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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2020

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 000-21617

ProPhase Labs, Inc.
(Exact name of registrant as specified in its charter)

Delaware	23-2577138
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
711 Stewart Avenue, Suite 200 Garden City, New York	11530
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code (215) 345-0919

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, $0.0005 par value per share	"PRPH"	Nasdaq Capital Market

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

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

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 [X]

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 [X] 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 (§229.405 of this chapter) during the preceding 12 months (or such shorter period that the registrant was required to submit such files). Yes [X] No [ ]

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See definition 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 [X] Smaller reporting company [X]
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. [ ]

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

The aggregate market value of the registrant's voting and non-voting common stock held by non-affiliates was $12,644,080 as of June 30, 2020, based on the closing price of the common stock on The Nasdaq Capital Market.

As of March 31, 2021, there were 15,154,253 shares outstanding of the registrant's common stock, par value $0.0005 per share.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's definitive proxy statement relating to its 2021 annual meeting of stockholders (the "2021 Proxy Statement") are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. The 2021 Proxy Statement will be filed with the U.S. Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K ("Annual Report") contains "forward looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All statements, other than statements of historical facts, included in this Annual Report, including statements related to future events and our future financial performance are forward-looking statements. Forward-looking statements typically are identified by use of terms such as "anticipate", "believe", "plan", "expect", "intend", "may", "will", "should", "estimate", "predict", "potential", "continue" and similar words although some forward-looking statements are expressed differently. You are cautioned that such forward looking statements are not guarantees of future performance and are subject to risks, uncertainties and other factors that could cause our actual results, performance, achievements and prospects, as well as those of the markets we serve, to differ materially from those expressed or implied by these forward-looking statements. Many of these risks are beyond our ability to predict. Given the risks and uncertainties surrounding forward-looking statements, you should not place undue reliance on these statements.

Such risks and uncertainties include, but are not limited to:

- Our dependence on our largest manufacturing customers;
- Our ability to successfully offer, perform and generate revenues from our new diagnostic services;
- Our ability to generate sufficient profits from RPP Molecular tests if and when demand for COVID-19 testing decreases or becomes no longer necessary;
- Our ability to secure additional capital, when needed to support our diagnostic services business and product development and commercialization programs;
- Potential disruptions to our supply chain or increases to the price of or adulteration of key raw materials or supplies;
- Potential disruptions in our ability to manufacture our products and those of others;
- Seasonal fluctuations in demand for the products we manufacture at our manufacturing facility;
- Our ability to successfully develop and commercialize our existing products and any new products;
- Our ability to compete effectively, including our ability to maintain and increase our markets and/or market share in the markets in which we do business;
- Our ability to attract, retain and motivate our key employees;
- Our ability to protect our proprietary rights;
- Our ability to comply with regulatory requirements applicable to our businesses; and
- Our dependence on third parties to provide services critical to our lab diagnostic services business;

You should also consider carefully the statements under other sections of this Annual Report, including the Risk Factors included in Item 1A, which address additional risks that could cause our actual results to differ from those set forth in any forward-looking statements. Our forward-looking statements speak only as of the date of this Annual Report. We undertake no obligation to publicly update or review any forward-looking statements, whether as a result of new information, future developments or otherwise except as otherwise required by law.

PART I

Item 1. Business

General

ProPhase Labs, Inc. ("ProPhase" "we," "us," "our" or the "Company") is a diversified medical science and technology company with deep experience with over-the-counter ("OTC") consumer healthcare products and dietary supplements. We conduct our operations through two operating segments: consumer products and diagnostic services. Until late 2020, we were engaged in the research, development, manufacture, distribution, marketing and sale of OTC consumer healthcare products and dietary supplements in the United States. However commencing in December 2020, we also began to offer COVID-19 and other respiratory pathogen panel (RPP) molecular tests through our new diagnostic service business.

Our wholly-owned subsidiary, Pharmaloz Manufacturing, Inc. ("PMI"), is a full-service contract manufacturer and private label developer of a broad range of non-GMO, organic and natural-based cough drops and lozenges and OTC drug and dietary supplement products. The dietary supplements are developed and marketed under the TK Supplements® brand name.

Our wholly-owned subsidiary, ProPhase Diagnostics, Inc., ("ProPhase Diagnostics"), which was formed on October 9, 2020, offers a variety of important medical tests, including COVID-19 and (RPP) molecular tests. On October 23, 2020, we completed the acquisition of all of the issued and outstanding shares of capital stock of Confucius Plaza Medical Laboratory Corp. ("CPM") for approximately $2.5 million in cash, subject to certain adjustments, pursuant to the terms of a Stock Purchase Agreement, by and among the Company, CPM, Pride Diagnostics LLC ("Pride Diagnostics") and other parties named therein. CPM (which is now known as ProPhase Diagnostics NJ, Inc.) is the owner of a 4,000 square foot Clinical Laboratory Improvement Amendments ("CLIA") accredited laboratory located in Old Bridge, New Jersey, which ProPhase Diagnostics acquired as part of the transaction. As a result of the acquisition of CPM in October 2020, we entered into a new business line, diagnostic services.

We continue to actively pursue acquisition opportunities for other companies, technologies and products within and outside the consumer healthcare products and diagnostics services industries.

We use a December 31 year-end for financial reporting purposes. References in this Annual Report to "Fiscal 2020" mean the fiscal year ended December 31, