratifications. The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Credit Agreement and the other Loan Documents, and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Credit Agreement and the other Loan Documents are ratified and confirmed and shall continue in full force and effect. Borrower, Lenders and Agent agree that the Credit Agreement and the other Loan Documents, as amended hereby, shall continue to be legal, valid, binding and enforceable in accordance with their respective terms. Borrower agrees that this Amendment is not intended to and shall not cause a novation with respect to any or all of the Obligations.

4.3Representations and Warranties. Borrower hereby represents and warrants to Agent and Lenders that (a) the execution, delivery and performance of this Amendment, any and all other Loan Documents executed and/or delivered in connection herewith have been authorized by all requisite action (as applicable) on the part of Borrower and will not violate the organizational documents of Borrower; (b) Borrower's directors and/or managers have authorized the execution, delivery and performance of this Amendment any and all other Loan Documents executed and/or delivered in connection herewith; (c) the representations and warranties contained in the Credit Agreement, as amended hereby, and any other Loan Document are true and correct on and as of the date hereof and on and as of the date of execution hereof as though made on and as of each such date (except to the extent such representations and warranties expressly relate to an earlier date); (d) no Default or Event of Default under the Credit Agreement, as amended hereby, has occurred and is continuing; (e) Loan Parties are in full compliance in all material respects with all covenants and agreements contained in the Credit Agreement and the other Loan Documents, as amended hereby; and (f) except as disclosed to Agent, no Loan Party has amended its organizational documents since the date of the Credit Agreement.

ARTICLE V

Miscellaneous Provisions

5.1Survival of Representations and Warranties. All representations and warranties made in the Credit Agreement or any other Loan Document, including, without limitation, any document furnished in connection with this Amendment, shall survive the execution and delivery of this Amendment and the other Loan Documents, and no investigation by Agent or any Lender or any closing shall affect the representations and warranties or the right of Agent and each Lender to rely upon them.

5.2Reference to Credit Agreement. Each of the Credit Agreement and the other Loan Documents, and any and all other Loan Documents, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as amended hereby, are hereby amended so that any reference in the Credit Agreement and such other Loan Documents to the Credit Agreement shall mean a reference to the Credit Agreement, as amended hereby.

5.3Expenses of Agent. As provided in the Credit Agreement, Borrower agrees to pay on demand all costs and expenses incurred by Agent, or its Affiliates, in connection with the preparation, negotiation, and execution of this Amendment and the other Loan Documents executed pursuant hereto and any and all amendments, modifications, and supplements thereto, including, without limitation, the reasonable fees and costs of legal counsel, and all costs and expenses incurred by Agent and each Lender in connection with the enforcement or preservation of any rights under the Credit Agreement, as amended hereby, or any other Loan Documents, including, without, limitation, the reasonable fees and costs of legal counsel**.**

5.4Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

5.5Successors and Assigns. This Amendment is binding upon and shall inure to the benefit of Agent and each Lender and Borrower and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations hereunder without the prior written consent of Agent.

5.6Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. This Amendment may be executed by facsimile or electronic (.pdf) transmission, which facsimile or electronic (.pdf) signatures shall be considered original executed counterparts for purposes of this Section 5.6, and each party to this Amendment agrees that it will be bound by its own facsimile or electronic (.pdf) signature and that it accepts the facsimile or electronic (.pdf) signature of each other party to this Amendment.

5.7Effect of Waiver. No consent or waiver, express or implied, by Agent to or for any breach of or deviation from any covenant or condition by Borrower shall be deemed a consent to or waiver of any other breach of the same or any other covenant, condition or duty.

5.8Headings. The headings, captions, and arrangements used in this Amendment are for convenience only and shall not affect the interpretation of this Amendment.

5.9Applicable Law. THE TERMS AND PROVISIONS OF SECTIONS 10.17 (GOVERNING LAW) AND 10.18 (FORUM SELECTION; CONSENT TO JURISDICTION) OF THE CREDIT AGREEMENT ARE HEREBY INCORPORATED HEREIN BY REFERENCE, AND SHALL APPLY TO THIS AMENDMENT *MUTATIS MUTANDIS* AS IF FULLY SET FORTH HEREIN.

5.10Final Agreement. THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, EACH AS AMENDED HEREBY, REPRESENT THE ENTIRE EXPRESSION OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ON THE DATE THIS AMENDMENT IS EXECUTED. THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS AMENDED HEREBY, MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. NO MODIFICATION, RESCISSION, WAIVER, RELEASE OR AMENDMENT OF ANY PROVISION OF THIS AMENDMENT SHALL BE MADE, EXCEPT BY A WRITTEN AGREEMENT SIGNED BY BORROWER AND AGENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Amendment has been executed and is effective as of the date first written above.

BORROWER:

BIOLASE., INC.,
a Delaware corporation

By: /s/ Jennifer Bright
Name: Jennifer Bright
Title: CFO

AGENT AND LENDER:

SWK FUNDING LLC,
as Agent and a Lender

By: SWK Holdings Corporation,
its sole Manager

By: /s/ Joe D. Staggs
Name: Joe D. Staggs
Title: President and CEO

Exhibit A

Amendments to Conformed Credit Agreement

(Attached)

and suppliers received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and bona fide disputes with, customers and suppliers, and, in each case, extensions, modifications and renewals thereof;

(m)Loans and advances to suppliers and customers or otherwise made in connection with the purchase of goods and services, in each case, in the ordinary course of business; and

(n)other Investments in an aggregate amount not to exceed $1,000,000 during the term of this Agreement.

7.11Restriction of Amendments to Certain Documents.

Not, nor permit any Loan Party to, amend or otherwise modify in any material manner, or waive any rights under, any provisions of (i) any loan documents governing any Approved AR Loan Facility (except that the terms of any Approved AR Loan Facility may be amended, modified or otherwise waived to the extent permitted under the applicable Intercreditor Agreement, or (ii) any of the Material Contracts (or any replacements thereof) set forth on Schedule 7.11 hereto (as such schedule may be updated from time to time as reasonably determined by the Agent and the Borrower).

7.12Fiscal Year.

Not change its Fiscal Year.

7.13Financial Covenants.

7.13.1Consolidated Unencumbered Liquid Assets.

Not permit the Consolidated Unencumbered Liquid Assets, (i) as of any date of determination prior to December 31, 2023, to be less than $1,500,000 and (ii) as of any date of determination on or after December 31, 2023, to be less than $2,500,000.

7.13.2Conditional Minimum Aggregate Revenue.

~~To the extent that the Consolidated Unencumbered Liquid Assets are less than $5,500,000 as of the last day of any Fiscal Quarter set forth in the table below (designated by "Q" in the table below), not permit Aggregate Revenue for the consecutive month period ending on the last Business Day of such Fiscal Quarter~~Not permit Aggregate Revenue for the consecutive month period ending on the last Business Day of any Fiscal Quarter set forth in the table below (designated by "Q" in the table below) to be less than the applicable amount set forth in the table below for such period.

Minimum LTM	as of the end of:
Six (6) month period ending Q4 2021	$19,000,000
Nine (9) month period ending Q1 2022	$30,000,000
Twelve (12) month period ending Q2 2022	$37,000,000
Twelve (12) month period ending Q3 2022	$38,000,000
Twelve (12) month period ending Q1 2023 and each Fiscal Quarter thereafter	$40,000,000

7.13.3 Conditional Minimum EBITDA.

To the extent that the Consolidated Unencumbered Liquid Assets are less than $~~5,500,000~~3,500,000 as of the last day of any Fiscal Quarter set forth in the table below (designated by "Q" in the table below), not permit the EBITDA of Borrower and its Subsidiaries for the consecutive month period ending on the last Business Day of such Fiscal Quarter to be less than the applicable amount set forth in the table below for such period.

Twelve (12) month period ending Q~~1 2023~~1 2024 and each Fiscal Quarter thereafter	$1

7.14 Deposit Accounts.

Not, and not permit any other Loan Party, to maintain or establish any new Deposit Accounts other than (a) Exempt Accounts and (b) the Deposit Accounts set forth on Schedule 7.14 (which Deposit Accounts constitute all of the Deposit Accounts, securities accounts or other similar accounts maintained by the Loan Parties as of the Closing Date) without prior written notice to Agent. To the extent such Deposit Account is not an Exempt Account or otherwise subject to the control of the lender(s) in relation to an Approved AR Loan Facility, Borrower or such other applicable Loan Party and the bank or other financial institution at which the account is to be opened after the Closing Date shall promptly

Exhibit B

Conformed Credit Agreement

(Attached)

Conformed Through Eleventh Amendment

CREDIT AGREEMENT

among

BIOLASE, INC.,
as Borrower,

SWK FUNDING LLC,
as Agent, Sole Lead Arranger and Sole Bookrunner,

and

the financial institutions party hereto from time to time as Lenders

Dated as of November 9, 2018

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CREDIT AGREEMENT

This CREDIT AGREEMENT (as may be amended, restated, supplemented, or otherwise modified from time to time, this "Agreement") dated as of November 9, 2018 (the "Closing Date"), among BIOLASE, INC., a Delaware corporation ("Borrower"), the financial institutions party hereto from time to time as lenders (each a "Lender" and collectively, the "Lenders") and SWK FUNDING LLC (in its individual capacity, "SWK"), as Agent for all Lenders.

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

Section 1 Definitions; Interpretation.

1.1. Definitions.

When used herein the following terms shall have the following meanings:

Account Control Agreement means, individually and collectively, any account control or similar agreement(s) entered into from time to time at Agent's request, among a Loan Party, Agent and any third party bank or financial institution at which such Loan Party maintains a Deposit Account.

Acquisition means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, (c) the acquisition of a product license or a product line (excluding, for purposes of Section 7.10 hereof, any pending Acquisitions as of the Closing Date as set forth on Schedule 1.1 hereto), or (d) a merger or consolidation or any other combination (other than a merger, consolidation or combination that effects a Disposition) with another Person (other than a Person that is already a Subsidiary).

Affiliate of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any employee, manager, officer or director of such Person and (c) with respect to any Lender, any entity administered or managed by such Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans; *provided*, *however*, that notwithstanding anything to the contrary herein, the Investors are not Affiliates for purposes of this Agreement.

Agent means SWK in its capacity as administrative and collateral agent for all Lenders hereunder and any permitted successor thereto in such capacity.

Aggregate Revenue shall have the meaning set forth in Section 2.9.1(a).

Agreement shall have the meaning set forth in the Preamble.

Approved AR Loan Facility shall have the meaning set forth in Section 10.22.

Approved Fund means (a) any fund, trust or similar entity that invests in commercial loans in the ordinary course of business and is advised or managed by (i) a Lender, (ii) an Affiliate of a Lender, (iii) the same investment advisor that manages a Lender or (iv) an Affiliate of an investment advisor that manages a Lender or (b) any finance company, insurance company or other financial institution which temporarily warehouses loans for any Lender or any Person described in clause (a) above.

Assignment Agreement means an agreement substantially in the form of Exhibit A.

Authorization shall have the meaning set forth in Section 5.22(b).

Borrower shall have the meaning set forth in the Preamble.

Business Day means any day on which commercial banks are open for commercial banking business in Dallas, Texas, and, in the case of a Business Day which relates to the calculation of LIBOR, on which dealings are carried on in the London interbank Eurodollar market.

Capital Lease means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of such Person; provided that, notwithstanding the foregoing, in no event will any lease that would have been categorized as an operating lease as determined in accordance with GAAP prior to giving effect to the Financial Accounting Standards Board Accounting Standard Update 2016-02, Leases (Topic 842), issued in February 2016, or any other changes in GAAP subsequent to the Closing Date be considered a capital lease for purposes of this Agreement.

Cash Equivalent Investment means, at any time, (a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States Government or any agency thereof, (b) commercial paper, or corporate demand notes, in each case (unless issued by a Lender or its holding company) rated at least "A-l" by Standard & Poor's Ratings Group or "P-l" by Moody's Investors Service, Inc., (c) any certificate of deposit (or time deposit represented by a certificate of deposit) or banker's acceptance maturing not more than one year after such time, or any overnight Federal Funds transaction that is issued or sold by any Lender (or by a commercial banking institution that is a member of the Federal Reserve System or is a U.S. branch of a foreign banking institution and has a combined capital and surplus and undivided profits of not less than $500,000,000), (d) any repurchase agreement entered into with any Lender (or commercial banking institution of the nature referred to in clause (c) above) which (i) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (a) through (c) above and (ii) has a market value at the time such repurchase agreement is entered into of not less than one-hundred percent (100%) of the repurchase obligation of such Lender (or other commercial banking institution) thereunder, (e) money market accounts or mutual funds which invest exclusively or substantially in assets satisfying the foregoing requirements, (f) cash, and (g) other short-term investments utilized by Foreign Subsidiaries in accordance with the normal investment practices for cash management in investments of a type analogous to the foregoing and (h) other short term liquid investments approved in writing by Agent.

Change of Control means the occurrence of any of the following, unless such action has been consented to in advance in writing by Agent in its sole discretion:

(i)any Person, other than the Permitted Holders, is or becomes the beneficial owner (within the meaning Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of more than fifty-one percent (51%) of the issued and outstanding voting Equity Interests of Borrower;

(ii)fifty percent (50%) or more of the members of the Board of Directors (or other applicable governing body) of Borrower on any date shall not have been (*x*) members of the Board of Directors (or other applicable governing body) of Borrower on the date twelve (12) months prior to such date or (*y*) approved (by recommendation, nomination, ratification, election or otherwise) by Persons who constitute at least a majority of the members of the Board of Directors (or other applicable governing body) of Borrower as constituted on the date twelve (12) months prior to such date;

(iii)Borrower shall at any time fail to own, directly or indirectly, one hundred percent (100%) of the Equity Interests of each of its Subsidiaries;

(iv)[reserved];

(v)any "change in/of control" in any document governing Debt of any Loan Party (other than any Loan Documents) in excess of $1,000,000, individually or in the aggregate which gives the holder of such indebtedness the right to accelerate or otherwise require payment of such indebtedness prior to the maturity date thereof; or

(vi)the sale of all or substantially all of the assets of Borrower and its Subsidiaries or any merger, consolidation or acquisition by Borrower or any of its Subsidiaries which does not result in such Person being the sole surviving entity or otherwise permitted in Section 7.4(a).

Closing Date shall have the meaning set forth in the Preamble.

Closing Date Warrant means that certain warrant issued to SWK Funding LLC by Borrower on the Closing Date.

CMS means the Centers for Medicare and Medicaid Services of the United States of America.

COC Prepayment Fee has the meaning set forth in Section 2.8.3.

Collateral has the meaning set forth in the Guarantee and Collateral Agreement.

Collateral Access Agreement means an agreement in form and substance reasonably satisfactory to Agent pursuant to which a mortgagee or lessor of real property on which Collateral (or any books and records) is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by any Loan Party, acknowledges the Liens of Agent and waives (or, if approved by Agent, subordinates) any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits Agent reasonable access to any Collateral stored or otherwise located thereon.

Collateral Documents means, collectively, the Guarantee and Collateral Agreement, the IP Security Agreement, each Collateral Access Agreement, any mortgage delivered in connection with the Loan from time to time, each Account Control Agreement and each other agreement or instrument pursuant to or in connection with which any Loan Party or any other Person grants a Lien in any Collateral to Agent for the benefit of Agent and Lenders, each as amended, restated or otherwise modified from time to time.

Commitment means, as to any Lender, such Lender's Pro Rata Term Loan Share.

Compliance Certificate means a certificate substantially in the form of Exhibit B.

Consolidated Net Income means, with respect to any Person and its Subsidiaries, for any period, the consolidated net income (or loss) of such Person and its respective Subsidiaries for such period, as determined under GAAP.

Consolidated Unencumbered Liquid Assets means as of any date of determination (i) any Cash Equivalent Investment owned by Borrower and its Subsidiaries on a consolidated basis which are not the subject of any Lien or other arrangement with any creditor to have its claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of Borrower and such Subsidiaries other than the Lien for the benefit of Agent and Lenders and any Liens granted to the lenders under the Approved AR Loan Facility, minus (ii) the aggregate amount of Borrower's accounts payable under GAAP that are ninety (90) days or more past due the invoice date for such accounts payable.

Contingent Obligation means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation in respect of any Contingent Obligation shall be deemed to be the amount for which the Person obligated thereon is reasonably expected to be liable or responsible.

Contract Rate means a rate per annum equal to (x) the LIBOR Rate, plus (y) nine percent (9.00%).

Control has the meaning set forth in Section 6.4.

Controlled Group means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with a Loan Party, are treated as a single employer under Section 414 of the IRC or Section 4001 of ERISA.

Copyrights shall mean all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) copyrights, rights and interests in copyrights, works protectable by copyright, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Copyright Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) all renewals of any of the foregoing.

Debt of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability (excluding footnotes) in accordance with GAAP, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts, accrued expenses, current accounts and similar obligations payable in the ordinary course of business (including on an intercompany basis)), other than royalty payments or milestone payments made or to be made by such Person from time to time in connection with an Acquisition, (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount thereof being measured as the lesser of (*x*) the aggregate unpaid amount of such indebtedness and (*y*) the fair market value of such property), (f) all reimbursement obligations, contingent or otherwise, with respect to the face amount of letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, other than obligations that relate to trade accounts payable in the ordinary course of business, (g) all net Hedging Obligations of such Person, (h) all Contingent Obligations of such Person in respect of Debt referred to in clauses (a) through (g) above and clause (i) below, in each case, of others, (i) all indebtedness of any partnership of which such Person is a general partner except to the extent such Person is not liable for such Debt, and (j) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for tax purposes but the transaction is classified as an operating lease in accordance with GAAP. For the avoidance of doubt, notwithstanding anything to the contrary set forth herein, intercompany advances in the ordinary course of business in respect of operating costs (such as cash management obligations, royalty fees and transfer pricing) shall not constitute Debt.

Debtor Relief Law means, collectively: (a) Title 11 of the United States Code, 11 U.S.C. § 101 et. seq., as amended from time to time, and (b) all other United States or foreign applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws from time to time in effect affecting the rights of creditors generally, in each case as amended from time to time.

Default means any event that, if it continues uncured, will, with the lapse of time or the giving of notice or both, constitute an Event of Default.

Default Rate means a rate per annum equal to the lesser of (i) three percent (3%) over the Contract Rate, or (ii) the maximum rate of interest permitted to be charged by applicable laws or regulation governing this Agreement until paid.

Deposit Account means, individually and collectively, any bank or other depository accounts of a Loan Party.

Disposition means, as to any asset or right of any Loan Party, (a) any sale, lease, assignment or other transfer (other than to any other Loan Party), but specifically excluding any license or sublicense, (b) any loss, destruction or damage thereof or (c) any condemnation, expropriation, confiscation, requisition, seizure or taking thereof, in each case excluding (i) the sale of inventory or Product in the ordinary course of business, (ii) any sale or issuance of Equity Interests by Borrower or any Subsidiary and (iii) sales or dispositions in reliance on Section 7.4(b)(ii), (iv), (vi), (xiii), (x) and/or (xv) and (iv) any other Disposition where the Net Cash Proceeds of any sale, lease, assignment, transfer, condemnation, expropriation, confiscation, requisition, seizure or taking do not in the aggregate exceed $500,000 in any Fiscal Year.

Division means, with respect to any Person which is an entity, the division of such Person into two (2) or more separate such Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other applicable law with respect to any corporation, limited liability company, partnership or other entity. The word "Divide," when capitalized, shall have a correlative meaning.

Dollar and $ mean lawful money of the United States of America.

Drug Application means a new drug application, an abbreviated drug application, or a product license application for any Product, as appropriate, as those terms are defined in the FDA Law and Regulation.

EBITDA means, for any Person and its Subsidiaries for any period, Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income for such period (and without duplication), (i) Interest Expense, (ii) tax expense (including tax accruals), (iii) depreciation and amortization, (iv) nonrecurring cash fees, costs and expenses incurred in connection with the Acquisitions of product licenses and product lines from a third party, and milestone and royalty payments to any third party, in relation to any Material Contract or any other Acquisition made prior to the date of this Agreement, (v) non-cash expenses relating to equity-based compensation or purchase accounting, (vi) non-cash charges reducing Consolidated Net Income, (vii) fees, premiums, expenses and other transaction costs incurred in connection with the negotiation and entry into this Agreement and the Approved AR Loan Facility and (viii) other non-recurring and/or non-cash expenses or charges approved by the Agent.

Elapsed Period has the meaning set forth in Section 2.9.1(a).

Environmental Claims means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or any Person or property.

Environmental Laws means all present or future foreign, federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case relating to any matter arising out of or relating to the effect of the environment on health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, release, control or cleanup of any Hazardous Substance.

Equity Interests means, with respect to any Person, its equity ownership interests, its common stock and any other capital stock or other equity ownership units of such Person authorized from time to time, and any other shares, options, interests, participations or other equivalents (however designated) of or in such Person, whether voting or nonvoting, including, without limitation, common stock, options, warrants, preferred stock, phantom stock, membership units (common or preferred), stock appreciation rights, membership unit appreciation rights, convertible notes or debentures, stock purchase rights, membership unit purchase rights and all securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing.

Event of Default means any of the events described in Section 8.1.

Excluded Taxes has the meaning set forth in Section 3.1(a).

Exempt Accounts means any Deposit Accounts, securities accounts or other similar accounts (i) into which there are deposited no funds other than those intended solely to cover compensation to employees of the Loan Parties (and related contributions to be made on behalf of such employees to health and benefit plans) plus balances for outstanding checks for compensation and such contributions from prior periods; (ii) constituting employee withholding accounts and contain only funds deducted from pay otherwise due to employees for services rendered to be applied toward the tax obligations of such Person or its employees; or (iii) that contain cash deposits, at any one time, in an aggregate amount less than $1,000,000 in the aggregate.

Exit Fee shall have the meaning set forth in Section 2.7(b).

Fair Valuation shall mean the determination of the value of the consolidated assets of a Person by the Borrower in good faith on the basis of the amount which may be realized by a willing seller within a reasonable time through collection or sale of such assets at market value on a going concern basis to an interested buyer who is willing to purchase under ordinary selling conditions in an arm's length transaction.

FATCA means Sections 1471 through 1474 of the IRC and any current or future regulations thereunder or official interpretations thereof.

FD&C Act means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq., as amended.

FDA means the Food and Drug Administration of the United States of America.

FDA Law and Regulation means the provisions of the FD&C Act and all applicable regulations promulgated by the FDA.

FDA Products means any finished products sold by Borrower or any of the other Loan Parties for itself or for a third party that are subject to applicable Health Care Laws.

Federal Funds Effective Rate means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day's Federal funds transactions by depositary institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding day on which commercial banks are open for commercial banking business in New York, New York, by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 0%.

Fiscal Quarter means a calendar quarter of a Fiscal Year.

Fiscal Year means the fiscal year of Borrower and its Subsidiaries, which period shall be the twelve (12) month period ending on December 31 of each year.

Foreign Lender means any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Foreign Subsidiary shall have the meaning set forth in Section 6.8(b).

FRB means the Board of Governors of the Federal Reserve System or any successor thereto.

GAAP means generally accepted accounting principles in effect in the United States of America set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

Governmental Authority means any nation or government, any state or other political subdivision thereof, and any agency, branch of government, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign. Governmental Authority shall include any agency, branch or other governmental body charged with the responsibility and/or vested with the authority to administer and/or enforce any Health Care Laws.

Guarantee and Collateral Agreement means the Guarantee and Collateral Agreement dated as of the Closing Date executed by each Loan Party signatory thereto in favor of Agent for the benefit of Agent and Lenders.

Hazardous Substances means hazardous waste, pollutant, contaminant, toxic substance, oil, hazardous material, chemical or other substance regulated by any Environmental Law.

Health Care Laws mean all foreign, federal and state fraud and abuse laws relating to the regulation of healthcare products, pharmaceutical products, laboratory facilities and services, healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors, including but not limited to (i) the federal Anti-Kickback Statute (42 U.S.C. (§1320a-7b(b)), the Stark Law (42 U.S.C. §1395nn and §1395(q)), the civil False Claims Act (31 U.S.C. §3729 et seq.), TRICARE (10 U.S.C. Section 1071 et seq.), Section 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statues; (ii) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as amended by the Health Information, Technology for Economic and Clinical Health Act of 2009 (collectively, "HIPAA"), and the regulations promulgated thereunder, (iii) Medicare (Title XVIII of the Social Security Act) and the regulations promulgated thereunder; (iv) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder; (v) the FD&C Act and all applicable requirements, regulations and guidances issued thereunder by the FDA (including FDA Law and Regulation); (vi) quality, safety and accreditation standards and requirements of all applicable foreign and domestic federal, provincial or state laws or regulatory bodies; (vii) all applicable licensure laws and regulations; (viii) all applicable professional standards regulating healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors; and (ix) any and all other applicable health care laws (whether foreign or domestic), regulations, manual provisions, policies and administrative guidance, including those related to the corporate practice of medicine, fee-splitting, state anti-kickback or self-referral prohibitions, each of clauses (i) through (ix) as may be amended from time to time.

Hedging Obligation means, with respect to any Person, any liability of such Person under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the termination value that would be reflected in the financial statements of such Person in accordance with GAAP.

Indemnified Taxes has the meaning set forth in Section 3.1(a).

Intellectual Property shall mean all present and future: trade secrets, know-how and other proprietary information; Trademarks and Trademark Licenses (as defined in the Guarantee and Collateral Agreement), internet domain names, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; Copyrights (including Copyrights for computer programs, but excluding commercially available off-the-shelf software and any Intellectual Property rights relating thereto) and Copyright Licenses (as defined in the Guarantee and Collateral Agreement) and all tangible and intangible property embodying the Copyrights, unpatented inventions (whether or not patentable); Patents and Patent Licenses (as defined in the Guarantee and Collateral Agreement); Mask Works (as defined in the Guarantee and Collateral Agreement); industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom, books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; customer lists and customer information, the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

Intercreditor Agreement means any intercreditor or similar agreement (in form and substance acceptable to Agent in its commercially reasonable (from the stand point of a secured lender) discretion) entered into between Agent and the lender(s) (or an agent on their behalf) under any Approved AR Loan Facility in accordance with Section 10.22 hereof, as each may be amended, restated, supplemented, or otherwise modified from time to time.

Interest Expense means for any Person and its Subsidiaries for any period the consolidated interest expense of such Person and its Subsidiaries for such period (including all imputed interest on Capital Leases) determined in accordance with GAAP.

Inventory has the meaning set forth in the Guarantee and Collateral Agreement as the context requires.

Investment means, with respect to any Person, (a) the purchase of any debt or equity security of any other Person, (b) the making of any loan or advance to any other Person, (c) becoming obligated with respect to a Contingent Obligation in respect of Debt of any other Person (other than travel and similar advances to employees in the ordinary course of business) or (d) the making of an Acquisition.

Investors means Larry Feinberg, Jack Schuler and their respective Affiliates.

IP Security Agreement means the Intellectual Property Security Agreement dated on or about the Closing Date by each Loan Party signatory thereto in favor of Agent for the benefit of Agent and Lenders.

IRC means the Internal Revenue Code of 1986, as amended.

IRS means the United States Internal Revenue Service.

Legal Costs means, with respect to any Person, all reasonable, duly documented, out-of-pocket fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals to such Person, and all court costs and similar legal expenses.

Lenders has the meaning set forth in the Preamble.

LIBOR Rate means a fluctuating rate per annum equal to the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. Dollar deposits are offered by leading banks in the London interbank deposit market), as the offered rate for loans in Dollars for a three (3) month period, rounded upwards, if necessary, to the nearest 1/8 of 1%. The rate is set by the ICE Benchmark Administration as of 11:00 a.m. (London time) as determined two (2) Business Days prior to each Payment Date, and effective on the Payment Date immediately following such determination date and continuing to but not including the next succeeding Payment Date. If Bloomberg Professional Service (or another nationally-recognized rate reporting source acceptable to Agent) no longer reports the LIBOR Rate or Agent determines in good faith that the rate so reported no longer accurately reflects the rate available to Agent in the London Interbank Market or if such index no longer exists or if page USD-LIBOR- BBA (ICE) no longer exists or accurately reflects the rate available to Agent in the London Interbank Market, Agent may select a replacement index that approximates as near as possible such prior index. Notwithstanding the foregoing, (i) if at any time Agent determines (which determination shall be conclusive absent manifest error) that the LIBOR Rate is no longer available for determining interest rates for loans or notes similar to the Loans, then Agent shall, in consultation with Borrower, endeavor to establish an alternate rate of interest to the LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for loans or notes similar to the Loans in the United States at such time, and, if requested by Agent, Agent and Lenders at such time party hereto and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable, and (ii) in no event shall the "LIBOR Rate" or any such alternate rate of interest to the LIBOR Rate ever be less than one and one-quarter of one percent (1.25%) per annum at any time.

Lien means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

Loan or Loans means, individually and collectively the Term Loan and any other advances made by Agent and Lenders in accordance with the Loan Documents.

Loan Documents means this Agreement, any Notes, the Collateral Documents and all documents, instruments and agreements delivered in connection with the foregoing.

Loan Party means Borrower and each of its Subsidiaries; provided, however, notwithstanding anything to the contrary herein, neither Biolase Australia Pty. Ltd., an entity organized under the laws of Australia and Biolase (NZ) Limited, an entity organized under the laws of New Zealand shall be considered a Loan Party of the Borrower for purposes of this Agreement or any other Loan Document.

Margin Stock means any "margin stock" as defined in Regulation T, U or X of the FRB.

Material Adverse Effect means (a) a material adverse change in, or a material and adverse effect upon, the condition (financial or otherwise), operations, assets, business or properties of the Loan Parties taken as a whole, (b) a material impairment of the ability of the Loan Parties, taken as a whole, to perform any of their payment Obligations under any Loan Document or (c) a material and adverse effect upon any material portion of the Collateral under the Collateral Documents or upon the legality, validity, binding effect or enforceability against any Loan Party of any material Loan Document.

Material Contract has the meaning assigned in Section 5.21 hereof.

Multiemployer Pension Plan means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which Borrower or any member of the Controlled Group may have any liability.

Net Cash Proceeds means, with respect to any Disposition, the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance and by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by any Loan Party pursuant to such Disposition net of (i) the reasonable direct costs relating to such Disposition (including sales commissions and legal, accounting and investment banking fees, commissions and expenses), (ii) any portion of such proceeds deposited in an escrow account pursuant to the documentation relating to such Disposition (*provided* that such amounts shall be treated as Net Cash Proceeds upon their release from such escrow account to and receipt by the applicable Loan Party), (iii) taxes and other governmental costs and expenses paid or reasonably estimated by a Loan Party to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (iv) amounts required to be applied to the repayment of any Debt (together with any interest thereon, premium or penalty and any other amount payable with respect thereto) secured by a Lien that has priority over the Lien, if any, of Agent on the asset subject to such Disposition, (v) reserves for purchase price adjustments and retained liabilities reasonably expected to be payable by the Loan Parties in connection therewith established in accordance with GAAP (*provided* that upon the final determination of the amount paid in respect of such purchase price adjustments and retained liabilities, the actual amount of purchase price adjustments and retained liabilities paid is less than such reserves, the difference shall, at such time, constitute Net Cash Proceeds) and (vi) with respect to any Disposition described in clauses (a), (b) or (c) of the definition thereof, all cash actually applied within one-hundred eighty (180) days to reinvest in assets to be used in the business of Borrower and the Subsidiaries.

Net Sales means the gross amount billed or invoiced by Borrower and its Subsidiaries for Services and for the sale of Products and (including products and services ancillary thereto) to independent customers, less deductions for (a) quantity, trade, cash or other discounts, allowances, credits or rebates (including customer rebates) actually allowed or taken, (b) amounts deducted, repaid or credited by reason of rejections or returns of goods and government mandated rebates, or because of chargebacks or retroactive price reductions, and (c) taxes, tariffs, duties or other governmental charges or assessments (including any sales, value added or similar taxes other than an income tax) levied, absorbed or otherwise imposed on or with respect to the production, sale, transportation, delivery or use of pharmaceutical products. A Product or Service shall be considered sold and/or provided when billed out or invoiced. To the extent applicable, components of Net Sales shall be determined in the ordinary course of business in accordance with historical practice and using the accrual method of accounting in accordance with GAAP. For the purposes of calculating Net Sales, Lenders and Agent understand and agree that (i) Affiliates of a Borrower shall not be regarded as independent customers and (ii) Net Sales shall not include Products distributed for product development purposes, including for use in pre-clinical trials.

Note means a promissory note substantially in the form of Exhibit C.

Obligations means all liabilities, indebtedness and obligations (monetary (including post-petition interest, allowed or not) or otherwise) of any Loan Party under this Agreement, any other Loan Document or any other document or instrument executed in connection herewith or therewith which are owed to any Lender or Affiliate of a Lender, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. For the avoidance of doubt, "Obligations" shall include Borrower's obligation to pay any amounts due under Section 2.8.2 or COC Prepayment Fee otherwise due and payable on such date of determination.

OFAC shall mean the U.S. Department of Treasury's Office of Foreign Asset Control.

Origination Fee shall have the meaning set forth in Section 2.7(a).

Paid in Full, Pay in Full or Payment in Full means, with respect to any Obligations, the payment in full in cash of all such Obligations (other than contingent indemnification obligations, yield protection and expense reimbursement to the extent no claim giving rise thereto has been asserted in respect of contingent indemnification obligations, and to the extent no amounts therefor have been asserted, in the case of yield protection and expense reimbursement obligations).

Patents shall mean all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title and interest in and to: (i) all patents, patent applications, inventions, invention disclosures and improvements, and all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) the reissues, divisions, continuations, renewals, re-examinations, extensions and continuations-in-part of any of the foregoing.

Payment Date means the fifteenth (15^{th}) day of each of February, May, August and November (or the next succeeding Business Day to the extent such 15^{th} day is not a Business Day), commencing with February 15, 2019.

Permitted Holders means (a) the Investors and (b) any Person with which one or more Investors form a "group" (within the meaning of Section 14(d) of the Exchange Act) so long as, in the case of this clause (b), the Investors beneficially own more than 50% of the relevant voting Equity Interests beneficially owned by the group.

PBGC means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its material functions under ERISA.

Pension Plan means a "pension plan", as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Pension Plan), and to which Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

Permit means, with respect to any Person any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject, including without limitation all registrations with Governmental Authorities.

Permitted Liens means Liens permitted by Section 7.2.

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

Prior Debt means the Debt listed on Schedule 4.1.

Pro Rata Term Loan Share means, with respect to any Lender, the applicable percentage (as adjusted from time to time in accordance with the terms hereof) specified opposite such Lender's name on Annex I which percentage represents the aggregate percentage of the Term Loan Commitment held by such Lender, which percentage shall be with respect to the outstanding balance of the Term Loan as of any date of determination after the Term Loan Commitment has terminated.

Product means any products manufactured, sold, developed, tested or marketed by Borrower or any of its Subsidiaries from time to time, including, without limitation, those products set forth on Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2).

Registered Intellectual Property means all applications, registrations and recordings for or of Patents, Trademarks or Copyrights filed by a Loan Party with any Governmental Authority, all internet domain name registrations owned by a Loan Party, and all proprietary software owned by a Loan Party.

Required Lenders means Lenders having an aggregate Pro Rata Term Loan Share in excess of fifty percent (50%), collectively.

Required Permit means a Permit (a) required under applicable law to the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under any laws applicable to the business of Borrower or any of its Subsidiaries (including, without limitation, any Health Care Laws) or any Drug Application (including without limitation, at any point in time, all licenses, approvals and permits issued by the FDA, CMS, or any other applicable Governmental Authority necessary for the testing, manufacture, marketing or sale of any Product by Borrower or any of its Subsidiary as such activities are being conducted by Borrower or its Subsidiary with respect to such Product at such time), and (b) required by any Person from which Borrower or any of its Subsidiaries have received an accreditation.

Responsible Officer shall mean the president, vice president or secretary of a Person, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer, the treasurer or the controller of a Person, or any other officer having substantially the same authority and responsibility, and in all cases such person shall be listed on an incumbency certificate delivered to Agent in form and substance reasonably acceptable to Agent.

Revenue-Based Payment has the meaning set forth in Section 2.9.1(a).

Royalties means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by Borrower and its Subsidiaries with respect to the sale of Products or the provision of services by independent licensees of Borrower and/or its Subsidiaries, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based, regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, Lenders and Agent understand and agree that Affiliates of Borrower shall not be regarded as independent licensees.

Services means services provided by Borrower or any Affiliate of Borrower to un-Affiliated Persons, including without limitation any sales, laboratory analysis, testing, consulting, marketing, commercialization and any other healthcare-related services.

Subordinated Debt means any Debt incurred by Borrower and/or any other Loan Party that is subordinated to the Obligations pursuant to a subordination agreement entered into between Agent, any applicable Loan Party and the subordinated creditor(s) upon terms acceptable to Agent in its commercially reasonable discretion; *provided*, *however*, that the Approved AR Loan Facility shall not be considered Subordinated Debt.

Solvent means, as to any Person at any time, that (a) the fair value of the property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent, unmatured and unliquidated liabilities); (b) the present fair saleable value of the property (on a going concern basis) of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to realize upon its assets and pay its debts and other liabilities (including subordinated, disputed, contingent, unmatured and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital.

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares or other equity interests as to have more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to direct and indirect Subsidiaries of Borrower. Notwithstanding anything to the contrary herein, neither Biolase Australia Pty. Ltd., an entity organized under the laws of Australia and Biolase (NZ) Limited, an entity organized under the laws of New Zealand shall be considered Subsidiaries of the Borrower for purposes of Section 6.8(a) of this Agreement.

SWK has the meaning set forth in the Preamble.

Taxes has the meaning set forth in Section 3.1(a).

Term Loan has the meaning set forth in Section 2.1.

Term Loan Commitment means $15,000,000.

Term Loan Maturity Date means May 31, 2025.

Termination Date means the earlier to occur of (a) the Term Loan Maturity Date, or (b) the date upon which the Loan and all other Obligations are Paid in Full, whether as a result of (i) the prepayment of the Term Loan and all Obligations through (*x*) the application of Net Cash Proceeds from any Disposition, or (*y*) any other mandatory or voluntary prepayment of the Term Loan in full, (ii) the contractual acceleration of the Loan hereunder, (iii) the acceleration of the Loan by Agent in accordance with this Agreement, or (iv) otherwise.

Trademarks shall mean all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) all of such Loan Party's (or if referring to another Person, such other Person's) trademarks, trade dress, trade names, designs, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, slogans (and all translations, adaptions, derivations and combinations of the foregoing), other business identifiers, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, or in any other country, and the goodwill of the business relating to the foregoing; (ii) all renewals thereof; and (iii) all designs and general intangibles of a like nature.

Uniform Commercial Code means the Uniform Commercial Code as in effect in the State of New York; *provided* that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

U.S. or United States means the United States of America.

U.S. Lender means any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Wholly-Owned Subsidiary means, as to any Person, another Person all of the Equity Interests of which (except directors' qualifying shares) are at the time directly or indirectly owned by such Person and/or another Wholly-Owned Subsidiary of such Person.

1.2. Interpretation.

(a) In the case of this Agreement and each other Loan Document, (i) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (ii) Annex, Exhibit, Schedule and Section references are to such Loan Document unless otherwise specified; (iii) the term "including" is not limiting and means "including but not limited to"; (iv) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including"; (v) unless otherwise expressly provided in such Loan Document, (A) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto, but only to the extent such amendments, restatements and other modifications are not prohibited by the terms of any Loan Document, and (B) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation; (vi) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms and (vii) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to Agent, Borrower, Lenders and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against Borrower, Agent or Lenders merely because of Borrower's, Agent's or Lenders' involvement in their preparation. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Agent's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (*x*) within the sole and absolute discretion of Agent and/or Lenders; and (*y*) deemed to have been given only by a specific writing intended for such purpose executed by Agent.

(b) For purposes of converting any amount reported or otherwise denominated in any currency other than Dollars to Dollars under or in connection with the Loan Documents, Agent shall calculate such currency conversion via the applicable exchange rate identified and normally published by Bloomberg Professional Service as the applicable exchange rate as of the close of currency trading on each trading date during the applicable period of measurement, or, if such currency conversion deals exclusively with a particular date of determination, as of the close of currency trading on such date of determination (or the following trading date to the extent no currency trading took place on such date of determination). If Bloomberg Professional Service no longer reports such currency exchange rate, Agent shall select another nationally-recognized currency exchange rate reporting service selected by Agent in good faith.

(c) If any payment hereunder is to be made on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. In the case of any extension of any payment of principal pursuant to the preceding sentence, interest thereon shall be payable at the then applicable rate during such extension. When the performance of any covenant, duty or obligation (other than payment of an obligation as described in the immediately preceding sentence) is required on a day which is not a Business Day, the date on which such performance is required shall be extended to the immediately succeeding Business Day.

(d) Any and all notices, reports, financial statements or other documents or instruments that are required to be delivered pursuant this Agreement (including, without limitation and for the avoidance of doubt, pursuant to Section 6.1.1, Section 6.1.2, Section 6.1.5, Section 6.1.6, Section 6.1.7, Section 6.1.10 and Section 6.9) shall be deemed to have been delivered on the date on which such documents are posted on the SEC's website at www.sec.gov.

(e) In the case of this Agreement and each other Loan Document, to the extent that any representation and warranty applies (i) to any Foreign Subsidiary or (ii) any asset, Product, Service or property of any Foreign Subsidiary, such representation and warranty shall be subject to the actual knowledge of the Loan Parties as context requires.

(f)In the case of this Agreement and each other Loan Document, and notwithstanding anything to the contrary in any Loan Document, it is understood and agreed that (i) the Agent shall not require the perfection of a security interest granted in Collateral (under and as defined in the Guarantee and Collateral Agreement) as to which (A) the cost, burden, difficulty or consequence (including any effect on the ability of the relevant Loan Party to conduct its operations and business in the ordinary course of business) of perfecting a security interest therein outweighs the benefit of a security interest to the relevant Secured Parties (under and as defined in the Guarantee and Collateral Agreement) afforded thereby, as determined by Agent in its reasonable (from standpoint of a secured lender) discretion and (B) solely as it relates to any Collateral that does not constitute US Collateral (under and as defined in the Guarantee and Collateral Agreement) or that is owned or held by a Loan Party that is organized under the law of any jurisdiction other than the United States or Canada, the granting of a security interest in, or the perfection of a security interest granted in, in either case, would result in material and adverse tax consequences to any Loan Party (as determined by Agent in its reasonable (from standpoint of a secured lender) discretion) and (ii) to the extent any Foreign Subsidiary is prohibited by applicable law from being a Guarantor (under and as defined in the Guarantee and Collateral Agreement), such Foreign Subsidiary's status as a Guarantor and/or its Guarantor Obligations, as applicable, under and as defined in the Guarantee and Collateral Agreement, shall be limited to the maximum amount of liability which could be asserted against such Guarantor without causing such Foreign Subsidiary (or its directors and officers) to be in violation with applicable law.

Section 2 Credit Facility.

2.1.Term Loan Commitments.

The Commitments of Lenders to make any Term Loan shall terminate concurrently with the making the of such Term Loan. The Term Loan is not a revolving credit facility, and therefore any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

2.2.Loan Procedures.

(a)On the Closing Date, each Lender shall advance to Borrower an amount equal to its Pro Rata Share of the Term Loan, upon Borrower's satisfaction of the conditions to closing described in Section 4 of this Agreement. (a) Borrower, Agent and Lenders hereby agree and acknowledge that, as of May 7, 2019, the outstanding principal balance of the Term Loan is $12,500,000.

(b)On or about May 7, 2019, Lenders shall make an additional term loan in the original principal amount of $2,500,000, resulting in an aggregate outstanding principal balance of the Term Loan of $15,000,000. Upon the funding of such additional term loan amount under this Section 2.2.2, Borrower shall pay to Agent, for its own account, an origination fee in the amount of $37,500, which origination fee shall be deemed fully earned and non-refundable as of the funding of such subsequent term loan. All such term loan advances described in this Section 2.2 shall be deemed a single term Loan (each such loan, individually and collectively, the "Term Loan") which shall be in an aggregate principal amount equal to the Term Loan Commitment

2.3.Commitments Several.

The failure of any Lender to make the Term Loan on the Closing Date shall not relieve any other Lender of its obligation (if any) to make its Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make the Term Loan to be made by such other Lender.

2.4. Indebtedness Absolute; No Offset; Waiver.

The payment obligations of Borrower hereunder are absolute and unconditional, without any right of rescission, set-off, counterclaim or defense for any reason against Agent and Lenders. As of the Closing Date, the Loan has not been compromised, adjusted, extended, satisfied, rescinded, set-off or modified, and the Loan Documents are not subject to any litigation, dispute, refund, claims of rescission, set-off, netting, counterclaim or defense whatsoever, including but not limited to, claims by or against any Loan Party or any other Person. Payment of the Obligations by Borrower, shall be made only by wire transfer, in Dollars, and in immediately available funds when due and payable pursuant to the terms of this Agreement and the other Loan Documents, is not subject to compromise, adjustment, extension, satisfaction, rescission, set- off, counterclaim, defense, abatement, suspension, deferment, deductible, reduction, termination or modification, whether arising out of transactions concerning the Loan, or otherwise. Without limitation to the foregoing, to the fullest extent permitted under applicable law and notwithstanding any other term or provision contained in this Agreement or any other Loan Document, Borrower hereby waives (and shall cause each Loan Party to waive) (a) presentment, protest and demand, notice of default (except as expressly required in the Loan Documents), notice of intent to accelerate, notice of acceleration, notice of protest, notice of demand and of dishonor and non-payment of the Obligations, (b) any requirement of diligence or promptness on Agent's part in the enforcement of its rights under the provisions of this Agreement and any other Loan Document, (c) any rights, legal or equitable, to require any marshalling of assets or to require foreclosure sales in a particular order, (d) all notices of every kind and description which may be required to be given by any statute or rule of law except as specifically required hereunder, (e) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale or any portion of the Collateral, (f) all rights of homestead, exemption, redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the Obligations in the event of foreclosure of the Liens created by the Loan Documents, (g) the pleading of any statute of limitations as a defense to any demand under any Loan Document and (h) any defense to the obligation to make any payments required under the Loan Documents, including the obligation to pay taxes based on any damage to, defects in or destruction of the Collateral or any other event, including obsolescence of any of the Collateral, it being agreed and acknowledged that such payment obligations are unconditional and irrevocable. Borrower further acknowledges and agrees (i) to any substitution, subordination, exchange or release of any security or the release of any party primarily or secondarily liable for the payment of the Loan; (ii) that Agent shall not be required to first institute suit or exhaust its remedies hereon against others liable for repayment of all or any part of the Loan, whether primarily or secondarily (collectively, the "Obligors"), or to perfect or enforce its rights against any Obligor or any security for the Loan; and (iii) that its liability for payment of the Loan shall not be affected or impaired by any determination that any security interest or lien taken by Agent for the benefit of Agent and Lenders to secure the Loan is invalid or unperfected. Borrower acknowledges, warrants and represents in connection with each waiver of any right or remedy of Borrower contained in any Loan Document, that it has been fully informed with respect to, and represented by counsel of its choice in connection with, such rights and remedies, and all such waivers, and after such advice and consultation, has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive or relinquish such rights and remedies to the full extent specified in each such waiver.

2.5. Loan Accounting.

2.5.1. Recordkeeping.

Agent, on behalf of each Lender, shall record in its records the date and amount of the Loan made by each Lender, each prepayment and repayment thereof. The aggregate unpaid principal amount so recorded shall be final, binding and conclusive absent manifest error. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of Borrower hereunder or under any Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.

2.5.2. Notes.

At the request of any Lender, the Loan of such Lender shall be evidenced by a Note, with appropriate insertions, payable to the order of such Lender in a face principal amount equal to such Lender's Pro Rata Term Loan Share and payable in such amounts and on such dates as are set forth herein.

2.6.Payment of Interest.

2.6.1.Interest Rates.

(a)The outstanding principal balance under the Loan shall bear interest at a per annum rate of interest equal to the Contract Rate (as may be adjusted from time to time in accordance with this Section 2.6.1). Whenever, subsequent to the date hereof, the LIBOR Rate is increased or decreased (as determined on the date that is two (2) Business Days prior to each Payment Date), the Contract Rate, as set forth herein, shall be similarly changed effective as of such subsequent Payment Date, without notice or demand of any kind by an amount equal to the amount of such change in the LIBOR Rate on the date that is two (2) Business Days prior to each such Payment Date. The interest due on the principal balance of the Loan outstanding as of any Payment Date shall be computed for the actual number of days elapsed during the period in question on the basis of a year consisting of three hundred sixty (360) days and shall be calculated by determining the average daily principal balance outstanding for each day of such period in question. The daily rate shall be equal to 1/360th times the Contract Rate. If any statement furnished by Agent for the amount of a payment due exceeded the actual amount that should have been paid because the LIBOR Rate decreased and such decrease was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall receive a credit for the overpayment, which credit shall be applied towards the next subsequent payment due hereunder. If any statement furnished by Agent for the amount of a payment due was less than the actual amount that should have been paid because the LIBOR Rate increased and such increase was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall be required to pay any resulting underpayment with the next subsequent payment due hereunder; for the avoidance of doubt, any payment that is made that is in an amount less than the actual amount that should have been paid because a LIBOR Rate increase was not reflected in a statement furnished by the Agent shall not be considered a Default or Event of Default hereunder.

(b)Borrower recognizes and acknowledges that any default on any payment, or portion thereof, due hereunder or to be made under any of the other Loan Documents, will result in losses and additional expenses to Agent in servicing the Loan, and in losses due to Lenders' loss of the use of funds not timely received. Borrower further acknowledges and agrees that in the event of any such Default, Lenders would be entitled to damages for the detriment proximately caused thereby, but that it would be extremely difficult and impracticable to ascertain the extent of or compute such damages. Therefore, upon the Term Loan Maturity Date and/or upon the occurrence and during the existence of an Event of Default (or upon any acceleration), interest shall automatically accrue hereunder, without notice to Borrower, at the Default Rate. The Default Rate shall be calculated and due from the date that the Event of Default occurred and shall be payable upon demand.

(c)Notwithstanding anything herein to the contrary, if at any time the interest rate for any Loan (if applicable), together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively, "charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder (if applicable), together with all charges payable in respect of the Loan, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest (if any) and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or refunded to the Borrower so that at no time shall the interest (if any) and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

2.6.2.Payments of Interest and Principal.

Borrower shall pay to Lenders all accrued interest on the Loan in arrears on each Payment Date, upon a prepayment of such Loan in accordance with Section 2.8 and at maturity in cash. Any partial prepayment of the Loan shall be applied in inverse order of maturity and so shall not reduce the amount of any quarterly principal amortization payment required pursuant to Section 2.9.1 (but this shall not be construed as permitting any partial prepayment other than as may be expressly permitted elsewhere in this Agreement).

2.7.Fees.

(a)Origination Fee. Borrower shall pay to SWK, for its own account, a fee (the "Origination Fee") in the amount of $187,500, which Origination Fee shall be deemed fully earned and non-refundable on the Closing Date and which, at the option of the Borrower, may be net-funded on the Closing Date.

(b)Exit Fee. Subject to Section 2.8.3, upon the Termination Date, Borrower shall pay an exit fee (the "Exit Fee") to Agent, for the benefit of Lenders, in an amount equal to (i) (*x*) eight percent (8.0%) multiplied by (*y*) the aggregate principal amount of the Term Loan advanced hereunder plus (ii) $75,000, which Exit Fee shall be deemed fully earned and non-refundable on the Termination Date.

(c)First Amendment Fee. Upon the Termination Date, Borrower shall pay a deferred amendment fee in relation to that certain First Amendment to this Agreement (the "First Amendment Fee") to Agent, for its own account, in an amount equal to $150,000, which First Amendment Fee shall be deemed fully earned and non-refundable on May 7, 2019.

(d)Tenth Amendment Fee. Upon the Termination Date, Borrower shall pay a deferred amendment fee in relation to that certain Tenth Amendment to this Agreement (the "Tenth Amendment Fee") to Agent, for its own account, in an amount equal to (i) to the extent that Borrower shall have issued additional Equity Interests or Subordinated Debt, in form and substance reasonably acceptable to Agent, resulting in gross cash proceeds to Borrower of not less than $10,000,000 on or prior to January 30, 2023, $0, (ii) to the extent that Borrower shall have issued additional Equity Interests or Subordinated Debt, in form and substance reasonably acceptable to Agent, resulting in gross cash proceeds to Borrower of less than $10,000,000 but greater than $5,000,000 on or prior to January 30, 2023, $25,000, or (iii) to the extent that Borrower shall have failed to issue additional Equity Interests or Subordinated Debt, in form and substance reasonably acceptable to Agent, resulting in gross cash proceeds to Borrower of at least $5,000,000 on or prior to January 30, 2023, $130,000; which Tenth Amendment Fee shall be deemed fully earned and non-refundable on January 30, 2023.

2.8.Prepayment.

2.8.1.Mandatory Prepayment. Borrower shall prepay all or part of, as applicable, the Obligations (which shall include (a) as it relates to any such prepayment made pursuant to this Section 2.8.1, on or after the Closing Date and prior to the first anniversary of the Closing Date, the amount of interest theretofore accrued but unpaid in respect of the principal amount so prepaid, plus the amount of interest that would have accrued on the principal amount so prepaid had it remained outstanding through the first anniversary of the Closing Date assuming the Contract Rate remained constant from the date of such prepayment through the first anniversary of the Closing Date, (b) as it relates to any such prepayment made on or after the first anniversary of the Closing Date, any amounts that would otherwise be due and payable on such date had Borrower voluntarily prepaid the Obligations pursuant to Section 2.8.2), or (c) as it relates to any such prepayment made on or before the first anniversary of the Closing Date, any COC Prepayment Fee that would otherwise be due and payable on such date had Borrower voluntarily prepaid the Obligations pursuant to Section 2.8.3) until paid in full within two (2) Business Days after the receipt by a Loan Party of any Net Cash Proceeds from any Disposition, in an amount equal to such Net Cash Proceeds.

2.8.2.Voluntary Prepayment.

(a)Subject to clause (b) below and Section 2.8.3 hereof, Borrower may, on at least five (5) Business Days' (or such shorter period as Agent may agree in its sole discretion) written notice or telephonic notice (provided that such notice may be conditioned on receiving the proceeds of any transaction) (followed on the same Business Day by written confirmation thereof) to Agent (which shall promptly advise each Lender thereof) not later than 2:00 p.m. Dallas time on such day, prepay the Term Loan and all related Obligations in whole but not in part at any time on or after the first anniversary of the Closing Date. Such notice to Agent shall specify the amount and proposed date of such prepayment, and the application of such amounts to be prepaid shall be applied in accordance with Section 2.9.1(b) or 2.10.2 (as applicable).

(b)If Borrower makes a prepayment of the Term Loan under Section 2.8.2(a), it shall pay to Agent, for the benefit of Lenders, the following amounts (in addition to any such prepayment of the Term Loan and related Obligations) on the date of such prepayment: (i) if such prepayment is made on or after the first anniversary

of the Closing Date but prior to the second anniversary of the Closing Date, six percent (6%) of the aggregate amount of the Term Loan so prepaid; (ii) if such prepayment is made on or after the second anniversary of the Closing Date but prior to the third anniversary of the Closing Date, one percent (1%) of the aggregate amount of the Term Loan so prepaid; and (iii) if such prepayment is made on or after the third anniversary of the Closing Date, zero percent (0%) of the aggregate amount of the Term Loan so prepaid.

(c)For the avoidance of doubt, a permitted payment under this Section 2.8.2 is independent of and in addition to Revenue-Based Payments that are credited toward the principal of the Loans under Section 2.9.1(b). Notwithstanding anything set forth herein or in any other Loan Documents to the contrary, any prepayment of the Loans shall be limited and governed by this Section 2.8.2 other than prepayments or repayments (i) via the application of Revenue-Based Payments made pursuant to Section 2.9.1 or Section 2.10.2, as applicable or (ii) prepayments in accordance with Section 2.8.1 or Section 2.8.3.

2.8.3.Change of Control. Upon a Change of Control on or before the first anniversary of the Closing Date, Borrower shall immediately prepay all outstanding Obligations. Such prepayment shall equal the sum of the outstanding principal balance of the Term Loan and all other outstanding Obligations (subject to the limitations set forth in this Section 2.8.3), plus

(a)a prepayment fee (the "COC Prepayment Fee") calculated as the additional amount that would be needed to be paid such that the sum of (1) such COC Prepayment Fee, plus (2) the aggregate payments actually made in cash to all Lenders on or prior to such date in respect of the principal amount of the Term Loan, including without limitation the Origination Fee, plus (3) without duplication, all Revenue-Based Payments actually made in cash to all Lenders on or prior to such date (excluding, for the avoidance of doubt, any amounts paid in respect of any costs, expenses, indemnifications or reimbursements or any amounts paid in connection with the Closing Date Warrant, but including, for the avoidance of doubt, any amounts paid or payable in respect of the Origination Fee, the COC Prepayment Fee and Exit Fee) results in an amount equal to one and twenty-three hundredth (1.23) times the aggregate amount advanced by Lenders pursuant to Section 2.2 hereof on or prior to such date; or

(b)if such prepayment occurs on or after the first anniversary of the Closing Date, the amounts that would otherwise be due and payable upon a prepayment made pursuant to Section 2.8.2(b) on such date of determination, if any.

Any prepayment made under this Section 2.8.3 shall be applied in the order set forth in Section 2.9.1(b). For the avoidance of doubt, (i) no amounts paid or otherwise earned in connection with the Closing Date Warrant shall be included in the calculation of the Prepayment Fee, and (ii) no Exit Fee shall be due and payable upon a prepayment of the loan prior to the first anniversary of the Closing Date pursuant to this Section 2.8.3.

2.9.Repayment of Term Loan.

2.9.1.Revenue-Based Payment.

(a)During the period commencing on the date hereof until the Obligations are Paid in Full, Borrower promises to pay to Agent, for the account of each Lender according to its Pro Rata Term Loan Share, an amount based on a percentage of the aggregate of the Net Sales, Royalties and other revenue realized by Borrower and/or its Subsidiaries, on a consolidated basis, in accordance with GAAP (collectively, the "Aggregate Revenue") in each Fiscal Quarter (the "Revenue-Based Payment"), which will be applied to the Obligations as provided in clause (b) below. The Revenue-Based Payment with respect to each Fiscal Quarter shall be payable on the Payment Date next following the end of such Fiscal Quarter. Commencing with the Fiscal Quarter beginning January 1, 2018, the Revenue-Based Payment with respect to each Fiscal Quarter shall be equal to:

(i)the aggregate Revenue-Based Payments payable during the period commencing as of January 1 of the Fiscal Year of which such Fiscal Quarter is part, through the end of such Fiscal Quarter (such elapsed portion of the Fiscal Year, the "Elapsed Period"), calculated as the sum of:

(A)Fifty percent (50.00%) of Aggregate Revenue during the Elapsed Period up to and including $7,500,000; plus

(B)Twenty-five percent (25.00%) of Aggregate Revenue during the Elapsed Period greater than $7,500,000; minus

(ii)the aggregate amount of Revenue-Based Payments, if any, made with respect to prior Fiscal Quarters in such Fiscal Year; *provided* that the Revenue-Based Payment is payable solely upon Aggregate Revenue in a given Fiscal Year, and will not be calculated on a cumulative, year-over-year basis.

(b)So long as no Event of Default has occurred and is continuing and until the Obligations have been Paid in Full, each Revenue-Based Payment on each Payment Date will be applied in the following priority:

(i)FIRST, to the payment of all fees, costs, expenses and indemnities due and owing to Agent pursuant to Sections 2.7, 3.1, 3.2, 6.3(d), 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, and any other Obligations owing to Agent in respect of sums advanced by Agent to preserve or protect the Collateral or to preserve or protect its security interest in the Collateral (other than fees not otherwise included in an invoice provided by Agent pursuant to Section 2.1.0.1 for such Payment Date for which invoices have been delivered to the Borrower no later than two (2) Business Days prior to such Payment Date);

(ii)SECOND, to the payment of all fees, costs, expenses and indemnities due and owing to Lenders in respect of the Loans and Commitments pursuant to Sections 2.7, 3.1, 3.2, 6.3(d), 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iii)THIRD, to the payment of all accrued but unpaid interest in respect of the Loans as of such Payment Date, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iv)FOURTH:

(A)as it relates to the Payment Date in November 2023, to the payment of principal of the Loans, pro rata based on each Lender's Pro Rata Term Loan Share, in the amount of $165,000;

(B)as it relates to the Payment Date in February 2024, to the payment of all principal of the Loans, pro rata based on each Lender's Pro Rata Term Loan Share, in the amount of:

(1)to the extent that the Consolidated Unencumbered Liquid Assets are greater than $3,500,000 as of February 14, 2024, $165,000, or

(2)to the extent that the Consolidated Unencumbered Liquid Assets are equal to or less than $3,500,000 as of February 14, 2024, $700,000;

(C)as it relates to each Payment Date on or after the Payment Date occurring in May 2024 to the payment of all principal of the Loans, pro rata based on each Lender's Pro Rata Term Loan Share, in the amount of $700,000 on each such Payment Date; and

(v)FIFTH, all remaining amounts to the Borrower.

In the event that the amounts distributed under this clause (b) on any Payment Date are insufficient for payment of the amounts set forth in clauses (i) through (iv) above for such Payment Date, Borrower shall pay an amount equal to the extent of such insufficiency within five (5) Business Days (or such longer period as Agent may agree in its sole discretion) of request by Agent. For the avoidance of doubt, at all times prior to the Payment Date in November 2023, Borrower shall only be required to pay Revenue-Based Payments to the extent of amounts owing under clauses (i), (ii), and (iii) above on each such Payment Date prior to the Payment Date in November 2023**.**

(c)In the event that Borrower makes any adjustment to Aggregate Revenue after it has been reported to Agent, and such adjustment results in an adjustment to the Revenue-Based Payment due to the Lenders pursuant to this Section 2.9.1, Borrower shall so notify Agent and such adjustment shall be captured, reported and reconciled with the next scheduled report and payment of Revenue-Based Payment hereunder, but in no event shall the failure to have paid any amount that has been adjusted in accordance with this Section 2.9.1(d) result in an Event of Default to the extent such amounts are paid in full on the next Payment Date. Notwithstanding the foregoing, Agent and Borrower shall discuss and agree on the amount of any such adjustment prior to it being given effect with respect to future Revenue- Based Payments.

2.9.2.Principal.

Notwithstanding the foregoing, the outstanding principal balance of the Term Loan and all other Obligations then due and owing (including any amounts due pursuant to Section 2.8.2 hereof or any COC Prepayment Fee, as applicable, that may be due and owing on such date) shall be Paid in Full on the Termination Date.

2.10.Payment.

2.10.1.Making of Payments.

Except as set forth in the last sentence of this Section 2.10.1, all payments of principal, interest, fees and other amounts, shall be made in immediately-available funds, via wire transfer as directed by Agent in writing, not later than 2:00 p.m. Dallas time on the date due, and funds received after that hour shall be deemed to have been received by Agent on the following Business Day. Not later than two (2) Business Days prior to each Payment Date, Agent shall provide to Borrower and each Lender a quarterly statement with the amounts payable by Borrower to Agent on such Payment Date in accordance with Section 2.9.1(b) and (c) hereof, which shall include, for additional clarity, Agent's calculation of the Revenue-Based Payment for the prior Fiscal Quarter, which statement shall be binding on Borrower absent manifest error, and Borrower shall be entitled to rely on such quarterly statement in relation to its payment obligations on such Payment Date.

2.10.2.Application of Payments and Proceeds Following an Event of Default.

Following the occurrence and during the continuance of an Event of Default, or if the Obligations have otherwise become or have been declared to become immediately due and payable in accordance with this Agreement, then notwithstanding anything herein or in any other Loan Document to the contrary, Agent shall apply all or any part of payments in respect of the Obligations and proceeds of Collateral, in each case as received by Agent, to the payment of the Obligations in the order and priority as determined by Agent in its sole discretion.

2.10.3.Set-off.

Borrower agrees that Agent and each Lender and its Affiliates have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, Borrower agrees that at any time an Event of Default exists and is continuing, Agent and each Lender may, subject to Section 2.10.4, to the fullest extent permitted by applicable law, apply to the payment of any Obligations of Borrower hereunder then due, any and all balances, credits, deposits, accounts or moneys of Borrower then or thereafter with Agent or such Lender. Notwithstanding the foregoing, no Lender shall exercise any rights described in the preceding sentence without the prior written consent of Agent.

2.10.4.Proration of Payments.

If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of set-off or otherwise, on account of principal of, interest on or fees in relation to any Loan, but excluding any payment pursuant to Section 3.1, 3.2, 10.5 or 10.8) in excess of its applicable Pro Rata Term Loan Share of payments and other recoveries obtained by all Lenders on account of principal of, interest on or fees in relation to such Term Loan then held by them, then such Lender shall purchase from the other Lenders such participations in the Loans held by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided* that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery.

Section 3 Yield Protection.

3.1Taxes.

(a)All payments of principal and interest on the Loans and all other amounts payable hereunder by or on behalf of Borrower to or for the account of Agent or any Lender shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, property or franchise taxes and other taxes, fees, duties, levies, withholdings or other similar charges imposed by any Governmental Authority that is a taxing authority ("Taxes"), excluding (i) taxes imposed on or measured by Agent's or any Lender's net income (however denominated) or gross profits, and franchise taxes, imposed by any jurisdiction (or subdivision thereof) under the laws of which Agent or such Lender is organized or in which Agent or such Lender conducts business or, in the case of any Lender, in which its applicable lending office is located, (ii) any branch profit taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Agent or a Lender is located or conducts business; (iii) in the case of any Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement or designates a new lending office; (iv) in the case of any U.S. Lender, any United States federal backup withholding tax; and (v) taxes imposed under FATCA (items in clauses (i) through (v), "Excluded Taxes", and all Taxes other than Excluded Taxes, "Indemnified Taxes"). If any withholding or deduction from any payment to be made by Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then Borrower shall: (*w*) make such withholding or deduction; (*x*) pay directly to the relevant Governmental Authority the full amount required to be so withheld or deducted; (*y*) as promptly as practicable forward to Agent the original or a certified copy of an official receipt or other documentation reasonably satisfactory to Agent evidencing such payment to such Governmental Authority; and (*z*) if the withholding or deduction is with respect to Indemnified Taxes, pay to Agent for the account of Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by each Lender will equal the full amount such Lender would have received had no such withholding or deduction of Indemnified Taxes been required. To the extent that any amounts shall ever be paid by Borrower in respect of Indemnified Taxes, such amounts shall, for greater certainty, be considered to have accrued and to have been paid by Borrower as interest on the Loans.

(b)Borrower shall indemnify Agent and each Lender for any Indemnified Taxes paid by Agent or such Lender, as applicable, on or with respect to any payment by or on account of any obligation of Borrower hereunder, and any additions to Tax, penalties and interest paid by Agent or such Lender with respect to such Indemnified Taxes; *provided* that Borrower shall not have any obligation to indemnify any party hereunder for any Indemnified Taxes or additions to Tax, penalties or interest with respect thereto that result from or are attributable to such party's own gross negligence or willful misconduct. Payment under this Section 3.1(b) shall be made within thirty (30) days after the date Agent or the Lender, as applicable, makes written demand therefor; *provided*, *however*, that if such written demand is made more than one-hundred eighty (180) days after the earlier of (i) the date on which Agent or the Lender, as applicable, pays such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto and (ii) the date on which the applicable Governmental Authority makes written demand on Agent or such Lender, as applicable, for payment of such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto, then Borrower shall not be obligated to indemnify Agent or such Lender for such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto.

(c)Each Foreign Lender that is a party hereto on the Closing Date or becomes an assignee of an interest under this Agreement under Section 10.8.1 after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall deliver to Borrower and Agent on or prior to the date on which such Foreign Lender becomes a party to this Agreement:

(i)Two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE) claiming exemption from withholding of Taxes under an income tax treaty to which the United States of America is a party;

(ii)two duly completed and executed originals of IRS Form W-8ECI;

(iii)a certificate in form and substance reasonably satisfactory to Agent and Borrower claiming entitlement to the portfolio interest exemption under Section 881(c) of the IRC and certifying that such Foreign Lender is not (*x*) a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, (*y*) a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or (*z*) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the IRC, together with two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE); or

(iv)if the Foreign Lender is not the beneficial owner of amounts paid to it hereunder, two duly completed and executed originals of IRS Form W-8IMY, each accompanied by a duly completed and executed IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W- 8BENE), IRS Form W-9 or a portfolio interest certificate described in clause (iii) above from each beneficial owner of such amounts claiming entitlement to exemption from withholding or backup withholding of Taxes.

Each Foreign Lender shall (to the extent legally entitled to do so) provide updated forms to Borrower and Agent on or prior to the date any prior form previously provided under this clause (c) becomes obsolete or expires, after the occurrence of an event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c) or from time to time if requested by Borrower or Agent. Each U.S. Lender shall deliver to Agent and Borrower on or prior to the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of Borrower or Agent) properly completed and executed originals of IRS Form W-9 certifying that such Lender is exempt from backup withholding. Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be required to pay additional amounts to or indemnify any Lender pursuant to this Section 3.1 with respect to any Taxes required to be deducted or withheld (or any additions to Tax, penalties or interest with respect thereto) (A) on the basis of the information, certificates or statements of exemption provided by a Lender pursuant to this clause (c), or (B) if such Lender shall fail to comply with the certification requirements of this clause (c).

(d)Without limiting the foregoing, each Lender shall timely comply with any certification, documentation, information or other reporting necessary to establish an exemption from withholding under FATCA and shall provide any documentation reasonably requested by Borrower or Agent sufficient for Borrower and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such applicable reporting requirements.

(e)If Agent or a Lender determines that it is entitled to or has received a refund of any Taxes for which it has been indemnified by Borrower (or another Loan Party) or with respect to which Borrower (or another Loan Party) shall have paid additional amounts pursuant to this Section 3.1, it shall promptly notify Borrower of such refund, and promptly make an appropriate claim to the relevant Governmental Authority for such refund (if it has not previously done so). If Agent or a Lender receives a refund (whether or not pursuant to such claim) of such Taxes, it shall promptly pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Loan Parties under this Section 3.1 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that Borrower, upon the request of Agent or such Lender, agrees to repay to Agent or such Lender the amount paid over to Borrower in the event Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 3.1(e) shall not be construed to require Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to Borrower or any other Person or to alter its internal practices or procedures with respect to the administration of Taxes.

3.2Increased Cost.

(a)If, after the Closing Date, the adoption of, or any change in, any applicable law, rule or regulation, or any change in the interpretation or administration of any applicable law, rule or regulation by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law, regardless of the date enacted, adopted or issued), or compliance by any Lender with any request or directive (whether or not having the force of law) issued after the Closing Date of any such authority, central bank or comparable agency: (i) shall impose, modify or deem applicable any reserve (including any reserve imposed by the FRB), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by any Lender; or (ii) shall impose on any Lender any other condition affecting its ability to make loans based on the LIBOR Rate or its obligation to make loans based on the LIBOR Rate; and the result of anything described in clauses (i) and (ii) above is to increase the cost to (or to impose a cost on) such Lender of making or maintaining any loan based on the LIBOR Rate, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or under its Note with respect thereto, then upon demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), and without duplication of other payment obligations of Borrower hereunder (including pursuant to Section 3.1), Borrower shall pay directly to such Lender such additional amount as will compensate such Lender for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect. For the avoidance of doubt, this clause (a) will not apply to any such increased costs or reductions resulting from Taxes, as to which Section 3.1 shall govern.

(b)If any Lender shall reasonably determine that any change after the Closing Date in, or the adoption or phase-in after the Closing Date of, any applicable law, rule or regulation regarding capital adequacy, or any change after the Closing Date in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or the compliance by any Lender or any Person controlling such Lender with any request or directive issued after the Closing Date regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law, regardless of the date enacted, adopted or issued), has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such change, adoption, phase-in or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by such Lender or such controlling Person to be material, then from time to time, within five (5) Business Days of demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrower shall pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect.

(c)Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans, becomes aware of the occurrence of an event or the existence of a condition that would entitle such Lender to receive payments under this Section 3.2, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (i) make, issue, fund or maintain its Loans through another office of such Lender, or (ii) take such other measures as such Lender may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender pursuant to this Section 3.2 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Loans or the interests of such Lender; *provided* that such Lender will not be obligated to utilize such other office pursuant to this clause (c) unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this clause (c) (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Agent) shall be conclusive absent manifest error.

3.3Funding Losses.

Borrower hereby agrees that upon demand by any Lender (which demand shall be accompanied by a statement setting forth the basis for the amount being claimed, a copy of which shall be furnished to Agent), Borrower will indemnify such Lender against any net loss or expense which such Lender may sustain or incur (including any net loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund or maintain the Term Loan subject to the LIBOR Rate, as reasonably determined by such Lender) as a result of (a) any payment or prepayment of the Term Loan of such Lender on a date other than the Term Loan Maturity Date or (b) any failure of Borrower to borrow any Loan on a date specified therefor in a notice of borrowing pursuant to this Agreement. For the purposes of this Section 3.3, all determinations shall be made as if such Lender had actually funded and maintained the Term Loan through the purchase of deposits having a maturity corresponding to the Loan and bearing an interest rate equal to the LIBOR Rate during such period of time being measured.

3.4Manner of Funding; Alternate Funding Offices.

Notwithstanding any provision of this Agreement to the contrary, each Lender shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it may determine at its sole discretion. Each Lender may, if it so elects, fulfill its commitment to make the Term Loan by causing any branch or Affiliate of such Lender to make such Loan; *provided* that in such event for the purposes of this Agreement (other than Section 3.1) such Loan shall be deemed to have been made by such Lender and the obligation of Borrower to repay such Loan shall nevertheless be to such Lender and shall be deemed held by it, to the extent of such Loan, for the account of such branch or Affiliate.

3.5Conclusiveness of Statements; Survival.

Determinations and statements of any Lender pursuant to Section 3.1, 3.2, 3.3 or 3.4 shall be conclusive absent demonstrable error. Lenders may use reasonable averaging and attribution methods in determining compensation under Sections 3.1 or 3.2, and the provisions of such Sections shall survive repayment of the Loans, cancellation of the Notes and termination of this Agreement.

Section 4 Conditions Precedent.

The effectiveness of this Agreement and the obligation of each Lender to make its Loan hereunder is subject to the following conditions precedent, each of which shall be reasonably satisfactory in all respects (or waived by) to Agent.

4.1.Prior Debt.

The Prior Debt has been (or concurrently with the initial borrowing will be) paid in full and all related Liens have been (or concurrently with the initial borrowing will be) released.

4.2. Delivery of Loan Documents.

Borrower shall have delivered the following documents in form and substance reasonably acceptable to Agent (and, as applicable, duly executed and dated the Closing Date or an earlier date reasonably satisfactory to Agent):

(a) Loan Documents. The Loan Documents to which any Loan Party is a party, each duly executed by a Responsible Officer of each Loan Party and the other parties thereto (except Agent and the Lenders), and each other Person (except Agent and the Lenders) shall have delivered to Agent and Lenders the Loan Documents to which it is a party, each duly executed and delivered by such Person and the other parties thereto (except Agent and the Lenders).

(b) Financing Statements. Properly completed Uniform Commercial Code financing statements.

(c) Lien Searches. Copies of Uniform Commercial Code and state search reports listing all effective financing statements filed and other Liens of record against any Loan Party, with copies of any financing statements and applicable searches of the records of the U.S. Patent and Trademark Office and the U.S. Copyright Office performed with respect to each Loan Party, all in each U.S. jurisdiction reasonably determined by Agent.

(d) Reserved.

(e) Payoff; Release. Customary payoff letters with respect to the repayment in full of all Prior Debt, termination of all agreements relating thereto and the release of all Liens granted in connection therewith, with Uniform Commercial Code or other appropriate termination statements and documents effective to evidence the foregoing or authorization to file the same.

(f) Authorization Documents. For each Loan Party, such Person's (i) charter (or similar formation document), certified by the appropriate Governmental Authority, (ii) good standing certificates in its jurisdiction of incorporation (or formation) and in each other jurisdiction reasonably requested by Agent, (iii) bylaws (or similar governing document), (iv) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby, and (v) signature and incumbency certificates of its officers executing any of the Loan Documents, all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification, in form and substance reasonably satisfactory to Agent.

(g) Closing Certificate. A certificate executed by a Responsible Officer of Borrower, which shall constitute a representation and warranty by Borrower as of the Closing Date that the conditions contained in Section 4.5 and Section 4.9 have been satisfied.

(h) Opinions of Counsel. Customary opinions of U.S. counsel for each Loan Party in form and substance reasonably acceptable to Agent regarding certain customary closing matters, and Borrower hereby requests such counsel to deliver such opinions and authorizes Agent and Lenders to rely thereon.

(i) Insurance. (Certificates or other evidence of insurance in effect as required by Section 6.3(c) and (d), naming Agent as lenders' loss payee and/or additional insured, as applicable.

(j) Solvency Certificate. Agent shall have received a certificate of the chief financial officer (or, in the absence of a chief financial officer, the chief executive officer or manager) of Borrower, in his or her capacity as such and not in his or her individual capacity, in form and substance reasonably satisfactory to Agent, certifying that Borrower and its Subsidiaries on a consolidated basis are Solvent after giving effect to the transactions and the indebtedness contemplated by the Loan Documents.

(k) Financials. The financial statements, projections and pro forma balance sheet described in Section 5.4.

(l) Reserved.

(m)Consents. Evidence that all necessary consents, permits and approvals (governmental or otherwise) required for the execution, delivery and performance by each Loan Party of the Loan Documents have been duly obtained and are in full force and effect.

4.3.Fees. The Lenders and Agent shall have received all reasonable and documented fees required to be paid, and all reasonable and documented expenses for which invoices have been presented (including the Legal Costs), required to be paid under the Loan Documents on or before the Closing Date; provided that Legal Costs shall be limited to those of a single firm of counsel for the Agent and the Lenders, taken as a whole (and, in the case of an actual or perceived conflict of interest, one additional firm of counsel for all similarly affected indemnitees), and, if reasonably necessary, by a single firm of local counsel in each relevant jurisdiction (which may include a single firm of special counsel acting in multiple jurisdictions) for the Agent and the Lenders taken as a whole (and, in the case of an actual or perceived conflict of interest, one additional firm of local counsel in each relevant jurisdiction for similarly affected indemnitees). All such amounts will be paid with proceeds of the initial advance of the Term Loan and any previous expense deposits made with Agent on or before the Closing Date and will be reflected in the funding instructions given by Borrower to Agent on or before the Closing Date.

4.4.Closing Date Warrant. Agent shall have received the fully executed Closing Date Warrant.

4.5.Representations, Warranties, Defaults. As of the Closing Date, after giving effect to the making of the Loans, (a) all representations and warranties of Borrower set forth in any Loan Document shall be true and correct in all material respects as if made on and as of the Closing Date (except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all material respects as of such earlier date) and (b) no Default or Event of Default shall exist and be continuing. The acceptance of the Term Loan by Borrower shall be deemed to be a certification by Borrower that the conditions set forth in this Section 4.5 have been satisfied.

4.6.Reserved.

4.7.Reserved.

4.8.Reserved.

4.9.No Material Adverse Effect. There shall not be any Debt or material obligations (other than those permitted pursuant to Section 7.1 hereof or as otherwise set forth in the Schedules to this Agreement or in quarterly and annual reports filed by the Company with the SEC) of any nature with respect to any Loan Party which could reasonably be likely to have a Material Adverse Effect.

Section 5 Representations and Warranties.

To induce Agent and Lenders to enter into this Agreement and to induce Lenders to make the Loan hereunder, Borrower represents and warrants to Agent and Lenders, as of the Closing Date that:

5.1.Organization.

Each Loan Party is validly existing and in good standing under the laws of its state or country of jurisdiction as set forth on Schedule 5.1, and is duly qualified to do business in each jurisdiction set forth on Schedule 5.1, which are all of the jurisdictions in which failure to so qualify could reasonably be likely to have or result in a Material Adverse Effect.

5.2.Authorization; No Conflict.

Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, to borrow or guaranty monies hereunder, as applicable, and to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by each Loan Party of this Agreement and the other Loan Documents to which it is a party, as applicable, and the transactions contemplated therein, do not and will not (a) require any consent or approval of any applicable Governmental Authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) any provision of applicable law (including any Health Care Law), (ii) the charter, by-laws or other organizational documents of such Loan Party or (iii) (except as it relates to the

documents governing the Prior Debt, each of which will be terminated and/or paid on the Closing Date) any Material Contract, or any judgment, order or decree, which is binding upon any Loan Party or any of its properties or (c) require, or result in, the creation or imposition of any Lien on any asset of any Loan Party (other than Liens in favor of Agent created pursuant to the Collateral Documents), except, in each case, which could not reasonably be expected to result in a material adverse effect on the ability of the Borrower and its Subsidiaries, taken as a whole, to perform their obligations hereunder.

5.3. Validity; Binding Nature.

Each of this Agreement and each other Loan Document to which any Loan Party is a party, as applicable, is the legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity and concepts of reasonableness.

5.4. Financial Condition.

(a)The audited consolidated financial statements of Borrower for the Fiscal Year 2017 and the unaudited consolidated financial statements of Borrower for the Fiscal Quarters ended March 31, 2018, June 30, 2018 and September 30, 2018, copies of each of which have been delivered pursuant hereto, were prepared in accordance with GAAP and present fairly in all material respects the consolidated financial condition of Borrower as at such dates and the results of its operations for the periods then ended.

(b)The consolidated financial projections (including an operating budget and a cash flow budget) of Borrower and its Subsidiaries for the period ending December 31, 2022 delivered to Agent and Lenders on or prior to the Closing Date (i) were prepared by Borrower in good faith and (ii) were prepared in accordance with assumptions for which Borrower believes it has a reasonable basis, and the accompanying consolidated pro forma unaudited balance sheet of Borrower and its Subsidiaries as at the Closing Date, adjusted to give effect to the financings contemplated hereby as if such transactions had occurred on such date, is consistent in all material respects with such projections (it being understood that the projections are not a guaranty of future performance and that actual results during the period covered by the projections may materially differ from the projected results therein).

5.5. No Material Adverse Change.

Since December 31, 2017, except as disclosed in quarterly and annual reports filed by the Company with the SEC, there has been no change in the financial condition, operations, assets, business or properties of Borrower and its Subsidiaries, taken as a whole, which could not reasonably be expected to result in a material adverse effect on the ability of the Borrower and its Subsidiaries, taken as a whole, to perform their obligations hereunder.

5.6. Litigation.

Except as disclosed in quarterly and annual reports filed by the Company with the SEC, no litigation (including derivative actions), arbitration proceeding or governmental investigation or proceeding is pending or, to Borrower's knowledge, threatened against any Loan Party that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. As of the Closing Date, other than any liability incidental to such litigation or proceedings, no Loan Party has any material Contingent Obligations not listed on Schedule 7.1 or disclosed in the financial statements specified in Section 5.4(a).

5.7. Ownership of Properties; Liens.

Borrower and each other Loan Party owns, or leases or licenses, as applicable, all of its material properties and assets, tangible and intangible, of any nature whatsoever that it purports to own, or lease, as applicable (including Intellectual Property), free and clear of all Liens and charges and claims (including infringement claims with respect to Intellectual Property), except Permitted Liens and as set forth on Schedule 5.7.

5.8.Capitalization.

All issued and outstanding Equity Interests of the Loan Parties that are Subsidiaries of the Borrower are duly authorized, validly issued, fully paid, non-assessable, and such securities were issued in compliance in all material respects with all applicable state and federal laws concerning the issuance of securities. Schedule 5.8 sets forth the authorized Equity Interests of each of the Loan Parties that is a Subsidiary of the Borrower as of the Closing Date as well as all Persons owning more than ten percent (10%) of the outstanding Equity Interests in each such Loan Party as of the Closing Date.

5.9.Pension Plans.

No Loan Party has, nor to Borrower's knowledge has any Loan Party ever had, a Pension Plan.

5.10.Investment Company Act.

No Loan Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company", within the meaning of the Investment Company Act of 1940.

5.11.No Default.

No Event of Default or Default exists or would result from the incurrence by Borrower of any Debt hereunder or under any other Loan Document or as a result of any Loan Party entering into the Loan Documents to which it is a party.

5.12.Margin Stock.

No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. As of the Closing Date, no portion of the Obligations is secured directly or indirectly by Margin Stock.

5.13.Taxes.

Each Loan Party has filed, or caused to be filed, all material federal and material state taxes returns and reports required by applicable U.S. state and U.S. federal law to have been filed by it and has paid all material federal and material state taxes and governmental charges thereby shown to be owing, except any such taxes or charges (a) that are not delinquent or (b) that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books. Except as would not, either individually or in the aggregate, reasonably be expected to result in a material adverse effect on the ability of the Borrower and its Subsidiaries, taken as a whole, to perform their obligations hereunder, each Loan Party has filed, or caused to be filed, all material foreign and other (non-state or U.S.) material tax returns and reports required by foreign law to have been filed by it and has paid all material foreign and other (non-state or U.S.) taxes and governmental charges thereby shown to be owing, except any such taxes or charges (a) that are not delinquent or (b) that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books.

5.14.Solvency.

On the Closing Date, and immediately prior to and after giving effect to the borrowing hereunder and the use of the proceeds hereof, Borrower and its Subsidiaries on a consolidated basis are, and will be, Solvent.

5.15.Environmental Matters.

The on-going operations of Loan Parties comply in all respects with all applicable Environmental Laws, except for non-compliance which could not (if enforced in accordance with applicable law) reasonably be expected to result in a Material Adverse Effect. Each Loan Party has obtained, and maintained in good standing, all licenses, permits, authorizations and registrations required under any Environmental Law and necessary for its respective ordinary course operations, and each Loan Party is in compliance with all material terms and conditions thereof, in each case, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. Neither Borrower, any of its Subsidiaries nor any of their respective properties or operations is subject to any outstanding written order from or agreement with any applicable federal, state, or local Governmental Authority, nor subject to any judicial or docketed administrative proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Substance, in each case, that would reasonably be expected to result in a Material Adverse Effect. There are no Hazardous Substances or other conditions or circumstances existing with respect to any property, or arising from operations prior to the Closing Date, of any Loan Party that would reasonably be expected to result in a Material Adverse Effect.

5.16.Insurance.

Loan Parties and their respective properties are insured with financially sound and reputable insurance companies which are not Affiliates of any Loan Party, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Parties operate, as applicable. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth on Schedule 5.16.

5.17.Information.

All written information (other than projections, or other forward-looking information and information of a general economic or industry nature) heretofore or contemporaneously herewith furnished in writing by Borrower to Agent or any Lender for purposes of or in connection with this Agreement and the transactions contemplated hereby, taken as a whole, is true and accurate in every material respect on the date as of which such information, taken as a whole, and none of such information was materially incomplete by omitting to state any material fact necessary to make such information not materially misleading in any material respect in light of the circumstances under which made (after giving effect to all supplements and updates thereto from time to time) (it being recognized by Agent and Lenders that any projections and forecasts, taken as a whole, provided by Borrower are based on good faith estimates and assumptions believed by Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results).

5.18.Intellectual Property; Products and Services.

(a)Schedule 5.18(a) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all of Loan Parties' Registered Intellectual Property. Each Loan Party owns and possesses or has a license or other right to use all material Intellectual Property as is necessary for the conduct of the business of such Loan Party, and to the knowledge of such Loan Party, without any infringement upon the intellectual property rights of others, except as otherwise set forth on Schedule 5.18(a) hereto.

(b)Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all Products and Services.

(c)With respect to any Product or Service that are material to the business of the Loan Parties, taken as a whole, and that are being tested, manufactured, marketed, sold, and/or delivered by Loan Parties, the applicable Loan Party has received (or the applicable, authorized third parties have received), and such Product or Service is the subject of, all Required Permits needed in connection with the testing, manufacture, marketing, sale, and/or delivery of such Product or Service by or on behalf of Loan Parties as currently conducted. No Loan Party has received any written notice from any applicable Governmental Authority, specifically including the FDA and/or CMS, that such Governmental Authority is conducting an investigation or review (other than a normal routine scheduled inspection) of any Loan Party's (*x*) manufacturing facilities, laboratory facilities, the processes for any such Product that is material to the business of the Loan Parties, taken as a whole, or any related sales or marketing activities and/or the Required Permits related to such material Product, and (*y*) laboratory facilities, the processes for any such Services that are material to the business of the Loan Parties, taken as a whole, or any related sales or marketing activities and/or the Required Permits related to such material Services. There are no material deficiencies or violations of applicable laws in relation to the manufacturing, processes, sales, marketing, or delivery of any such Product or Services that are material to the business of the Loan Parties, taken as a whole, and/or the Required Permits related to such material Product or Services, and, except as disclosed in quarterly and annual reports filed by the Company with the SEC, no Required Permit has been revoked or withdrawn, nor, to the best of Borrower's knowledge, has any such Governmental Authority issued any order or recommendation stating that the development, testing, manufacturing, sales and/or marketing of such material Product or Services by or on behalf of Loan Parties should cease or be withdrawn from the marketplace, as applicable, that, in each case, is material to the business of the Loan Parties, taken as a whole.

(d)Except as set forth on Schedule 5.18(b), (A) there have been no adverse clinical trial results in respect of any Product that is material to the business of the Loan Parties, taken as a whole, since the date on which the applicable Loan Party acquired rights to such material Product, and (B) there have been no product recalls or voluntary product withdrawals from any market in respect of any Product that is material to the business of the Loan Parties, taken as a whole, since the date on which the applicable Loan Party acquired rights to such material Product.

(e)Since January 1, 2016, no Loan Party has experienced any significant failures in its manufacturing of any Product which caused any reduction in Products sold.

5.19.Restrictive Provisions.

No Loan Party is a party to any agreement or contract or subject to any restriction contained in its operative documents which would reasonably be expected to have a Material Adverse Effect.

5.20.Labor Matters.

No Loan Party is subject to any labor or collective bargaining agreement. There are no existing or threatened strikes, lockouts or other labor disputes involving any Loan Party that singly or in the aggregate would reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of each Loan Party are not in violation in any material respect of the Fair Labor Standards Act or any other applicable law, rule or regulation dealing with such matters.

5.21.Material Contracts.

Except for the agreements set forth on Schedule 5.21 or in the exhibit list to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2017 or any quarterly report on Form 10-Q filed by the Company with the SEC in 2018 (collectively, the "Material Contracts"), as of the Closing Date there are no (i) employment agreements covering the management of any Loan Party, (ii) collective bargaining agreements or other labor agreements covering any employees of any Loan Party, (iii) agreements for managerial, consulting or similar services to which any Loan Party is a party or by which it is bound, (iv) agreements regarding any Loan Party, its assets or operations or any investment therein to which such Loan Party and any of holder of 5.0% or more of its equity that has filed a Schedule 13D or 13G are a party, (v) Patent Licenses, Trademark Licenses, Copyright Licenses or other lease or license agreements to which any Loan Party is a party, either as lessor or lessee, or as licensor or licensee (other than software subject to "shrink-wrap" or "click-through" software licenses), (vi) distribution, marketing or supply agreements to which any Loan Party is a party, (vii) customer agreements to which any Loan Party is a party (in each case with respect to any agreement of the type described in the preceding clauses (i), (iii), (iv), (v), (vi) and (vii) requiring payments in the aggregate of more than $500,000 in any year),(viii) partnership agreements pursuant to which any Loan Party is a partner, limited liability company agreements pursuant to which any Loan Party is a member or manager, or joint venture agreements to which any Loan Party is a party (in each case other than the applicable Loan Parties' organizational documents),(ix) real estate leases, or (x) any other agreements or instruments to which any Loan Party is a party, in each case the breach, nonperformance or cancellation of which, would reasonably be expected to have a Material Adverse Effect. Schedule 5.21 sets forth, with respect to each real estate lease agreement to which any Loan Party is a party as of the Closing Date, the address of the subject property. The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than a Loan Party) which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.22.Compliance with Laws; Health Care Laws.

(a)Laws Generally. Each Loan Party is in compliance with, and is conducting and has conducted its business and operations in material compliance with the requirements of all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect.

(b)Health Care Laws. Without limiting the generality of clause (a) above:

(i)No Loan Party is in violation of any of the Health Care Laws, except for any such violation which would not reasonably be expected (either individually and taken as a whole with any other violations) to have a Material Adverse Effect.

(ii)Each Loan Party(either directly or through one or more authorized third parties) has (i) all licenses, consents, certificates, permits, authorizations, approvals, franchises, registrations, qualifications and other rights from, and has made all declarations and filings with, all applicable Governmental Authorities and self-regulatory authorities (each, an "Authorization") necessary to engage in the business conducted by it, except for such Authorizations with respect to which the failure to obtain would not reasonably be expected to have a Material Adverse Effect, and (ii) no knowledge that any Governmental Authority is considering limiting, suspending or revoking any such Authorization, except where the limitation, suspension or revocation of such Authorization would not reasonably be expected to have a Material Adverse Effect. All such Authorizations are valid and in full force and effect and such Loan Party is in material compliance with the terms and conditions of all such Authorizations and with the rules and regulations of the regulatory authorities having jurisdiction with respect to such Authorizations, except where failure to be in such compliance or for an Authorization to be valid and in full force and effect could not reasonably be expected to have a Material Adverse Effect.

(iii)Each Loan Party has received and maintains accreditation in good standing and without limitation or impairment by all applicable accrediting organizations, to the extent required by applicable law or regulation (including any foreign law or equivalent regulation), except where the failure to be so accredited and in good standing without limitation would not reasonably be expected to have a Material Adverse Effect.

(iv)Except where any of the following would not reasonably be expected to have a Material Adverse Effect, no Loan Party has been, or has been threatened to be, (i) excluded from U.S. health care programs pursuant to 42 U.S.C. §1320(a)7 or any related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (48 C.F.R. Subpart 9.4), or other applicable laws or regulations, or (iii) made a party to any other action by any Governmental Authority that may prohibit it from selling products to any governmental or other purchaser pursuant to any federal, state or local laws or regulations.

(v)No Loan Party has received any written notice from the FDA, CMS, or any other Governmental Authority with respect to, nor to Borrower's best knowledge is there, any actual or threatened investigation, inquiry, or administrative or judicial action, hearing, or enforcement proceeding by the FDA, CMS, or any other Governmental Authority against any Loan Party regarding any violation of applicable law, except for such investigations, inquiries, or administrative or judicial actions, hearings, or enforcement proceedings which, individually and in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.23.Existing Indebtedness; Investments, Guarantees and Certain Contracts.

Except as set forth on Schedule 7.1, as permitted by Section 7.1 or in the exhibit list to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2017 or any quarterly report on Form 10-Q filed by the Company with the SEC in 2018, no Loan Party (a) has any outstanding Debt, except Debt under the Loan Documents, or (b) owns or holds any equity or long-term debt investments in, or has any outstanding advances to or any outstanding guarantees for the obligations of, or any outstanding borrowings from, any other Person.

5.24.Affiliated Agreements.

Except as set forth on Schedule 7.7 or in the exhibit list to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2017 or any quarterly report on Form 10-Q filed by the Company with the SEC in 2018, and except for employment agreements entered into with employees, managers, officers and directors from time to time in the ordinary course of business, (i) there are no existing or proposed agreements, arrangements, understandings or transactions between any Loan Party, on the one hand, and such Loan Party's members, managers, managing members, investors, officers, directors, stockholders, other equity holders, employees, or Affiliates or any members of their respective families, on the other hand, and (ii) to Borrower's knowledge, none of the foregoing Persons are directly or indirectly, indebted to or have any direct or indirect ownership or voting interest in, any Affiliate of any Loan Party or any Person with which any Loan Party has a business relationship or which competes with any Loan Party (except that any such Persons may own equity interests in (but not exceeding two percent (2%) of the outstanding equity interests of) any publicly traded company that may compete with Loan Parties).

5.25.Names; Locations of Offices, Records and Collateral; Deposit Accounts.

Since January 1, 2013, no Loan Party has conducted business under or used any name (whether corporate, partnership or assumed) other than such names set forth on Schedule 5.25A. Each Loan Party is the sole owner(s) of all of its respective names listed on Schedule 5.25A, and any and all business done and invoices issued in such names are such Loan Party's sales, business and invoices. Each Loan Party maintains, and since January 1, 2013 has maintained, respective places of business only at the locations set forth on Schedule 5.25B, and all books and records of Loan Parties relating to or evidencing the Collateral are located in and at such locations (other than (i) Deposit Accounts, (ii) Collateral in the possession of Agent, for the benefit of Agent and Lenders, and (iii) other locations disclosed to Agent from time to time in writing). Schedule 7.14 lists all of Loan Parties' Deposit Accounts as of the Closing Date. All of the tangible material Collateral (except for Inventory that is in transit or Equipment that is being repaired) is located exclusively within the United States.

5.26.Non-Subordination.

The payment and performance of the Obligations by Loan Parties are not subordinated in any way to any other obligations of such Loan Parties or to the rights of any other Person.

5.27.Reserved.

5.28.Anti-Terrorism; OFAC.

(a)No Loan Party, nor any Person Controlling or Controlled by a Loan Party, nor, to Borrower's knowledge, any Person having a beneficial interest in a Loan Party, nor any Person for whom a Loan Party is acting as agent or nominee in connection with this transaction (1) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (2) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such Person in any manner that violates of Section 2 of such executive order, or (3) is a Person on the list of Specially Designated Nationals and Blocked Persons or is in violation of the limitations or prohibitions under any other OFAC regulation or executive order.

(b)No part of the proceeds of the Loan will be used, directly or indirectly, by any Loan Party for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

5.29.Security Interest.

Each Loan Party has full right and power to grant to Agent, for the benefit of itself and the other Lenders, a perfected, first priority (subject to Permitted Liens and the Intercreditor Agreement) security interest and Lien on the Collateral pursuant to this Agreement and the other Loan Documents, as applicable, subject to the following sentence. Subject to Section 6.14, upon the execution and delivery of this Agreement and the other Loan Documents, and upon the filing of the necessary financing statements and/or appropriate filings and/or delivery of the necessary certificates evidencing any equity interest, control and/or possession, as applicable, without any further action, Agent will have a good, valid and first priority (subject to Permitted Liens and the Intercreditor Agreement) perfected Lien and security interest in the U.S. Collateral, for the benefit of Agent and Lenders. Borrower is not party to any agreement, document or instrument that conflicts with this Section 5.29 other than in respect of Permitted Liens and the Intercreditor Agreement.

5.30.Survival.

Borrower hereby makes the representations and warranties contained herein with the knowledge and intention that Agent and Lenders are relying and will rely thereon. All such representations and warranties will survive the execution and delivery of this Agreement, the closing and the making of the Loan.

Section 6 Affirmative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, it will:

6.1.Information.

Furnish to Agent (which shall furnish to each Lender):

6.1.1.Annual Report.

Promptly when available and in any event within ninety (90) days after the close of each Fiscal Year (unless Borrower files a Notice of Late Filing (12b-25 Notice) in which case such report shall be due within one hundred five (105) days of the end of the relevant Fiscal Year): a copy of the annual audited report of Borrower and its Subsidiaries for such Fiscal Year, including therein (a) a consolidated balance sheet and statement of earnings and cash flows of Borrower and its Subsidiaries as at the end of and for such Fiscal Year, certified without qualification (except for (x) qualifications relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent certified public accountants and (y) going concern qualification) by independent auditors of recognized standing selected by Borrower, and (b) a comparison with the previous Fiscal Year.

6.1.2.Interim Reports.

(a)Promptly when available and in any event within forty-five (45) days:

(i)after the end of each of the first three Fiscal Quarters of each Fiscal Year (unless Borrower files a Notice of Late Filing (12b-25 Notice) in which case such report shall be due within fifty (50) days of the end of the relevant Fiscal Quarter), unaudited consolidated balance sheets of Borrower and its Subsidiaries as of the end of such Fiscal Quarter, together with consolidated statements of earnings and cash flows for such Fiscal Quarter and for the period beginning with the first day of such Fiscal Year and ending on the last day of such Fiscal Quarter, together with a comparison with the corresponding period of the previous Fiscal Year and a comparison with the budget for such period of the current Fiscal Year (which may be in preliminary form and subject to normal year-end audit adjustments and the absence of footnotes); and

(ii)after the end of the last Fiscal Quarter of each Fiscal Year, unaudited consolidated balance sheets of Borrower and its Subsidiaries as of the end of such Fiscal Quarter, together with consolidated statements of earnings for such Fiscal Quarter and for the period beginning with the first day of such Fiscal Year and ending on the last day of such Fiscal Quarter (which may be in preliminary form and subject to normal year-end audit adjustments and the absence of footnotes).

(b)Together with each such quarterly report to be delivered pursuant to clause (a)(i) above, Borrower shall provide to Agent a written statement of Borrower's management setting forth a summary discussion of Borrower's financial condition, changes in financial condition and results of operations (which requirement shall be satisfied by the filing by Borrower with the SEC of Management's Discussion and Analysis of Financial Condition and Results of Operations).

(c)Promptly when available and in any event within thirty (30) days after the end of each calendar month, monthly management and sales reports of Borrower and its Subsidiaries, which reports shall be in form and substance consistence with the past practice of the Borrower (as such form may be updated in the ordinary course of business of the Borrower.

6.1.3.Revenue-Based Payment Reconciliation.

Upon Agent's request Borrower shall furnish to Agent, a report, in form acceptable to Agent, reconciling the Net Sales, Royalties, and other revenue realized on a consolidated basis in accordance with GAAP, in each case, reported by Borrower to Agent during any reporting period to the Aggregate Revenue reported by Borrower hereunder for such period and the amount of Revenue-Based Payment(s) made by Borrower in connection with such period(s).

6.1.4.Compliance Certificate.

Contemporaneously with the furnishing of a copy of each set of quarterly statements pursuant to Section 6.1.2, a duly completed Compliance Certificate, with appropriate insertions, dated the date of delivery and corresponding to such annual report or such quarterly statements, and signed by the chief financial officer (or other executive officer) of Borrower, containing a computation showing compliance with Section 7.13 and a statement to the effect that such officer has not become aware of any Event of Default or Default that exists or, if there is any such event, describing it and the steps, if any, being taken to cure it.

6.1.5.Reports to Governmental Authorities and Shareholders.

Promptly upon the filing or sending thereof, copies of (a) all regular, periodic or special reports of each Loan Party filed with any Governmental Authority, (b) all registration statements (or such equivalent documents) of each Loan Party filed with any Governmental Authority and (c) all proxy statements or other communications made to the holders of Borrower's Equity Interests generally.

6.1.6.Notice of Default; Litigation.

Promptly upon becoming aware of any of the following, written notice describing the same and the steps being taken by Borrower or the applicable Loan Party affected thereby with respect thereto:

(a)the occurrence of an Event of Default;

(b)any litigation, arbitration or governmental investigation or proceeding not previously disclosed by Borrower to Lenders which has been instituted or, to the knowledge of Borrower, is threatened in writing against Borrower or any other Loan Party or to which any of the properties of any thereof is subject, which in any case would reasonably be expected to have a Material Adverse Effect;

(c)the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, or the failure of any member of the Controlled Group to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a Lien under Section 303(k) of ERISA) or to any Multiemployer Pension Plan, or the taking of any action with respect to a Pension Plan which could result in the requirement that Borrower or any other Loan Party furnish a bond or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan or Multiemployer Pension Plan which could result in the incurrence by any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for withdrawal liability or partial withdrawal from any Multiemployer Pension Plan), or any material increase in the contingent liability of Borrower or any other Loan Party with respect to any post-retirement welfare plan benefit, or any notice that any Multiemployer Pension Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the IRC, that any such plan is or may be terminated, or that any such plan is or may become insolvent;

(d)any cancellation or material adverse change in any material insurance maintained by Borrower or any other Loan Party;

(e)any other event (including (i) any violation of any applicable law, including any applicable Environmental Law, or the assertion in writing of any Environmental Claim or (ii) the enactment or effectiveness of any applicable law, rule or regulation) which could reasonably be expected to have a Material Adverse Effect; or

(f)to the extent that it would reasonably be expected to result in a Material Adverse Effect (i) any suspension, revocation, cancellation or withdrawal of an Authorization required for Borrower or any other Loan Party, is threatened in writing or there is a reasonable basis for the Borrower to believe that such Authorization will not be renewable upon expiration or will be suspended, revoked, cancelled or withdrawn, (ii) Borrower or any other Loan Party enters into any consent decree or order pursuant to any Health Care Law and Regulation, or becomes a party to any judgment, decree or judicial or administrative order pursuant to any Health Care Law, (iii) receipt of any written notice or other written communication from the FDA, CMS, or any other applicable Governmental Authority alleging non- compliance with any applicable Health Care Law, (iv) the occurrence of any violation of any applicable Health Care Law by Borrower or any of the other Loan Parties in the development or provision of Services, and record keeping and reporting to the FDA or CMS that could reasonably be expected to require or lead to an investigation, corrective action or enforcement, regulatory or administrative action, (v) the occurrence of any civil or criminal proceedings relating to Borrower or any of the other Loan Parties or any of their respective employees, which involve a matter within or related to the FDA's or CMS' jurisdiction, (vi) upon obtaining actual knowledge thereof by the Borrower or any other Loan Party, any officer, employee or agent of Borrower (acting in his or her capacity as such) or any of the other Loan Parties is convicted of any crime or has engaged in any conduct for which debarment is mandated or permitted by 21 U.S.C. § 335a, or (vii) upon obtaining actual knowledge thereof by the Borrower or any other Loan Party, any officer, employee or agent of Borrower (acting in his or her capacity as such) or any of the other Loan Parties has been convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

6.1.7.Management Report.

Promptly upon receipt thereof, copies of all detailed financial and management reports submitted to Borrower or any other Loan Party by independent auditors in connection with each annual or interim audit made by such auditors of the books of Borrower or any other Loan Party.

6.1.8.Projections.

As soon as practicable, and in any event not later than thirty (30) days after the commencement of each Fiscal Year, financial projections on a monthly basis of revenues and EBITDA for Borrower and the Subsidiaries for such Fiscal Year prepared in a manner consistent with the projections delivered by Borrower to Agent prior to the Closing Date or otherwise in a manner reasonably satisfactory to Agent, accompanied by a certificate of a chief financial officer (or other executive officer) of Borrower on behalf of Borrower to the effect that (a) such projections were prepared by them in good faith, (b) Borrower believes that it has a reasonable basis for the assumptions contained in such projections and (c) such projections have been prepared in accordance with such assumptions.

6.1.9.Updated Schedules to Guarantee and Collateral Agreement.

Contemporaneously with the furnishing of each annual audit report pursuant to Section 6.1.1, updated versions of the Schedules to the Guarantee and Collateral Agreement showing information as of the date of such audit report (it being agreed and understood that this requirement shall be in addition to the notice and delivery requirements set forth in the Guarantee and Collateral Agreement).

6.1.10.Other Information.

Promptly, from time to time as Agent reasonably requests, Borrower shall deliver or shall cause to be delivered to Agent:

(a)copies of any reports, statements or written materials (other than routine communications (electronic or otherwise) between Borrower or its Affiliates and such entities that are not material in nature in the Borrower's good faith determination) in relation to any Material Contract;

(b)such other information concerning Borrower and any other Loan Party as Agent may reasonably request;

(c)copies of all material communication as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, or any other Governmental Authority; and

(d)copies of (*x*) any written notices or other communications relating to any material breach, default, or event of default with respect to any Debt listed on Schedule 7.1 and (*y*) any other material modifications or amendments entered into in relation to any Debt listed on Schedule 7.1.

6.2.Books; Records; Inspections.

Keep, and cause each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP; permit, and cause each other Loan Party to permit (at any reasonable time during normal business hours and with reasonable advance notice), Agent or any representative thereof to inspect the properties and operations of Borrower or any other Loan Party; provided, however, that in the absence of an Event of Default, the Agent (or representative thereof) may not do any of the foregoing (or seek reimbursement for) more than one visit during any Fiscal Year and to the extent any information is subject to confidentiality obligations with a third party or attorney-client privilege or the sharing of such information is prohibited by law, then such information shall not be required to be delivered; and permit, and cause each other Loan Party to permit, at any reasonable time during normal business hours and with reasonable advance notice (or at any time without notice if an Event of Default exists), Agent or any representative thereof to visit any or all of its offices, to discuss its financial matters with its officers and its independent auditors (and Borrower hereby authorizes such independent auditors to discuss such financial matters with Agent or any representative thereof), and to examine (and, at the expense of Borrower or the applicable Loan Party, photocopy extracts from) any of its books or other records; provided, however, that in the absence of an Event of Default, the Agent (or representative thereof) may not do any of the foregoing (or seek reimbursement for) more than one visit during any Fiscal Year and to the extent any information is subject to confidentiality obligations with a third party or attorney-client privilege or the sharing of such information is prohibited by law, then such information shall not be required to be delivered.

6.3.Conduct of Business; Maintenance of Property; Insurance.

(a)Borrower shall, and shall cause each other Loan Party to, (i) conduct its business substantially in accordance with its current business practices, (ii) engage principally in the same or similar lines of business substantially as heretofore conducted, (iii) collect the Royalties in the ordinary course of business, (iv) maintain all of its Collateral used or useful in its business in good repair, working order and condition (normal wear and tear excepted and except as may be disposed of in the ordinary course of business and in accordance with the terms of the Loan Documents), (v) from time to time to make all necessary repairs, renewals and replacements to the Collateral; (vi) maintain and keep in full force and effect all material Permits and qualifications to do business and good standing in its jurisdiction of formation and each other jurisdiction in which the ownership or lease of property or the nature of its business makes such Permits or qualification necessary and in which failure to maintain such Permits or qualification could reasonably be expected to be, have or result in a Material Adverse Effect; (vii) remain in good standing and maintain operations in all jurisdictions in which it is currently located, except where the failure to remain in good standing or maintain operations would not reasonably be expected to be, have or result in a Material Adverse Effect, and (viii) maintain, comply with and keep in full force and effect all Intellectual Property and Permits necessary to conduct its business, except in each case where the failure to maintain, comply with or keep in full force and effect could not reasonably be expected to be, have or result in a Material Adverse Effect.

(b)Borrower shall keep, and cause each other Loan Party to keep, all property necessary in the business of Borrower or each other Loan Party in good working order and condition (normal wear and tear excepted and except as may be disposed of in the ordinary course of business and in accordance with the terms of the Loan Documents).

(c)Borrower shall maintain, and cause each other Loan Party to maintain, with responsible insurance companies, such insurance coverage as shall be required by all laws, governmental regulations and court decrees and orders applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is customarily maintained by Persons operating in the same geographical region as Borrower that are (A) subject to applicable Health Care Laws, or (B) otherwise delivering to customers products or services similar to the Services (in each case, as determined by Agent in its reasonable discretion). Upon request of Agent or any Lender, Borrower shall furnish to Agent or such Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by Borrower and each other Loan Party. Borrower shall cause each issuer of an insurance policy to provide

Agent with an endorsement (*x*) showing Agent as a lender's loss payee with respect to each policy of property or casualty insurance and naming Agent as an additional insured with respect to each policy of liability insurance promptly upon request by Agent, (*y*) if insurance carrier agrees, providing that the insurance carrier will endeavor to give at least thirty (30) days' prior written notice to Borrower and Agent (or ten (10) days' prior written notice if the Agent consents to such shorter notice) before the termination or cancellation of the policy prior to the expiration thereof and (*z*) reasonably acceptable in all other respects to Agent. Borrower shall execute and deliver, and cause each other applicable Loan Party to execute and deliver, to Agent a collateral assignment, in form and substance reasonably satisfactory to Agent, of each business interruption insurance policy maintained by the Loan Parties.

(d)Unless Borrower provides Agent with evidence of the continuing insurance coverage required by this Agreement, Agent (upon reasonable advance notice to Borrower) may purchase such coverage at Borrower's expense to protect Agent's and Lenders' interests in the Collateral. This insurance shall protect Borrower's and each other Loan Party's interests. The coverage that Agent purchases shall pay any claim that is made against Borrower or any other Loan Party in connection with the Collateral. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained the insurance coverage required by this Agreement. If Agent purchases insurance for the Collateral, as set forth above, Borrower will be responsible for the reasonable costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance, and such costs of the insurance may be added to the principal amount of the Loans owing hereunder.

6.4.Compliance with Laws; Payment of Taxes and Liabilities.

(a) Comply, and cause each other Loan Party to comply, in all material respects with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply would not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party to ensure, that no person who Controls a Loan Party (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a Person designated under Section 1(b), (c) or (d) or Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; (c) without limiting clause (a) above, comply and cause each other Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws and regulations, (d) (i) file, or cause to be filed, all material federal and material state tax returns and reports required by applicable U.S. state and U.S. federal law to have been filed by it to be filed by any Loan Party and (ii) in respect of the taxes and reports described in the prior clause (d)(i), pay, and cause each other Loan Party to pay all such taxes and other material state or federal governmental charges as well as material claims of any kind which, if unpaid, could become a Lien (other than a Permitted Lien) on any of its property, except, in each case, any such taxes or charges (A) that are not delinquent or (B) that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books, (e) (i) except as would not, either individually or in the aggregate, reasonably be expected to result in a material adverse effect on the ability of the Borrower and its Subsidiaries, taken as a whole, to perform their obligations hereunder, file, or cause to be filed, all material foreign and other (non-state or Federal) material tax returns and reports required by foreign law to be filed by any Loan Party and (ii) in respect of the taxes and reports described in the prior clause (e)(i), except as would not, either individually or in the aggregate, reasonably be expected to result in a material adverse effect on the ability of the Borrower and its Subsidiaries, taken as a whole, to perform their obligations hereunder, pay, and cause each other Loan Party to pay, all material foreign other (non- state or federal) material taxes and other material governmental charges against it or any of its property, as well as material claims of any kind which, if unpaid, could become a Lien (other than a Permitted Lien) on any of its property, except, in each case, any such taxes or charges (A) that are not delinquent or (B) that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books. For purposes of this Section 6.4 and Section 5.28, "Control" shall mean, when used with respect to any Person, (*x*) the direct or indirect beneficial ownership of fifty-one percent (51%) or more of the outstanding Equity Interests of such Person or (*y*) the power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

6.5. Maintenance of Existence.

Maintain and preserve, and (subject to Section 7.4) cause each other Loan Party to maintain and preserve, (a) its existence and good standing in the jurisdiction of its organization and (b) its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary, other than any such jurisdiction where the failure to be qualified or in good standing would not reasonably be expected to have a Material Adverse Effect.

6.6. Employee Benefit Plans.

Except to the extent that failure to do so would not be reasonably expected to result in (a) a Material Adverse Effect or (b) liability in excess of $500,000 of any Loan Party, maintain, and cause each other Loan Party to maintain, each Pension Plan (if any) in substantial compliance with all applicable requirements of law and regulations.

6.7. Environmental Matters.

Except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, if any release or disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets of Borrower or any other Loan Party, cause, or direct the applicable Loan Party to cause, the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as is necessary to comply in all material respects with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, Borrower shall, and shall cause each other Loan Party to, comply with each valid federal or state judicial or administrative order requiring the performance at any real property by Borrower or any other Loan Party of activities in response to the release or threatened release of a Hazardous Substance.

6.8. Further Assurances.

(a)Take, and cause each other Loan Party to take, such actions as are necessary or as Agent or the Required Lenders may reasonably request from time to time to ensure that the Obligations of Borrower and each other Loan Party under the Loan Documents are secured by a perfected Lien in favor of Agent (subject only to the Permitted Liens) on substantially all of the assets of Borrower and each Subsidiary of Borrower (as well as all equity interests of each Subsidiary of Borrower) and guaranteed by all of the Subsidiaries of Borrower (including, promptly upon the acquisition or creation thereof, any Subsidiary of Borrower acquired or created after the Closing Date), in each case including (a) the execution and delivery of guaranties, security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing; (b) the delivery of certificated securities (if any) and other Collateral with respect to which perfection is obtained by possession but excluding (i) the requirement for the Loan Parties to execute and deliver leasehold mortgages, and (ii) any other Excluded Property as defined in the Guarantee and Collateral Agreement; and (c) using commercially reasonable efforts to obtain and deliver executed Collateral Access Agreements in relation to any foreign and domestic location where a material portion of the Collateral is held or otherwise stored from time to time (in each case subject to the limitations set forth in the definition of "Excluded Property" set forth in the Guarantee and Collateral Agreement and Section 1.2 hereof).

(b)In the event that Agent and Borrower agree, in their mutual and reasonable discretion, that being a party to the Guarantee and Collateral Agreement, granting of Liens thereunder and the related transactions contemplated herein or therein in relation to any Subsidiary that is organized outside of the United States (a "Foreign Subsidiary") may cause such Foreign Subsidiary to suffer a material, negative tax consequence to the Borrower and/or one of its Subsidiaries, then Agent and Borrower shall work together in good faith, and at Borrower's sole cost and expense, to negotiate and enter into such amendments to this Agreement and such other Loan Documents, all in form and substance acceptable to Agent and Borrower, as may be necessary to limit the obligations hereunder of such Foreign Subsidiary, including amendments to (i) release such Foreign Subsidiary from the Guarantee and Collateral Agreement, (ii) limit any pledge of Equity Interest in such Foreign Subsidiary pursuant to the Guarantee and Collateral Agreement to any applicable "safe-harbor" threshold as of such date of determination, and (iii) as deemed appropriate by Agent in its commercially reasonable discretion, revise this Agreement accordingly to take into account the exclusion of such Foreign Subsidiary, and its assets and income, as a Loan Party pursuant to this Agreement; in each case to the extent necessary to limit any such material, negative tax consequence to the extent commercially reasonable.

6.9.Compliance with Health Care Laws.

(a)Without limiting or qualifying Section 6.4 or any other provision of this Agreement, Borrower will comply, and will cause each other Loan Party and each Subsidiary of Borrower to comply, in all material respects with all applicable Health Care Laws relating to the operation of such Person's business, except where failure to comply would not reasonably be expected to have a Material Adverse Effect.

(b)Borrower will, and will cause each other Loan Party and each Subsidiary to:

(i)Keep in full force and effect all Authorizations required to operate such Person's business under applicable Health Care Laws and maintain any other qualifications necessary to conduct, arrange for, administer, provide services in connection with or receive payment for all applicable Services, except to the extent such failure to keep in full force and effect or maintain would not reasonably be expected to have a Material Adverse Effect.

(ii)Promptly furnish or cause to be furnished to the Agent, with respect to matters that could reasonably be expected to have a Material Adverse Effect, (w) copies of all material written reports of investigational/inspectional observations issued to and received by the Loan Parties or any of their Subsidiaries, and issued by any Governmental Authority relating to such Person's business, (x) copies of all material written establishment investigation/inspection reports (including, but not limited to, FDA Form 483's) issued to and received by Loan Parties or any of their Subsidiaries and issued by any Governmental Authority, (y) copies of all material written warnings and material untitled letters as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS or any other Governmental Authority relating to or arising out of the conduct of the Loan Parties or any of their Subsidiaries applicable to the business of the Loan Parties or any of their Subsidiaries that asserts past or ongoing lack of compliance with any Health Care Law or any other applicable foreign, federal, state or local law or regulation of similar import and (z) written notice of any material investigation or material audit or similar proceeding by the FDA, CMS, or any other Governmental Authority.

(iii)Promptly furnish or cause to be furnished to the Agent, with respect to matters that would reasonably be expected to have a Material Adverse Effect, (in such form as may be reasonably required by Agent) copies of all non-privileged, reports, correspondence, pleadings and other written communications relating to any matter that could lead to the loss, revocation or suspension (or threatened loss, revocation or suspension) of any material Authorization or of any material qualification of any Loan Party or Subsidiary; *provided* that any internal reports to a Person's compliance "hot line" which are promptly investigated and determined to be without merit need not be reported.

(iv)Promptly furnish or cause to be furnished to the Agent notice of all material fines or penalties imposed by any Governmental Authority under any Health Care Law against any Loan Party or any of its Subsidiaries.

(v)Promptly furnish or cause to be furnished to the Agent notice of all material written allegations by any Governmental Authority (or any agent thereof) of fraudulent activities of any Loan Party or any of its Subsidiaries in relation to the provision of clinical research or related services.

Notwithstanding anything to the contrary in any Loan Document, no Loan Party or any of its Subsidiaries shall be required to furnish to Agent or any Lender patient- related or other information, the disclosure of which to Agent or such Lender is prohibited by any applicable law.

6.10.Cure of Violations.

If there shall occur any breach of Section 6.9, Borrower shall take such commercially reasonable action as is necessary to validly challenge or otherwise appropriately respond to such fact, event or circumstance within any timeframe required by applicable Health Care Laws, and shall thereafter diligently pursue the same.

6.11.Corporate Compliance Program.

Maintain, and will cause each other Loan Party to maintain on its behalf, a corporate compliance program reasonably designed to ensure compliance by the Borrower, its Subsidiaries, with laws, ordinances, rules, regulations and requirements that are, in each case, material and applicable; provided, that, it is acknowledged and agreed that the Loan Parties' corporate compliance program as of the Closing Date, and any amendment, restatement, amendment and restatement, modification or supplement that does not result in a materially adverse change to the ability of Borrower and its Subsidiaries to comply with applicable laws, ordinances, rules, regulations and requirements (in each Loan Party's good faith determination), satisfies the Loan Parties' obligations under this Section 6.11. Until the Obligations have been Paid in Full, Borrower will modify such corporate compliance program from time to time (and cause the other Loan Parties and their Subsidiaries to modify their respective corporate compliance programs) as may be reasonable to attempt to ensure continuing compliance in all material respects with all material applicable laws, ordinances, rules, regulations and requirements (including, in all applicable material respects, any material Health Care Laws). Borrower will permit Agent and/or any of its outside consultants to review such corporate compliance programs from time to time upon reasonable notice and during normal business hours of Borrower.

6.12.Payment of Debt.

Except as otherwise prescribed in the Loan Documents, Borrower shall pay, discharge or otherwise satisfy when due and payable (subject to applicable grace periods and, in the case of trade payables, to ordinary course of payment practices) all of its material obligations and liabilities, except when (i) the amount or validity thereof is being contested in good faith by appropriate proceedings and appropriate reserves shall have been made in accordance with GAAP consistently applied or (ii) failure to do so would not reasonably be expected to result in a Material Adverse Effect.

6.13.[Reserved].

6.14.Post-Closing Covenant.

(a)Within sixty (60) days of the Closing Date (or such longer period as permitted by Agent in its reasonable discretion), Borrower shall deliver the fully-executed Account Control Agreements, in form and substance reasonably satisfactory to Agent, as requested by Agent, in relation to each of the Deposit Accounts (other than any Exempt Accounts) set forth on Schedule 7.14 hereto.

(b)Within sixty (60) days of the Closing Date (or such longer period as permitted by Agent in its reasonable discretion), Borrower shall use commercially reasonable efforts to deliver the fully- executed Collateral Access Agreements, in form and substance reasonably satisfactory to Agent, as reasonably requested by Agent with respect to the Borrower's leased location at 4 Cromwell, Irvine, CA 92618.

(c)Within sixty (60) days of the Closing Date (or such longer period as permitted by Agent in its reasonable discretion), Borrower shall deliver insurance endorsements naming Agent as lenders' loss payee and/or additional insured, as applicable, in form and substance reasonably satisfactory to Agent.

(d)Within one-hundred and twenty (120) days of the Closing Date (or such longer period as permitted by Agent in its reasonable discretion), the Borrower shall liquidate, wind up or dissolve each of Biolase Australia Pty. Ltd., an entity organized under the laws of Australia and Biolase (NZ) Limited, an entity organized under the laws of New Zealand.

Section 7 Negative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, in its sole discretion, it will:

7.1.Debt.

Not, and not permit any other Loan Party to, create, incur, assume or suffer to exist any Debt, except:

(a)Obligations under this Agreement and the other Loan Documents;

(b)Debt under any Approved AR Loan Facility and extensions, renewals and re- financings thereof; *provided* that the aggregate principal amount (excluding an amount equal to accrued interest, premiums, fees and expenses associated therewith) at any time outstanding in relation to such Approved AR Loan Facility shall not exceed $5,000,000; *provided* that, (A) the principal amount of such Debt (excluding an amount equal to accrued interest, premiums, fees and expenses associated therewith) is not increased pursuant to any such renewal, extension, refunding or refinancing, and (B) any such refinancing renewal, extension or refunding shall continue to constitute usage of any basket under which such Debt was originally incurred, created or assumed;

(c)Subordinated Debt and extensions, renewals, and re-financings thereof;

(d)Debt secured by Liens permitted by Section 7.2(b), Section 7.2(d) or Section 7.2(o) and extensions, renewals and re-financings thereof; *provided* that the aggregate principal amount of all such Debt (excluding an amount equal to accrued interest, premiums, fees and expenses associated therewith or with any extension, renewal or re-financing) permitted under Section 7.2(d) at any time outstanding shall not exceed $500,000;

(e)Debt with respect to any Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(f)Debt (i) arising from customary agreements for indemnification related to sales of goods, licensing of intellectual property or adjustment of purchase price or similar obligations in any case incurred in connection with the acquisition or disposition of any business, assets or Subsidiary of Borrower otherwise permitted hereunder, (ii) representing deferred compensation to employees of any Loan Party incurred in the ordinary course of business, or (iii) representing customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(g)Debt with respect to cash management obligations and other Debt in respect of automatic clearing house arrangements, netting services, overdraft protection and similar arrangements, and including, without limitation, treasury, depository, credit or debit card, “p-cards,” electronic funds transfer, foreign exchange services, zero balance arrangements, liquidity management tools (such as physical pooling or cash concentration) and other cash management arrangements, including any other arrangement designated in good faith by any Borrower to Agent as being a “cash management arrangement,” in each case incurred in the ordinary course of business;

(h)Debt incurred in connection with surety bonds, performance bonds or letters of credit for worker’s compensation, unemployment compensation and other types of social security and otherwise in the ordinary course of business or referred to in Section 7.2(e);

(i)Debt described on Schedule 7.1 as of the Closing Date, and any extension or renewal thereof so long (i) as the principal amount thereof is not increased, (ii) as the terms and conditions of such extension, renewal or refinancing are substantially identical to the original Debt, (iii) as to such extension or renewal, no collateral or other form of security is granted by Borrower in connection therewith; and

(j)unsecured Debt (which for further clarity shall exclude accounts payable, take-or- pay contracts, and other current liabilities incurred by Loan Parties in the ordinary course of business), in addition to the Debt listed above, in an aggregate principal outstanding amount (excluding an amount equal to accrued interest, premiums, fees and expenses associated therewith or with any extension, renewal or re- financing) not at any time exceeding $250,000 and extensions, renewals and re-financings thereof;

(k)to the extent constituting Debt, obligations due by any Loan Party or Subsidiary thereof under such Loan Party's or their respective Subsidiaries' Product warranty programs;

(l)Debt arising from cash pooling arrangements among the Loan Parties and their Subsidiaries; and

(m)Debt incurred in connection with the financing of insurance premiums in the ordinary course of business.

7.2. Liens.

Not, and not permit any other Loan Party to, create or permit to exist any Lien on any of its real or personal properties, assets or rights of whatsoever nature (whether now owned or hereafter acquired), except:

(a)Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement has occurred;

(b)Liens arising in the ordinary course of business (including without limitation (i) Liens of carriers, warehousemen (including customs warehousemen), mechanics, landlords and materialmen and other similar Liens imposed by law and (ii) Liens incurred in connection with worker's compensation, unemployment compensation and other types of social security or in connection with surety bonds, bids, tenders, performance bonds, trade contracts not for borrowed money, licenses, statutory obligations and similar obligations) for sums not overdue or being diligently contested in good faith by appropriate proceedings and not involving any deposits or advances or borrowed money or the deferred purchase price of property or services and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement of which is effectively stayed;

(c)Liens described on Schedule 7.2 as of the Closing Date (other than Liens being released at the closing under this Agreement) and the replacement, extension or renewal of any Lien permitted by this clause (c) upon or in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof (excluding an amount equal to accrued interest, premiums, fees and expenses associated therewith or with any extension, renewal or re-financing));

(d)(i) Liens arising in connection with Capital Leases (and attaching only to the property being leased), (ii) Liens on any property securing debt incurred for the purpose of financing all or any part of the cost of acquiring or improving such property; *provided* that any such Lien attaches to such property within ninety (90) days of the acquisition or improvement thereof and attaches solely to the property so acquired or improved, and (iii) the replacement, extension or renewal of a Lien permitted by one of the foregoing clauses (i) or (ii) in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof (excluding an amount equal to accrued interest, premiums, fees and expenses associated therewith or with any extension, renewal or re-financing));

(e)Liens (i) relating to litigation bonds and attachments, appeal bonds, judgments and other similar Liens arising in connection with any judgment or award that is not an Event of Default hereunder or posted to stay any such judgment or award pending appeal thereof and (ii) in connection with Debt incurred under Section 7.1(g);

(f)easements, rights of way, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of Borrower or any Subsidiary;

(g)Liens arising under the Loan Documents;

(h)any interest or title of a licensor, sublicensor, lessor or sublessor under any license, lease, sublicense or sublease (including non-exclusive licenses and sublicenses) agreement entered into in the normal course of business, only to the extent limited to the item licensed or leased (and proceeds thereof);

(i)Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) customary set off rights of deposit banks with respect to deposit accounts maintained at such deposit banks or which are contained in standard agreements for the opening of an account with a bank;

(j)Liens arising from precautionary filings of financing statements under the Uniform Commercial Code or similar legislation of any applicable jurisdiction in respect of operating leases permitted hereunder and entered into by a Loan Party in the ordinary course of business;

(k)Liens attaching to cash earnest money deposits in connection with any letter of intent or purchase agreement permitted hereunder or indemnification other post-closing escrows or holdbacks;

(l)Liens incurred with respect to Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(m)Liens to secure obligations of a Loan Party to another Loan Party;

(n)Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;

(o)Liens securing an Approved AR Loan Facility;

(p)Liens not otherwise permitted by this Section 7.2 so long as neither (i) the aggregate outstanding principal amount of the obligations secured thereby nor (ii) the aggregate fair market value (determined, in the case of each such Lien, as of the date such Lien is incurred) of the assets subject thereto exceeds, at any time, $250,000;

(q)Liens on insurance policies and the proceeds thereof securing the financing of premiums with respect thereto;

(r)Liens of landlords or mortgagees of landlords arising by operation of law or pursuant to the terms of real property leases;

(s)Liens on goods in favor of customs and revenue authorities which secure payment of customs duties in connection with the import and export of goods and Products; and

(t)Liens on cash collateral with respect to Hedge Agreements.

7.3. Dividends; Redemption of Equity Interests.

Not (a) declare, pay or make any dividend or distribution on any Equity Interests or other securities or ownership interests, (b) apply any of its funds, property or assets to the acquisition, redemption or other retirement of any Equity Interests or other securities or interests or of any options to purchase or acquire any of the foregoing, (c) otherwise make any payments, dividends or distributions to any member, manager, managing member, stockholder, director or other equity owner in such Person's capacity as such other than in compliance with Section 7.7 hereof, or (d) make any payment of any management, service or related or similar fee to any Affiliate or holder of Equity Interests of Borrower other than in compliance with Section 7.7 hereof; *provided*, *however*:

(a)any Subsidiary of Borrower may make payments to the holders of its Equity Interests ratably in accordance with their respective ownership interests;

(b)Borrower and any Subsidiary may pay dividends or distributions to the holders of its Equity in the form of additional Equity Interests;

(c)any Subsidiary may pay dividends or distributions to Borrower, in amounts sufficient to permit Borrower, as the case may be, to (i) pay corporate overhead expenses incurred in the ordinary course of business, (ii) pay all fees and expenses, if any, incurred in connection with the transactions expressly contemplated by this Agreement and the other Loan Documents, and to allow Borrower to perform its obligations under or in connection with the Loan Documents to which it is a party and (iii) pay reasonable and necessary expenses (including professional fees and expenses) incurred by Borrower, as applicable, in connection with (A) registrations and exchange listings of equity or debt securities and maintenance of the same, (B) compliance with reporting obligations under, or in connection with compliance with, federal or state laws or under this Agreement or any of the other Loan Documents and (C) indemnification and reimbursement of directors, officers and employees in respect of liabilities relating to their serving in any such capacity, or obligations in respect of director and officer insurance (including premiums therefor);

(d)repurchases of Equity Interests deemed to occur as a result of the surrender of such Equity Interests for cancellation in connection with the exercise of stock options, warrants or other securities convertible into or exchangeable for Equity Interests or similar rights issued with respect to any of such Equity Interests, shall, in each case, be permitted;

(e)each Loan Party and each Subsidiary may (and may incur an obligation to) purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new common Equity Interests if after giving effect to such payment on a pro-forma basis no Default or Event of Default shall have occurred and be continuing at the time of the declaration of such payment;

(f)Borrower and each Subsidiary may pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (including any options, warrants or other securities convertible into or exchangeable for Equity Interests or similar rights issued with respect to any of such Equity Interests) of Borrower held, directly or indirectly, by any future, present or former director, officer, employee, member of management, manager or consultant (or any affiliates, spouses, former spouses, domestic partners, former domestic partners, other immediate family members, successors, executors, administrators, heirs, legatees or distributees of any such director, officer, employee, member of management, manager or consultant) of Borrower or any of its Subsidiaries pursuant to any employee, management or director equity plan, employee, management or director stock option plan or any other employee, management or director benefit plan or any agreement (including any stock option or stock appreciation or similar rights plan, any management, director and/or employee stock ownership or incentive plan, stock subscription plan, employment termination agreement or any other employment agreements or equity holders' agreement) with any such director, officer, employee, member of management, manager or consultant; and

(g)(i) Borrower and each Subsidiary may make payments to pay cash in lieu of fractional shares in connection with any exercise of warrants, options, or other securities convertible into or exchangeable for Equity Interests of such Borrower or Subsidiary, as applicable, or in connection with any other dividend, split or combination thereof, in each case, otherwise permitted hereunder and (ii) the Borrower and each Subsidiary may repurchase Equity Interests upon the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests if such Equity Interests represents all or a portion of the exercise price of such warrants, options or other securities convertible into or exchangeable for Equity Interests as part of a "cashless" exercise.

7.4. Mergers; Consolidations; Asset Sales.

(a) Not be a party to any amalgamation or any other form of Division, merger or consolidation, unless agreed to by Agent in its sole discretion, nor permit any other Loan Party to be a party to any Division, amalgamation or any other form of merger or consolidation, unless agreed to by Agent in its reasonable discretion; *provided* that any Loan Party may be a party to a Division, amalgamation or any other form of merger or consolidation to the extent (x) all Person(s) servicing such Division, amalgamation or other form of merger or consolidation remain and/or become a Loan Party in accordance with Section 6.8, (y) other than in respect of a Division, amalgamation or other merger or consolidation of the Borrower, if the resulting Person(s) do not become Loan Parties, the Investment in such Person is permitted by Section 7.10 and all material Collateral of any Loan Parties involved in such transaction remains subject to the lien in favor of Agent in existence prior to such transaction or (z) the Loan Party survives Division, amalgamation or any other form of merger or consolidation and all material Collateral of any Loan Parties involved in such transaction remains subject to the lien in favor of Agent in existence prior to such transaction.

(b) Not, and not permit any other Loan Party to, sell, transfer, dispose of, convey, lease or license any of its real or personal property assets or Equity Interests, except for (i) sales of Inventory in the ordinary course of business for at least fair market value, (ii) transfers, destruction or other disposition of obsolete or worn-out assets in the ordinary course of business and (iii) any other sales and dispositions of assets (excluding (A) any Equity Interests of Borrower or any Subsidiary or (B) sales of Inventory described in clause (i) above) for at least fair market value (as determined by the Loan Parties) so long as the net book value of all assets sold or otherwise disposed of in any Fiscal Year does not exceed $500,000 with respect to sales and dispositions made pursuant to this clause (iii), (iv) sales and dispositions to Loan Parties, (v) leases, licenses, subleases and sublicenses entered into in the ordinary course of business, (vi) sales and exchanges of Cash Equivalent Investments to the extent otherwise permitted hereunder, (vii) Liens expressly permitted under Section 7.2 and transactions expressly permitted by clause (a) or Section 7.10, (viii) sales or issuances of Equity Interests by Borrower, (ix) issuances of Equity Interests by any Loan Party to any other Loan Party, (x) dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Loan Parties, (xi) a cancellation of any intercompany Debt among the Loan Parties, (xii) a disposition which constitutes an insured event or pursuant to a condemnation, expropriation, "eminent domain" or similar proceeding, (xiii) sales and dispositions among Subsidiaries of Borrower, (xiv) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged and (xv) the sale, transfer, disposition of, conveyance, lease or license of owned real estate located in Germany as of the Closing Date.

(c) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the prior consent of Agent shall not be required in connection with the licensing or sublicensing of Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties executed (i) in the ordinary course of a Loan Party's business, (ii) on an arms-length basis and (iii) prior to the occurrence of an Event of Default.

(d) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, each of Biolase Australia Pty. Ltd., an entity organized under the laws of Australia and Biolase (NZ) Limited, an entity organized under the laws of New Zealand may be liquidated, wound up or dissolved, as applicable.

7.5. Modification of Organizational Documents.

Not permit the charter, by-laws or other organizational documents of Borrower or any other Loan Party to be amended or modified in any way which could reasonably be expected to materially and adversely affect the interests of Agent or any Lender. An amendment to Borrower's certificate of incorporation to increase Borrower's authorized capital stock shall not be deemed to adversely affect the interests of Agent or any Lender.

7.6. Use of Proceeds.

Use the proceeds of the Loans solely to refinance the Prior Debt and otherwise for working capital, for fees and expenses related to the negotiation, execution, delivery and closing of this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby and for other general business purposes of Borrower and its Subsidiaries, and not use any proceeds of any Loan or permit any proceeds of any Loan to be used, either directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of "purchasing or carrying" any Margin Stock.

7.7. Transactions with Affiliates.

Not, and not permit any other Loan Party to, enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its other Affiliates, which is on terms which are less favorable than are obtainable from any Person which is not one of its Affiliates, other than (i) reasonable compensation and indemnities to, benefits for, reimbursement of expenses of, and employment arrangements with, officers, employees and directors in the ordinary course of business, (ii) transactions among Loan Parties, (iii) transactions permitted by Section 7.3 and Section 7.10, and (iv) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.7.

7.8. Inconsistent Agreements.

Not, and not permit any other Loan Party to, enter into any agreement containing any provision which would (a) be violated or breached by any borrowing by Borrower hereunder or by the performance by Borrower or any other Loan Party of any of its Obligations hereunder or under any other Loan Document, (b) prohibit Borrower or any other Loan Party from granting to Agent and Lenders a Lien on any of its assets or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any other Loan Party to (i) pay dividends or make other distributions to Borrower or any other Subsidiary, or pay any Debt owed to Borrower or any other Subsidiary, (ii) make loans or advances to Borrower or any other Loan Party or (iii) transfer any of its assets or properties to Borrower or any other Loan Party, other than, in the cases of clauses (b) and (c), (A) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and other secured Debt or to leases and licenses permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Debt or the property leased or licensed, (B) customary provisions in leases and other contracts restricting the assignment thereof, (C) restrictions and conditions imposed by law, (D) those arising under any Loan Document or any loan documents governing an Approved AR Loan Facility, and (E) customary provisions in contracts for the disposition of any assets; *provided* that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder.

7.9. Business Activities.

Not, and not permit any other Loan Party to, engage in any line of business other than the businesses engaged in on the Closing Date and businesses reasonably related thereto. Not, and not permit any other Loan Party to, issue any Equity Interest other than (a) Equity Interests of Borrower that do not require any cash dividends or other cash distributions to be made prior to the Obligations being Paid in Full, (b) any issuance by a Subsidiary to Borrower or another Subsidiary in accordance with Section 7.4 or Section 7.10, or (c) any issuance of directors' qualifying shares as required by applicable law; *provided, however,* that the issuance of shares of convertible preferred stock of Borrower on terms substantially similar to the Series D Participating Convertible Preferred Stock shall not be prohibited by the foregoing.

7.10. Investments.

Not, and not permit any other Loan Party to, make or permit to exist any Investment in any other Person, except the following:

(a) The creation of any Wholly-Owned Subsidiary and contributions by Borrower to the capital of any Wholly-Owned Subsidiary of Borrower, so long as the recipient of any such contribution has guaranteed the Obligations and such guaranty is secured by a pledge of all of its equity interests and substantially all of its real and personal property, in each case in accordance with Section 6.8;

(b)Cash Equivalent Investments and Investments by and among Loan Parties and their Subsidiaries arising from ordinary course cash management operations or similar arrangements by and among the Loan Parties and their respective Subsidiaries;

(c)bank deposits and obligations arising as permitted by Section 7.1(g) and Section 7.1(l), in each case, in the ordinary course of business;

(d)Investments listed on Schedule 7.10 as of the Closing Date, together with any roll- over or reinvestment of such Investment(s);

(e)any purchase or other acquisition by Borrower or any Wholly-Owned Subsidiary of Borrower of the assets or equity interests of any Subsidiary of Borrower;

(f)(i) transactions permitted by, and Investments received or made pursuant to transactions permitted in, Section 7.1, Section 7.3 and Section 7.4 and (ii) Contingent Obligations in respect of Obligations arising in the ordinary course of business and not otherwise constituting Debt;

(g)Hedging Obligations permitted under Section 7.1(d);

(h)advances given to employees and directors in existence as of the Closing Date and as listed on Schedule 7.10, which amounts shall not be increased without Agent's prior written consent in its sole discretion;

(i)lease, utility, insurance, taxes and other similar deposits made in the ordinary course of business and trade credit extended in the ordinary course of business;

(j)Investments consisting of the non-cash portion of the consideration received in respect of Dispositions permitted hereunder;

(k)Investments permitted by Borrower or any Loan Party as a result of the receipt of insurance and/or condemnation or exproriation proceeds in accordance with the Loan Documents;

(l)Investments (i) received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes or (ii) in securities of customers and suppliers received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and bona fide disputes with, customers and suppliers, and, in each case, extensions, modifications and renewals thereof;

(m)Loans and advances to suppliers and customers or otherwise made in connection with the purchase of goods and services, in each case, in the ordinary course of business; and

(n)other Investments in an aggregate amount not to exceed $1,000,000 during the term of this Agreement.

7.11.Restriction of Amendments to Certain Documents.

Not, nor permit any Loan Party to, amend or otherwise modify in any material manner, or waive any rights under, any provisions of (i) any loan documents governing any Approved AR Loan Facility (except that the terms of any Approved AR Loan Facility may be amended, modified or otherwise waived to the extent permitted under the applicable Intercreditor Agreement, or (ii) any of the Material Contracts (or any replacements thereof) set forth on Schedule 7.11 hereto (as such schedule may be updated from time to time as reasonably determined by the Agent and the Borrower).

7.12.Fiscal Year.

Not change its Fiscal Year.

7.13.Financial Covenants.

7.13.1.Consolidated Unencumbered Liquid Assets.

Not permit the Consolidated Unencumbered Liquid Assets, (i) as of any date of determination prior to December 31, 2023, to be less than $1,500,000 and (ii) as of any date of determination on or after December 31, 2023, to be less than $2,500,000.

7.13.2.Conditional Minimum Aggregate Revenue.

Not permit Aggregate Revenue for the consecutive month period ending on the last Business Day of any Fiscal Quarter set forth in the table below (designated by "Q" in the table below) to be less than the applicable amount set forth in the table below for such period.

Minimum LTM Aggregate Revenue as of the end of:	
Six (6) month period ending Q4 2021	$19,000,000
Nine (9) month period ending Q1 2022	$30,000,000
Twelve (12) month period ending Q2 2022	$37,000,000
Twelve (12) month period ending Q3 2022	$38,000,000
Twelve (12) month period ending Q1 2023 and each Fiscal Quarter thereafter	$40,000,000

7.13.3.Conditional Minimum EBITDA.

To the extent that the Consolidated Unencumbered Liquid Assets are less than $3,500,000 as of the last day of any Fiscal Quarter set forth in the table below (designated by "Q" in the table below), not permit the EBITDA of Borrower and its Subsidiaries for the consecutive month period ending on the last Business Day of such Fiscal Quarter to be less than the applicable amount set forth in the table below for such period.

Minimum LTM EBITDA as of the end of:	
Twelve (12) month period ending Q1 2024 and each Fiscal Quarter thereafter	$1

7.14.Deposit Accounts.

Not, and not permit any other Loan Party, to maintain or establish any new Deposit Accounts other than (a) Exempt Accounts and (b) the Deposit Accounts set forth on Schedule 7.14 (which Deposit Accounts constitute all of the Deposit Accounts, securities accounts or other similar accounts maintained by the Loan Parties as of the Closing Date) without prior written notice to Agent. To the extent such Deposit Account is not an Exempt Account or otherwise subject to the control of the lender(s) in relation to an Approved AR Loan Facility, Borrower or such other applicable Loan Party and the bank or other financial institution at which the account is to be opened after the Closing Date shall promptly enter into an Account Control Agreement, in form and substance reasonably satisfactory to Agent, as requested by Agent.

7.15.Subsidiaries.

Not, and not permit any other Loan Party to, in each case without the prior written consent of Agent in its sole discretion, establish or acquire any Subsidiary unless (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) such Subsidiary shall have assumed and joined each Loan Document as a Loan Party pursuant to documentation acceptable to Agent in its sole discretion and (iii) all other Loan Parties shall have reaffirmed all Obligations as well as all representations and warranties under the Loan Documents (except to the extent such representations and warranties specifically relate to a prior date only).

7.16.Regulatory Matters.

To the extent that any of the following would reasonably be expected to result in a Material Adverse Effect, not, and not permit any other Loan Party to, (i) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any Governmental Authority; or commit a material act, make a material statement, or fail to make a statement that could otherwise reasonably be expected to provide the basis for CMS or any Governmental Authority to undertake material adverse action against such Loan Party, (ii) introduce into commercial distribution any FDA Products which are, upon their shipment, adulterated or misbranded in violation of 21 U.S.C. § 331, (iii) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of the FD&C Act or that could otherwise reasonably be expected to provide the basis for the FDA or any other Governmental Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (September 10, 1991), or (iv) otherwise incur any material liability (whether actual or contingent) for failure to comply with Health Care Laws.

7.17.Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names.

Borrower shall not, nor shall it permit any Loan Party to, (a) change its jurisdiction of organization or change its corporate name without thirty (30) calendar days (or such shorter period as Agent may agree in its sole discretion) prior written notice to Agent, (b) amend, alter, suspend, terminate or make provisional in any material way, any Permit, the suspension, amendment, alteration or termination of which could reasonably be expected to be, have or result in a Material Adverse Effect without the prior written consent of Agent, which consent shall not be unreasonably withheld, (c) wind up, liquidate or dissolve (voluntarily or involuntarily) or commence or suffer any proceedings seeking or that would result in any of the foregoing, (d) amend, modify, restate or change any insurance policy in a manner adverse to Agent or Lenders or otherwise allow its aggregate products liability insurance coverage to be less than $5,000,000 at any time, (e) engage, directly or indirectly, in any business other than the business it is engaged in on the Closing Date and business reasonably related thereto and/or sell all or any material portion of its assets without Agent's prior written approval in its sole discretion, (f) change its federal tax employer identification number or similar tax identification number under the relevant jurisdiction or establish new or additional trade names without providing not less than thirty (30) days (or such shorter period as Agent may agree in its sole discretion) advance written notice to Agent, or (g) revoke, alter or amend any Tax Information Authorization (on IRS Form 8821 or otherwise) or other similar authorization mandated by the relevant Government Authority given to any Lender.

Section 8 Events of Default; Remedies.

8.1Events of Default.

Each of the following shall constitute an Event of Default under this Agreement:

8.1.1Non-Payment of Credit.

(a) Default in the payment when due of all outstanding Obligations on the Termination Date; (b) default in the payment of any Revenue-Based Payment on the applicable Payment Date; or (c) without duplication of clause (b) hereof, default, and continuance thereof for five (5) Business Days, in the payment when due of any fee, or other amount payable by any Loan Party hereunder or under any other Loan Document.

8.1.2Default Under Other Debt.

Any (i) "Event of Default", or such similar term, as defined in the loan documents governing any Approved AR Loan Facility or (ii) default shall occur under the terms applicable to any Debt of any Loan Party (excluding the Obligations) in an aggregate principal amount (for all such Debt so affected and including undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding $500,000.

8.1.3Bankruptcy; Insolvency.

(a)Any Loan Party shall (i) be unable to pay its debts generally as they become due, (ii) file a petition under any insolvency statute, (iii) make a general assignment for the benefit of its creditors, (iv) commence a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property or shall otherwise be dissolved or liquidated, or (v) make an application or commence a proceeding seeking reorganization or liquidation or similar relief under any Debtor Relief Law or any other applicable law; or

(b)(i) a court of competent jurisdiction shall (A) enter an order, judgment or decree appointing a custodian, receiver, trustee, liquidator or conservator of any Loan Party or the whole or any substantial part of any of Loan Party's properties, which shall continue unstayed and in effect for a period of sixty (60) calendar days, (B) approve a petition or claim filed against any Loan Party seeking reorganization, liquidation, appointment of a receiver, interim receiver, liquidator, conservator, trustee or special manager or similar relief under the any Debtor Relief Law or any other applicable law, which is not dismissed within sixty (60) calendar days or, (C) under the provisions of any Debtor Relief Law or other applicable law or statute, assume custody or control of any Loan Party or of the whole or any substantial part of any of Loan Party's properties, which is not irrevocably relinquished within sixty (60) calendar days, or (ii) there is commenced against any Loan Party any proceeding or petition seeking reorganization, liquidation or similar relief under any Debtor Relief Law or any other applicable law or statute, which (A) is not unconditionally dismissed within sixty (60) calendar days after the date of commencement, or (B) is with respect to which Borrower takes any action to indicate its approval of or consent.

8.1.4Non-Compliance with Loan Documents.

(a) Any failure by Borrower to comply with or to perform any covenant set forth in Section 7 or Section 10.22(b); or (b) failure by any Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8) and continuance of such failure described in this clause (b) for thirty (30) days after the earlier of any Loan Party becoming aware of such failure or notice thereof to Borrower from Agent or any Lender.

8.1.5Representations; Warranties.

Any representation or warranty made by any Loan Party herein or any other Loan Document is false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to Agent or any Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.

8.1.6Pension Plans.

(a)Institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Loan Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of $500,000; (b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA securing obligations in excess of $500,000; or (c) there shall occur any withdrawal or partial withdrawal from a Multiemployer Pension Plan and the withdrawal liability (without un-accrued interest) to Multiemployer Pension Plans as a result of such withdrawal (including any outstanding withdrawal liability that Borrower or any other Loan Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $500,000.

8.1.7Judgments.

Final judgments which exceed an aggregate of $500,000 (to the extent not adequately covered by insurance as to which the insurance company has not disclaimed liability (provided that customary "reservation of rights" letters shall not be deemed to be disclaimers of liability)) shall be rendered against any Loan Party and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within sixty (60) calendar days after entry or filing of such judgments.

8.1.8Invalidity of Loan Documents or Liens.

(a)Any Loan Document shall cease to be in full force and effect otherwise in accordance with its express terms that results in a material diminution of the rights and remedies afforded to Agent and/or Lenders or any other secured parties thereunder; (b) any Loan Party (or any Person by, through or on behalf of any Loan Party) shall contest in writing in any manner the validity, binding nature or enforceability of any Loan Document; or (c) any Lien created pursuant to any Loan Document ceases to constitute a valid first priority perfected Lien (subject to Permitted Liens) on any material portion of the Collateral in accordance with the terms thereof, or Agent ceases to have a valid perfected first priority security interest (subject to Permitted Liens) in any material portion of the Collateral pledged to Agent, for the benefit of Agent and Lenders, pursuant to the Collateral Documents.

8.1.9Invalidity of Subordination Provisions.

Any subordination provision in any document or instrument governing any Approved AR Loan Facility or any subordination provision in any Intercreditor Agreement or any replacement Intercreditor Agreement, shall cease to be in full force and effect, or any Loan Party shall contest in any manner the validity, binding nature or enforceability of any such provision.

8.1.10Change of Control.

A Change of Control not otherwise permitted pursuant to Section 7.4 above shall occur that does not result in the payment in full of all Obligations hereunder in accordance with Section 2.8.3.

8.1.11Certificate Withdrawals, Adverse Test or Audit Results, and Other Matters.

(a) The institution of any proceeding by FDA, CMS, or any other Governmental Authority to order the withdrawal of any Product or Product category or Service or Service category from the market or to enjoin Borrower or any of its Affiliates from manufacturing, marketing, selling, distributing, or otherwise providing any Product or Product category or Service or Service category that could reasonably be expected to have a Material Adverse Effect, (b) the institution of any action or proceeding by FDA, CMS, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Required Permit held by Borrower or any of its Affiliates or any of their representatives, which, in each case, could reasonably be expected to have a Material Adverse Effect, (c) the commencement of any enforcement action against Borrower or any of its Affiliates by FDA, CMS, or any other Governmental Authority that could reasonably be expected to have a Material Adverse Effect, (d) the recall of any Products or Service from the market, the voluntary withdrawal of any Products or Service from the market, or actions to discontinue the sale of any Products or Service that could reasonably be expected to have a Material Adverse Effect, (e) the occurrence of adverse test, audit, or inspection results in connection with a Product or Service which could reasonably be expected to have a Material Adverse Effect, or (f) the occurrence of any event described in clauses (a) through (e) above that would otherwise cause Borrower to be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

8.1.12Reserved.

8.2Remedies.

(a)If any Event of Default described in Section 8.1.3 shall occur, the Loan and all other Obligations shall become immediately due and payable without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, Agent may, and upon the written request of Required Lenders shall, declare all or any part of the Loans and other Obligations to be due and payable, whereupon the Loans and other

Obligations (including without limitation the Exit Fee and any amounts due pursuant to Section 2.8.2 hereof or any COC Prepayment Fee, as applicable, payable with respect thereto) shall become immediately due and payable (in whole or in part, as applicable), all without presentment, demand, protest or notice of any kind. Agent shall use commercially reasonable efforts to promptly advise Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration.

(b)In addition to the acceleration provisions set forth in Section 8.2(a) above, upon the occurrence and continuation of an Event of Default, Agent may (or shall at the request of Required Lenders) exercise any and all rights, options and remedies provided for in any Loan Document, under the Uniform Commercial Code, any other applicable foreign or domestic laws or otherwise at law or in equity, including, without limitation, the right to (i) apply any property of Borrower held by Agent to reduce the Obligations, (ii) foreclose the Liens created under the Loan Documents, (iii) realize upon, take possession of and/or sell any Collateral or securities pledged, with or without judicial process, (iv) exercise all rights and powers with respect to the Collateral as Borrower might exercise, (v) collect and send notices regarding the Collateral, with or without judicial process, (vi) by its own means or with judicial assistance, enter any premises at which Collateral and/or pledged securities are located, or render any of the foregoing unusable or dispose of the Collateral and/or pledged securities on such premises without any liability for rent, storage, utilities, or other sums, and Borrower shall not resist or interfere with such action, (vii) at Borrower's expense, require that all or any part of the Collateral be assembled and made available to Agent, for the benefit of Agent and Lenders, or Required Lenders at any place reasonably designated by Required Lenders in their sole discretion and/or relinquish or abandon any Collateral or securities pledged or any Lien thereon.

(c)The enumeration of any rights and remedies in any Loan Document is not intended to be exhaustive, and all rights and remedies of Agent and Lenders described in any Loan Document are cumulative and are not alternative to or exclusive of any other rights or remedies which Agent and Lenders otherwise may have. The partial or complete exercise of any right or remedy shall not preclude any other further exercise of such or any other right or remedy.

(d)Notwithstanding any provision of any Loan Document, Agent, in its sole discretion shall have the right, but not any obligation, at any time that Loan Parties fail to do so, subject to any applicable cure periods permitted by or otherwise set forth in the Loan Documents, and from time to time, without prior notice, to: (i) discharge (at Borrower's expense) taxes or Liens affecting any of the Collateral that have not been paid in violation of any Loan Document or that jeopardize Agent's Lien priority in the Collateral; or (ii) make any other payment (at Borrower's expense) for the administration, servicing, maintenance, preservation or protection of the Collateral (each such advance or payment set forth in clauses (i) and (ii) herein, a "Protective Advance"). Agent shall be reimbursed for all Protective Advances pursuant to Section 2.9.1(b) and/or Section 2.10, as applicable, and any Protective Advances shall bear interest at the Default Rate from the date such Protective Advance is paid by Agent until it is repaid. No Protective Advance by Agent shall be construed as a waiver by Agent, or any Lender of any Default, Event of Default or any of the rights or remedies of Agent or any Lender under any Loan Document.

Section 9 Agent.

9.1Appointment; Authorization.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

9.2Delegation of Duties.

Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

9.3Limited Liability.

None of Agent or any of its Affiliates, directors, officers, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct as determined by a court of competent jurisdiction), or (b) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by any Loan Party or Affiliate of any Loan Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Loan Party or any other party to any Loan Document to perform its Obligations hereunder or thereunder. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party.

9.4Reliance.

Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of Required Lenders (or all Lenders if expressly required hereunder) as it deems appropriate and, if it so requests, confirmation from Lenders of their obligation to indemnify Agent against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of Required Lenders (or all Lenders if expressly required hereunder) and such request and any action taken or failure to act pursuant thereto shall be binding upon each Lender.

9.5Notice of Default.

Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Event of Default or Default and stating that such notice is a “notice of default”. Agent will notify Lenders of its receipt of any such notice or any such default in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders. Agent shall take such action with respect to such Event of Default or Default as may be requested by Required Lenders in accordance with Section 8.2; *provided* that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Default as it shall deem advisable or in the best interest of Lenders.

9.6Credit Decision.

Each Lender acknowledges that Agent has not made any representation or warranty to it, and that no act by Agent hereafter taken, including any review of the affairs of Borrower and the other Loan Parties, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of any Loan Party which may come into the possession of Agent.

9.7Indemnification.

Whether or not the transactions contemplated hereby are consummated, each Lender shall indemnify upon demand Agent and its Affiliates, directors, officers, employees and agents (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), based on such Lender's Pro Rata Term Loan Share, from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs, except to the extent any thereof result from the applicable Person's own gross negligence or willful misconduct, as determined by a court of competent jurisdiction. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Legal Costs) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section 9.7 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or modification, release or discharge of, any or all of the Collateral Documents, termination of this Agreement and the resignation or replacement of Agent.

9.8Agent Individually.

SWK and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Loan Party and any Affiliate of any Loan Party as though SWK were not Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, SWK or its Affiliates may receive information regarding Loan Parties or their Affiliates (including information that may be subject to confidentiality obligations in favor of any such Loan Party or such Affiliate) and acknowledge that Agent shall be under no obligation to provide such information to them. With respect to their Loans (if any), SWK and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though SWK were not Agent, and the terms "Lender" and "Lenders" include SWK and its Affiliates, to the extent applicable, in their individual capacities.

9.9Successor Agent.

Agent may resign as Agent at any time upon 30 days' prior notice to Lenders and Borrower (unless during the existence of an Event of Default such notice is waived by Required Lenders). If Agent resigns under this Agreement, Required Lenders shall, with (so long as no Event of Default exists) the consent of Borrower (which shall not be unreasonably withheld or delayed), appoint from among Lenders a successor agent for Lenders. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, on behalf of, and after consulting with Lenders and (so long as no Event of Default exists) Borrower, a successor agent. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent, and the retiring Agent's appointment, powers

and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent becomes effective, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above; *provided* that in the case of any collateral security held by Agent for the benefit of Agent and Lenders under any of the Loan Documents, the retiring Agent shall continue so to hold such collateral security until such time as a successor Agent is appointed and the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit so long as retiring Agent shall continue to so hold such collateral security. Upon the acceptance of a successor's appointment as Agent hereunder, the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents in respect of the Collateral.

9.10Collateral and Guarantee Matters.

Lenders irrevocably authorize Agent, at its option and in its discretion, (a) to release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement); or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by Required Lenders; (b) notwithstanding Section 10.1(a)(ii) hereof to release any party from its guaranty under the Guarantee and Collateral Agreement (i) when all Obligations have been Paid in Full or (ii) if such party was sold or is to be sold or disposed of as part of or in connection with any disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition being made in compliance with this Agreement); or (c) to subordinate its interest in any Collateral to any holder of a Lien on such Collateral which is permitted by Section 7.2(d) (it being understood that Agent may conclusively rely on a certificate from Borrower in determining whether the Debt secured by any such Lien is permitted by Section 7.1). Upon request by Agent at any time, Lenders will confirm in writing Agent's authority to release, or subordinate its interest in, particular types or items of Collateral pursuant to this Section 9.10.

Agent shall release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full, (ii) in respect of property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement) or (iii) subject to Section 10.1, if directed to do so in writing by Required Lenders.

In furtherance of the foregoing, Agent agrees to execute and deliver to Borrower, at Borrower's expense, such termination and release documentation as Borrower may reasonably request to evidence a Lien release that occurs pursuant to terms of this Section 9.10.

9.11Intercreditor Agreements.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to enter into one or more intercreditor agreements in relation to any other Debt of Borrower entered into in accordance with this Agreement or as otherwise approved by Required Lenders, on its behalf and to take such action on its behalf under the provisions of any such agreement (subject to the last sentence of this Section 9.11). Each Lender further agrees to be bound by the terms and conditions of any such intercreditor agreement. Each Lender hereby authorizes Agent to issue blockages notices in connection with any such Debt of Borrower and such intercreditor agreement, or any replacement intercreditor agreement, in its discretion or, at the direction of Required Lenders.

9.12 Actions in Concert.

For the sake of clarity, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement, the Notes or any other Loan Document (including exercising any rights of set-off) without first obtaining the prior written consent of Agent and Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement, the Notes and the other Loan Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

Section 10 Miscellaneous.

10.1 Waiver; Amendments.

(a) Except as otherwise expressly provided in this Agreement, no amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by Borrower (with respect to Loan Documents to which Borrower is a party), by Lenders having aggregate Pro Rata Term Loan Shares of not less than the aggregate Pro Rata Term Loan Shares expressly designated herein with respect thereto or, in the absence of such express designation herein, by Required Lenders, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided*, *however*, that:

(i) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders directly affected thereby, in addition to Required Lenders and Borrower, do any of the following: (A) increase any of the Commitments (*provided* that only the Lenders participating in any such increase of the Commitments shall be considered directly affected by such increase), (B) extend the date scheduled for payment of any principal of (except as otherwise expressly set forth below in clause (C)) or interest on the Loans or any fees or other amounts payable hereunder or under the other Loan Documents, or (C) reduce the principal amount of any Loan, the amount or rate of interest thereon (*provided* that Required Lenders may rescind an imposition of default interest pursuant to Section 2.6.1), or any fees or other amounts payable hereunder or under the other Loan Documents; and

(ii) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders in addition to Borrower (with respect to Loan Documents to which Borrower is a party), do any of the following: (A) release any material guaranty under the Guarantee and Collateral Agreement or release all or substantially all of the Collateral granted under the Collateral Documents, except as otherwise specifically provided in this Agreement or the other Loan Documents, (B) change the definition of Required Lenders, (C) change any provision of this Section 10.1, (D) amend the provisions of Section 2.10.2 or Section 2.10.4, or (E) reduce the aggregate Pro Rata Term Loan Shares required to effect any amendment, modification, waiver or consent under the Loan Documents.

(b) No amendment, modification, waiver or consent shall, unless in writing and signed by Agent, in addition to Borrower and Required Lenders (or all Lenders directly affected thereby or all of the Lenders, as the case may be, in accordance with the provisions above), affect the rights, privileges, duties or obligations of Agent (including without limitation under the provisions of Section 9), under this Agreement or any other Loan Document.

(c) No delay on the part of Agent or any Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

10.2Notices.

All notices hereunder shall be in writing (including via electronic mail) and shall be sent to the applicable party at its address shown on Annex II or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by electronic mail transmission shall be deemed to have been given when sent if sent during regular business hours on a Business Day, otherwise, such deemed delivery will be effective as of the next Business Day; notices sent by mail shall be deemed to have been given five (5) Business Days after the date when sent by registered or certified mail, first class postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received. Borrower, Agent and Lenders each hereby acknowledge that, from time to time, Agent, Lenders and Borrower may deliver information and notices using electronic mail.

10.3Computations.

Unless otherwise specifically provided herein, any accounting term used in this Agreement (including in Section 7.13 or any related definition) shall have the meaning customarily given such term in accordance with GAAP, and all financial computations (including pursuant to Section 7.13 and the related definitions, and with respect to the character or amount of any asset or liability or item of income or expense, or any consolidation or other accounting computation) hereunder shall be computed in accordance with GAAP consistently applied; *provided* that if Borrower notifies Agent that Borrower wishes to amend any covenant in Section 7.13 (or any related definition) to eliminate or to take into account the effect of any change in GAAP on the operation of such covenant (or if Agent notifies Borrower that Required Lenders wish to amend Section 7.13 (or any related definition) for such purpose), then Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant (or related definition) is amended in a manner satisfactory to Borrower and Required Lenders. The explicit qualification of terms or computations by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (Codification of Accounting Standards 825-10) to value any Debt or other liabilities of any Loan Party or any Subsidiary at "fair value", as defined therein.

10.4Costs; Expenses.

Borrower agrees to pay on demand the reasonable and documented out-of-pocket costs and expenses of (a) Agent (including Legal Costs) in connection with (i) the preparation, execution, syndication and delivery (including perfection and protection of Collateral) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith, (ii) the administration of the Loans and the Loan Documents, and (iii) any proposed or actual amendment, supplement or waiver to any Loan Document, and (b) Agent and Lenders (including Legal Costs) in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents; *provided*, *however*, that notwithstanding anything to the contrary herein, Borrower shall only be obligated to pay Legal Costs of a single firm of counsel for the Agent and the Lenders, taken as a whole (and, in the case of an actual or perceived conflict of interest, one additional firm of counsel for all similarly affected indemnitees), and, if reasonably necessary, by a single firm of local counsel in each relevant jurisdiction (which may include a single firm of special counsel acting in multiple jurisdictions) for the Agent and the Lenders taken as a whole (and, in the case of an actual or perceived conflict of interest, one additional firm of local counsel in each relevant jurisdiction for similarly affected Indemnitees). In addition, Borrower agrees to pay and to save Agent and Lenders harmless from all liability for, any fees of Borrower's auditors in connection with any reasonable exercise by Agent and Lenders of their rights pursuant to and to the extent provided in Section 6.2. All Obligations provided for in this Section 10.4 shall survive repayment of the Loans, cancellation of the Notes, and termination of this Agreement.

10.5Indemnification by Borrower.

In consideration of the execution and delivery of this Agreement by Agent and Lenders and the agreement to extend the Commitments provided hereunder, Borrower hereby agrees to indemnify, exonerate and hold Agent, each Lender and each of the officers, directors, employees, Affiliates and agents of Agent and each Lender (each a "Lender Party") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs (collectively, the "Indemnified Liabilities") of a single firm of counsel for all Lender Parties, taken as a whole (and, in the case of an actual or perceived conflict of interest, one additional firm of

counsel for all similarly affected Lender Parties), and, if reasonably necessary, by a single firm of local counsel in each relevant jurisdiction (which may include a single firm of special counsel acting in multiple jurisdictions) for all Lender Parties taken as a whole (and, in the case of an actual or perceived conflict of interest, one additional firm of local counsel in each relevant jurisdiction for similarly affected Lender Parties), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to any Loan Party or any of their respective officers, directors or agents, including, without limitation, (a) any tender offer, merger, purchase of equity interests, purchase of assets or other similar transaction financed or proposed to be financed in whole or in part, directly or indirectly, with the proceeds of any of the Loans, (b) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any Hazardous Substance at any property owned or leased by Borrower or any other Loan Party, (c) any violation of any Environmental Laws with respect to conditions at any property owned or leased by any Loan Party or the operations conducted thereon, (d) the investigation, cleanup or remediation of offsite locations at which any Loan Party or their respective predecessors are alleged to have directly or indirectly disposed of Hazardous Substances, (e) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party, or (f) such Loan Party's general operation of its business including all product liability out of or in connection with such Person's or any of its Affiliates or licensees manufacture use or sale of a Product or the provision of a Service; provided that Borrower shall not have any obligation hereunder to any Lender Party with respect to Indemnified Liabilities to the extent such Indemnified Liabilities have resulted from (i) the gross negligence, bad faith or willful misconduct of such Lender Party (as determined by a court of competent jurisdiction in a final and non-appealable decision), (ii) intentional breach by such Lender Party of its material obligations hereunder or any other Loan Document (as determined by a court of competent jurisdiction in a final and non-appealable decision) or (iii) any proceeding between and among Lenders (other than any claims against a Lender Party in its capacity as an Agent) that does not involve an act or omission by Borrower or any other Subsidiary of Borrower. Each Lender Party shall be obligated to refund or return any and all amounts paid by the Borrower pursuant to this Section 10.5 to such Lender Party for any fees, expenses, or damages to the extent such Lender Party is not entitled to payment of such amounts in accordance with the terms hereof. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. All Obligations provided for in this Section 10.5 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

10.6Marshaling; Payments Set Aside.

Neither Agent nor any Lender shall be under any obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that Borrower makes a payment or payments to Agent or any Lender, or Agent or any Lender enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent or any Lender in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (a) to the fullest extent permitted by applicable law, to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (b) each Lender severally agrees to pay to Agent upon demand its ratable share of the total amount so recovered from or repaid by Agent to the extent paid to such Lender.

10.7Nonliability of Lenders.

The relationship between Borrower on the one hand and Lenders and Agent on the other hand shall be solely that of borrower and lender. Neither Agent nor any Lender shall have any fiduciary responsibility to Borrower. Neither Agent nor any Lender undertakes any responsibility to Borrower to review or inform Borrower of any matter in connection with any phase of Borrower's business or operations. To the fullest extent permitted under applicable law, execution of this Agreement by Borrower constitutes a full, complete and irrevocable release of any and all claims which Borrower may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. Neither Agent nor any Lender shall have any liability with respect to, and Borrower hereby, to the fullest extent permitted under applicable law, waives, releases and agrees not to sue for, any special, indirect, punitive or consequential damages or liabilities.

10.8Assignments.

10.8.1Assignments.

(a)Any Lender may at any time assign to one or more Persons (other than a Loan Party and their respective Affiliates) (any such Person, an "Assignee") all or any portion of such Lender's Loans and Commitments, with the prior written consent of Agent, and, so long as no Event of Default (subject, for the avoidance of doubt, to any cure periods) has occurred and is continuing, Borrower (which consents shall not be unreasonably withheld or delayed), *provided*, *however*, that no such consent(s) shall be required:

(i)from Borrower for an assignment by a Lender to another Lender or an Affiliate of a Lender or an Approved Fund of a Lender, but such Lender will give written notice to Borrower of any such assignment;

(ii)from Agent for an assignment by a Lender to an Affiliate of a Lender or an Approved Fund of a Lender;

(iii)from Borrower or Agent for an assignment by SWK Funding LLC, as a Lender, to any Person for which SWK Advisors LLC acts as an investment advisor (or any similar type of representation or agency) pursuant to a written agreement, but SWK Funding LLC will give written notice to Borrower of any such assignment;

(iv)from Borrower or Agent for an assignment by a Lender of its Loans and its Note as collateral security to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder); or

(v)from Borrower, Agent or any Lender for (A) the assignment of SWK's Loans and Commitments to a Permitted Assignee (as defined below) or (B) a collateral assignment by SWK of, and the grant by SWK of a security interest in, all of SWK's right, title and interest in, to and under each of the Loan Documents, including, without limitation, all of SWK's rights and interests in, to and under this Agreement, the Obligations and the Collateral (collectively, the "Assigned Rights"), to a Permitted Assignee, provided that no such collateral assignment shall release SWK from any of its obligations under any of the Loan Documents. In connection with any enforcement of or foreclosure upon its security interests in any of the Assigned Rights, a Permitted Assignee, upon notice to Borrower, SWK and the other Lenders, shall be entitled to substitute itself, or its designee, for SWK as a Lender under this Agreement. For purposes hereof, the term "Permitted Assignee" shall mean any lender to or funding source of SWK or its Affiliate, together with its successors, assigns or designees (including, without limitation, any purchaser or other assignee of the Assigned Rights from such Person). Effective immediately upon the replacement of SWK as a Lender under this Agreement by a Permitted Assignee in accordance with this clause (v), SWK shall automatically be deemed to have resigned as Agent pursuant to Section 9.9 of this Agreement (without the need for Agent giving advance written notice of such resignation as required pursuant to such Section 9.9), and Required Lenders shall appoint a successor Agent in accordance with Section 9.9 of this Agreement.

(b)From and after the date on which the conditions described above have been met, (i) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder and (ii) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights (other than its indemnification rights) and obligations hereunder. Upon the request of the Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, Borrower shall execute and deliver to Agent for delivery to the Assignee (and, as applicable, the assigning Lender) a Note in the principal amount of the Assignee's Pro Rata Term Loan Share (and, as applicable, a Note in the principal amount of the Pro Rata Term Loan Share retained by the assigning Lender). Each such Note shall be dated the effective date of such assignment. Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower any prior Note held by it.

(c)Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the Commitments of, and principal amount of the Loans owing to, such Lender pursuant to the terms hereof. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent.

(d)Notwithstanding the foregoing provisions of this Section 10.8.1 or any other provision of this Agreement, any Lender may at any time assign all or any portion of its Loans and its Note (i) as collateral security to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder) and (ii) to (*w*) an Affiliate of such Lender which is at least fifty percent (50%) owned (directly or indirectly) by such Lender or by its direct or indirect parent company, (*x*) its direct or indirect parent company, (*y*) to one or more other Lenders or (*z*) to an Approved Fund.

10.9Participations.

Any Lender may at any time sell to one or more Persons participating interests in its Loans, Commitments or other interests hereunder (any such Person, a "Participant"). In the event of a sale by a Lender of a participating interest to a Participant, (a) such Lender's obligations hereunder shall remain unchanged for all purposes, (b) Borrower and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder and (c) all amounts payable by Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 10.1 expressly requiring the unanimous vote of all Lenders or, as applicable, all affected Lenders. Each Lender agrees to incorporate the requirements of the preceding sentence into each participation agreement which such Lender enters into with any Participant. Borrower agrees, to the fullest extent permitted by applicable law, that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided* that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 2.10.4. Borrower also agrees that each Participant shall be entitled to the benefits of Section 3 as if it were a Lender (*provided* that a Participant shall not be entitled to such benefits unless such Participant agrees, for the benefit of Borrower, to comply with the documentation requirements of Section 3.1(c) as if it were a Lender and complies with such requirements, and *provided*, *further*, that no Participant shall receive any greater compensation pursuant to Section 3 than would have been paid to the participating Lender if no participation had been sold). Any such Lender transferring a participation shall, as an agent for Borrower, maintain in the United States a register to record the names, address, and interest, principal and other amounts owing to, each Participant. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Participant hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such participation register shall be available for inspection by the Agent or Borrower, at any reasonable time upon reasonable prior written notice from Agent or Borrower.

10.10Confidentiality.

Borrower, Agent and each Lender agree to use commercially reasonable efforts (equivalent to the efforts Borrower, Agent or such Lender applies to maintain the confidentiality of its own confidential information) to maintain as confidential all information (including, without limitation, any information provided by Borrower pursuant to Sections 6.1, 6.2 and 6.9) provided to them by any other party hereto and/or any other Loan Party, as applicable, except that Agent and each Lender may disclose such information (a) to Persons employed or engaged by Agent or such Lender or any of their Affiliates (including collateral managers of Lenders) in evaluating, approving, structuring or administering the Loans and the Commitments (*provided* that such Persons have been informed of the covenants contained in this Section 10.10); (b) to any assignee or participant or potential assignee or participant that has agreed to comply with the covenants contained in this Section 10.10 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed by Agent or such Lender to be compelled by any court decree, subpoena or legal or administrative order or

process; (d) as, on the advice of Agent's or such Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which Agent or such Lender is a party; (f) to any nationally recognized rating agency or investor of a Lender that requires access to information about a Lender's investment portfolio in connection with ratings issued or investment decisions with respect to such Lender; (g) that ceases to be confidential through no fault of Agent or any Lender; (h) to a Person that is an investor or prospective investor in a Securitization that agrees that its access to information regarding Borrower and the Loans and Commitments is solely for purposes of evaluating an investment in such Securitization and who agrees to treat such information as confidential; or (i) to a Person that is a trustee, collateral manager, servicer, noteholder or secured party in a Securitization in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For purposes of this Section, "Securitization" means a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans or the Commitments. In each case described in clauses (c), (d) and (e) (as such disclosure in clause (e) pertains to litigation only), where the Agent or Lender, as applicable, is compelled to disclose a Loan Party's confidential information, promptly after such disclosure the Agent or such Lender, as applicable, shall notify Borrower of such disclosure *provided*, *however*, that neither the Agent nor any Lender shall be required to notify Borrower of any such disclosure (i) to any federal or state banking regulatory authority conducting an examination of the Agent or such Lender, or (ii) to the extent that it is legally prohibited from so notifying Borrower. Notwithstanding the foregoing, Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.11Captions.

Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

10.12Nature of Remedies.

All Obligations of Borrower and rights of Agent and Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate 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.

10.13Counterparts.

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by facsimile machine or in ".pdf" format through electronic mail of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page. This Agreement and the other Loan Documents to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including ".pdf"), shall be treated in all manner and respects and for all purposes as an original agreement or amendment and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such other Loan Document shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

10.14Severability.

The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

10.15Entire Agreement.

This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

10.16Successors; Assigns.

This Agreement shall be binding upon Borrower, Lenders and Agent and their respective successors and assigns, and shall inure to the benefit of Borrower, Lenders and Agent and the successors and assigns of Lenders and Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Borrower may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Agent and each Lender.

10.17Governing Law.

THIS AGREEMENT AND EACH NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS CODE).

10.18Forum Selection; Consent to Jurisdiction.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; *PROVIDED* THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

10.19Waiver of Jury Trial.

EACH OF BORROWER, AGENT AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.20Patriot Act.

Each Lender that is subject to the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), and Agent (for itself and not on behalf of any Lender), hereby notifies each Loan Party that, pursuant to the requirements of the Patriot Act, such Lender and Agent are required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or Agent, as applicable, to identify each Loan Party in accordance with the Patriot Act.

10.21Independent Nature of Relationship.

Nothing herein contained shall constitute any Loan Party and SWK as a partnership, an association, a joint venture or any other kind of entity or legal form or constitute any party the agent of the other. No party shall hold itself out contrary to the terms of this Section 10.21 and no party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. No Loan Party, Lender, nor SWK has any fiduciary or other special relationship with the other party hereto or any of its Affiliates. The Loan Parties and SWK agree that SWK is not involved in or responsible for the manufacture, marketing or sale of any Product or the provision of any Service.

10.22Approved AR Loan Facility.

(a)Agent and Lenders acknowledge that Borrower is seeking a revolving loan facility to be secured by a first lien security interest in Borrower's Inventory and accounts receivable generated by product sales in the normal course of business (such revolving loan facility, together with any replacement revolving loan facility as approved by Agent that is subject to an Intercreditor Agreement, collectively an "Approved AR Loan Facility"). Borrower may enter into any such Approved AR Loan Facliity so long as (i) such facility is in a maximum principal amount of $5,000,000, (ii) such facility is subject to an intercreditor agreement acceptable to Agent, (iii) Agent shall have a second priority Lien and security interest in any accounts receivable and Inventory securing such revolving loan facility, and (iv) the material terms and conditions of such revolving loan facility shall be acceptable to Agent in its commercially reasonable discretion. Agent and Borrower agree to work together in good faith, and at Borrower's sole cost and expense, to negotiate and enter into such amendments to this Agreement and such other Loan Documents as may be necessary to permit such Debt owing under any Approved AR Loan Facility, to release and/or subordinate such Liens as may be necessary to effectuate any such Approved AR Loan Facility, and to enter into such third party documents as may be reasonably requested by Borrower and/or the revolving loan lender under any such Approved AR Loan Facility.

(b)Notwithstanding anything set forth in the loan documents governing any such Approved AR Loan Facility, Borrower shall not incur more than $3,000,000 in principal indebtedness under the Approved AR Loan Facility without the prior written consent of Agent, in its sole discretion, unless and until (i) Borrower shall have (A) achieved Aggregate Revenue of at least $12,000,000 during the Fiscal Quarter ending September 30, 2019 and (B) issued additional Equity Interests or Subordinated Debt resulting in net cash proceeds to Borrower of not less than $5,000,000, or, alternatively, (ii) Borrower shall have (A) achieved Aggregate Revenue of at least $14,000,000 during the Fiscal Quarter ending December 31, 2019 and (B) issued additional Equity Interests or Subordinated Debt resulting in net cash proceeds to Borrower of not less than $5,000,000.

(c)Agent and Borrower agree to work together in good faith, and at Borrower's sole cost and expense, to negotiate and enter into such amendments to this Agreement and such other Loan Documents as may be necessary to permit such Debt owing under any Approved AR Loan Facility, to release and/or subordinate such Liens as may be necessary to effectuate any such Approved AR Loan Facility, and to enter into such third party documents as may be reasonably requested by Borrower and/or the revolving loan lender under any such Approved AR Loan Facility.

[*Remainder of page intentionally blank; signature pages follow*.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

BORROWER:

BIOLASE, INC.,
a Delaware corporation

By:
Name:
Title:

[Signature Page to Credit Agreement]

AGENT AND LENDERS:

SWK FUNDING LLC,
as Agent and a Lender

By: SWK Holdings Corporation,
its sole Manager

By:
Name: Winston Black
Title: Chief Executive Officer

Exhibit 21.1

Subsidiaries

BL Acquisition II, Inc. (Delaware)
BL Acquisition Corp. (Delaware)
Model Dental Office, LLC (Delaware)

Biolase Australia, Pty. Ltd. (AUSTRALIA)
Biolase Europe, GmbH (GERMANY)
Biolase Spain, S.L. (SPAIN)
Biolase India Private Limited (INDIA)

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

BIOLASE, Inc.
Lake Forest, California

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-276684, 333-194889, 333-144095, 333-112173, 333-130677, 333-177339, 333-204059, 333-224832 and 333-150105), Form S-1 (Nos. 333-274504, 333-273372, 333-271660, 333-239876, 333-268528, 333-240060, and 333-238914), and Form S-3 (Nos. 333-266852, 333-233172, 333-222564, 333-219406, 333-200623, 333-198291, 333-214281, 333-175664, 333-141417, 333-106290, 333-89692, and 333-58329) of Biolase, Inc. (the "Company") of our report dated March 21, 2024, relating to the consolidated financial statements and schedule listed in the index appearing under Item 15(a)(2), which appears in this Annual Report on Form 10-K. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/s/ Macias Gini & O'Connell, LLP

Macias, Gini & O'Connell, LLP
Irvine, California

March 21, 2024

Exhibit 23.2

Consent of Independent Registered Public Accounting Firm

BIOLASE, Inc.
Lake Forest, California

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-276684, 333-194889, 333-144095, 333-112173, 333-130677, 333-177339, 333-204059, 333-224832, and 333-150105), Form S-1 (Nos.333-276596, 333-276280, 333-273372, 333-271660, 333-274504, 333-239876, 333-268528, 333-240060 and 333-238914), and Form S-3 (Nos. 333-266852, 333-266673, 333-233172, 333-222564, 333-219406, 333-200623, 333-198291, 333-214281, 333-175664, 333-141417, 333-106290, 333-89692, and 333-58329), of BIOLASE, Inc. (the Company) of our report dated March 28, 2023, relating to the consolidated financial statements and schedules, which appears in this Form 10-K. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/s/ BDO USA, P.C.

Costa Mesa, California
March 21, 2024

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO RULE 13a-14(a) AND RULE 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, John R. Beaver, certify that:

1.I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2023 of BIOLASE, 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 financing 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: March 21, 2024

By: /s/ JOHN R. BEAVER
John R. Beaver
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO RULE 13a-14(a) AND RULE 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jennifer Bright, certify that:

1.I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2023 of BIOLASE, 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 financing 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: March 21, 2024

By: /s/ JENNIFER BRIGHT
Jennifer Bright
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Exhibit 32.1

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of BIOLASE, Inc. (the "Registrant") on Form 10-K for the year ended December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John R. Beaver, Chief Executive Officer of the Registrant, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1)The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2)The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: March 21, 2024

By: /s/ JOHN R. BEAVER
Name: John R. Beaver
Title: President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION OF THE CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of BIOLASE, Inc. (the "Registrant") on Form 10-K for the year ended December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jennifer Bright, Chief Financial Officer of the Registrant, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1)The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2)The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: March 21, 2024

By: /s/ JENNIFER BRIGHT
Name: Jennifer Bright
Title: Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Exhibit 97.1

BIOLASE, INC.

Executive Officer Clawback Policy

*Approved by the Board of Directors on November 8, 2023 (the "**Adoption Date**")*

i.Purpose

This Executive Officer Clawback Policy describes the circumstances under which Covered Persons of Biolase, Inc., a Delaware corporation and any of its direct or indirect subsidiaries (the "***Company***") will be required to repay or return Erroneously-Awarded Compensation to the Company.

This Policy and any terms used in this Policy shall be construed in accordance with all applicable SEC regulations promulgated to comply with Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, including, without limitation, Rule 10D-1 promulgated under the Securities Exchange Act of 1934, as amended, and the rules adopted by Nasdaq.

Each Covered Person of the Company shall sign an Acknowledgement and Agreement to the Executive Officer Clawback Policy in the form attached hereto as Exhibit A as a condition to his or her participation in any of the Company's incentive-based compensation programs; provided, that, this Policy shall apply to each Covered Person, irrespective of whether such Covered Person shall have failed, for any reason, to have executed such acknowledgment and agreement.

ii.Definitions

For purposes of this Policy, the following capitalized terms shall have the meaning set forth below:

a)"***Accounting Restatement***" shall mean an accounting restatement (i) due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements (a "Big R" restatement), or (ii) that corrects an error that is not material to previously issued financial statements, but would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period (a "little r" restatement).

b)"***Board***" shall mean the Board of Directors of the Company.

c)"***Clawback-Eligible Incentive Compensation***" shall mean, in connection with an Accounting Restatement, any Incentive-Based Compensation Received by a Covered Person (regardless of whether such Covered Person was serving at the time that Erroneously-Awarded Compensation is required to be repaid) (i) on or after October 2, 2023, (ii) after beginning service as a Covered Person, (iii) while the Company has a class of securities listed on a national securities exchange or national securities association and (iv) during the Clawback Period.

d)"***Clawback Period***" shall mean, with respect to any Accounting Restatement, the three completed fiscal years immediately preceding the Restatement Date and any transition period (that results from a change in the Company's fiscal year) of less than nine months within or immediately following those three completed fiscal years.

e)"***Committee***" shall mean the Compensation Committee of the Board.

f)"***Covered Person***" shall mean any person who is, or was at any time, during the Clawback Period, an Executive Officer of the Company. For the avoidance of doubt, Covered Person may include a former Executive Officer who left the Company, retired or transitioned to a non-Executive Officer role (including after serving as an Executive Officer in an interim capacity) during the Clawback Period.

g)"***Erroneously-Awarded Compensation***" shall mean the amount of Clawback-Eligible Incentive Compensation that exceeds the amount of Incentive-Based Compensation that otherwise would have been Received had it been determined based on the restated amounts. This amount must be computed without regard to any taxes paid.

h)"***Executive Officer***"shall mean the Company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person (including an officer of the Company's parent(s) or subsidiaries) who performs similar policy-making functions for the Company. For the sake of clarity, at a minimum, all persons who would be executive officers pursuant to Item 401(b) of Regulation S-K shall be deemed "Executive Officers".

i)"***Financial Reporting Measures***" shall mean measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and all other measures that are derived wholly or in part from such measures. For purposes of this Policy, Financial Reporting Measures shall include stock price and total shareholder return (and any measures that are derived wholly or in part from stock price or total shareholder return).

j)"***Incentive-Based Compensation***" shall have the meaning set forth in Section III below.

k)"***Nasdaq***" shall mean The Nasdaq Stock Market.

l)"***Policy***" shall mean this Executive Officer Clawback Policy, as the same may be amended and/or restated from time to time.

m)"***Received***" shall mean Incentive-Based Compensation received, or deemed to be received, in the Company's fiscal period during which the Financial Reporting Measure specified in the Incentive-Based Compensation is attained, even if the payment or grant occurs after the fiscal period.

n)"***Repayment Agreement***" shall have the meaning set forth in Section V below.

o)"***Restatement Date***" shall mean the earlier of (i) the date the Board, a committee of the Board or the officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement, or (ii) the date that a court, regulator or other legally authorized body directs the Company to prepare an Accounting Restatement.

p)"***SARs***" shall mean stock appreciation rights.

q)"***SEC***" shall mean the U.S. Securities and Exchange Commission.

iii.Incentive-Based Compensation

"***Incentive-Based Compensation***" shall mean any compensation that is granted, earned or vested wholly or in part upon the attainment of a Financial Reporting Measure.

For purposes of this Policy, specific examples of Incentive-Based Compensation include, but are not limited to:

- Non-equity incentive plan awards that are earned based, wholly or in part, on satisfaction of a Financial Reporting Measure performance goal;

•Bonuses paid from a "bonus pool," the size of which is determined, wholly or in part, based on satisfaction of a Financial Reporting Measure performance goal;

•Other cash awards based on satisfaction of a Financial Reporting Measure performance goal;

•Restricted stock, restricted stock units ("***RSUs***"), performance share units ("***PSUs***"), stock options and SARs that are granted or become vested, wholly or in part, on satisfaction of a Financial Reporting Measure performance goal; and

•Proceeds received upon the sale of shares acquired through an incentive plan that were granted or vested based, wholly or in part, on satisfaction of a Financial Reporting Measure performance goal.

For purposes of this Policy, Incentive-Based Compensation excludes:

•Base salaries (except with respect to any salary increases earned, wholly or in part, based on satisfaction of a Financial Reporting Measure performance goal);

•Bonuses paid solely at the discretion of the Committee or Board that are not paid from a "bonus pool" that is determined by satisfying a Financial Reporting Measure performance goal;

•Bonuses paid solely upon satisfying one or more subjective standards and/or completion of a specified employment period;

•Non-equity incentive plan awards earned solely upon satisfying one or more strategic measures or operational measures; and

•Equity awards that vest solely based on the passage of time and/or satisfaction of one or more non-Financial Reporting Measures.

iv.Determination and Calculation of Erroneously-Awarded Compensation

In the event of an Accounting Restatement, the Committee shall promptly determine the amount of any Erroneously-Awarded Compensation for each Covered Person in connection with such Accounting Restatement and shall promptly thereafter provide each Covered Person with a written notice containing the amount of Erroneously-Awarded Compensation and a demand for repayment, return or forfeiture thereof, as applicable (the "***Notice***").

a)**Cash Awards**. With respect to cash awards, the Erroneously-Awarded Compensation is the difference between the amount of the cash award (whether payable as a lump sum or over time) that was Received and the amount that should have been received applying the restated Financial Reporting Measure.

b)**Cash Awards Paid From Bonus Pools**. With respect to cash awards paid from bonus pools, the Erroneously-Awarded Compensation is the pro rata portion of any deficiency that results from the aggregate bonus pool that is reduced based on applying the restated Financial Reporting Measure.

c)**Equity Awards**. With respect to equity awards, if the shares, RSUs, PSUs, options or SARs are still held at the time of recovery, the Erroneously-Awarded Compensation is the number of such securities Received in excess of the number that should have been received applying the restated Financial Reporting Measure (or the value of that excess number). If the RSUs, PSUs, options or SARs have vested or been exercised, as the case may be, but the underlying shares have not been sold, the Erroneously-Awarded Compensation is the number of shares underlying the excess RSUs, PSUs, options or SARs (or the value thereof). If the underlying shares have already been sold, then the Committee shall determine the amount which most reasonably estimates the Erroneously-Awarded Compensation.

d)**Compensation Based on Stock Price or Total Shareholder Return**. For Incentive-Based Compensation based on (or derived from) stock price or total shareholder return, where the amount of Erroneously-Awarded Compensation is not subject to mathematical recalculation directly from the information in the applicable Accounting Restatement, the amount shall be determined by the Committee based on a reasonable estimate of

the effect of the Accounting Restatement on the stock price or total shareholder return upon which the Incentive-Based Compensation was Received (in which case, the Committee shall maintain documentation of such determination of that reasonable estimate and provide such documentation to Nasdaq in accordance with applicable listing standards).

v.Recovery of Erroneously-Awarded Compensation

Once the Committee has determined the amount of Erroneously-Awarded Compensation recoverable from the applicable Covered Person, the Committee shall take all necessary actions to recover the Erroneously-Awarded Compensation reasonably promptly following the delivery of the Notice to the Covered Person. Unless otherwise determined by the Committee, the Committee shall pursue the recovery of Erroneously-Awarded Compensation in accordance with the below:

a)**Cash Awards**. With respect to cash awards, the Committee shall either (i) require the Covered Person to repay the Erroneously-Awarded Compensation in a lump sum in cash (or such property as the Committee agrees to accept with a value equal to such Erroneously-Awarded Compensation) or (ii) if approved by the Committee, enter into a Repayment Agreement in accordance with subsection (d) below.

b)**Unvested Equity Awards**. With respect to those equity awards that have not yet vested, the Committee shall take such action as is necessary to cancel, or otherwise cause to be forfeited, the awards in the amount of the Erroneously-Awarded Compensation.

c)**Vested Equity Awards**. With respect to those equity awards that have vested or been exercised and the underlying shares have not been sold, the Committee shall take such action as is necessary to cause the Covered Person to deliver and surrender the underlying shares in the amount of the Erroneously-Awarded Compensation.

In the event that the Covered Person has sold any underlying shares, the Committee shall either (i) require the Covered Person to repay the Erroneously-Awarded Compensation in a lump sum in cash (or such property as the Committee agrees to accept with a value equal to such Erroneously-Awarded Compensation) or (ii) if approved by the Committee, enter into a Repayment Agreement in accordance with subsection (d) below.

d)**Repayment Agreement**. To the extent approved by the Committee, the Company shall enter into a written agreement (in a form reasonably acceptable to the Committee) with the Covered Person that provides for the Covered Person's repayment of the Erroneously-Awarded Compensation as promptly as possible without unreasonable economic hardship to the Covered Person based upon the particular facts and circumstances (a "***Repayment Agreement***").

e)**Effect of Non-Repayment**. To the extent that a Covered Person fails to repay all Erroneously-Awarded Compensation to the Company when due (as determined in accordance with this Policy), the Company shall take all actions reasonable and appropriate to recover such outstanding Erroneously-Awarded Compensation from the applicable Covered Person. The applicable Covered Person shall be required to reimburse the Company for any and all expenses reasonably incurred (including legal fees) by the Company in recovering such Erroneously-Awarded Compensation in accordance with the immediately preceding sentence.

The Committee shall have broad discretion to determine the appropriate means of recovery of Erroneously-Awarded Compensation based on all applicable facts and circumstances and taking into account the time value of money and the cost to shareholders of delaying recovery. However, in no event may the Company accept an amount that is less than the amount of Erroneously-Awarded Compensation in satisfaction of a Covered Person's obligations hereunder.

vi.Discretionary Recovery

Notwithstanding anything herein to the contrary, the Company shall not be required to take action to recover Erroneously-Awarded Compensation if any one of the following conditions are met and the Committee determines that recovery would be impracticable:

(i)The direct expenses paid to a third party to assist in enforcing this Policy against a Covered Person would exceed the amount to be recovered, after the Company has made a reasonable attempt to recover the applicable Erroneously-Awarded Compensation, documented such attempts and provided such documentation to Nasdaq;

(ii)Recovery would violate home country law where that law was adopted prior to November 28, 2022, provided that, before determining that it would be impracticable to recover any amount of Erroneously-Awarded Compensation based on violation of home country law, the Company has obtained an opinion of home country counsel, acceptable to Nasdaq, that recovery would result in such a violation and a copy of the opinion is provided to Nasdaq; or

(iii)Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

vii.Reporting and Disclosure Requirements

The Company shall file all disclosures with respect to this Policy in accordance with the requirements of the federal securities laws, including the disclosure required by the applicable filings required to be made with the SEC.

viii.Effective Date

This Policy shall apply to all Incentive-Based Compensation Received on or after October 2, 2023.

ix.No Indemnification

The Company shall not indemnify any Covered Person against the loss of Erroneously-Awarded Compensation and shall not pay, or reimburse any Covered Persons for premiums, for any insurance policy to fund such Covered Person's potential recovery obligations.

x.Administration

The Committee has the sole discretion to administer this Policy and ensure compliance with Nasdaq Rules and any other applicable law, regulation, rule or interpretation of the SEC or Nasdaq promulgated or issued in connection therewith. The Committee shall, subject to the provisions of this Policy, make such determinations and interpretations and take such actions as it deems necessary, appropriate or advisable. All determinations and interpretations made by the Committee shall be final, binding and conclusive.

xi.Amendment; Termination

The Board may amend this Policy from time to time in its discretion and shall amend this Policy as it deems necessary, including as and when it determines that it is legally required by any federal securities laws, SEC rule or the rules of any national securities exchange or national securities association on which the Company's securities are then listed. The Board may terminate this Policy at any time. Notwithstanding anything in this Section XI to the contrary, no amendment or termination of this Policy shall be effective if such amendment or termination would (after taking into account any actions taken by the Company contemporaneously with such amendment or termination) cause the Company to violate any federal securities laws, SEC rule, or the rules of any national securities exchange or national securities association on which the Company's securities are then listed.

xii.Other Recoupment Rights; No Additional Payments

The Committee intends that this Policy will be applied to the fullest extent of the law. The Committee may require that any employment agreement, equity award agreement or any other agreement entered into on or after the Adoption Date shall, as a condition to the grant of any benefit thereunder, require a Covered Person to agree to abide by the terms of this Policy; provided, that, this Policy shall apply to all Covered Persons irrespective of any such explicit agreement. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other rights under applicable law, regulation or rule or pursuant to the terms of any similar policy in any employment agreement, equity plan, equity award agreement or similar arrangement and any other legal remedies available to the Company. However, this Policy shall not provide for recovery of Incentive-Based Compensation that the Company has already recovered pursuant to Section 304 of the Sarbanes-Oxley Act or other recovery obligations.

xiii.Successors

This Policy shall be binding and enforceable against all Covered Persons and their beneficiaries, heirs, executors, administrators or other legal representatives.

* * * * * * *

Exhibit A

ACKNOWLEDGEMENT AND AGREEMENT
TO THE
EXECUTIVE OFFICER CLAWBACK POLICY
OF
BIOLASE, INC.

By signing below, the undersigned acknowledges and confirms that the undersigned has received and reviewed a copy of Biolase, Inc.'s Executive Officer Clawback Policy (the "***Policy***"). Capitalized terms used but not otherwise defined in this Acknowledgement Form (this "***Acknowledgement Form***") shall have the meanings ascribed to such terms in the Policy.

By signing this Acknowledgement Form, the undersigned acknowledges and agrees that the undersigned is and will continue to be subject to the Policy and that the Policy will apply both during and after the undersigned's employment with the Company. Further, by signing below, the undersigned agrees to abide by the terms of the Policy, including, without limitation, by returning any Erroneously-Awarded Compensation (as defined in the Policy) to the Company to the extent required by, and in a manner permitted by, the Policy.

Signature

Name

Date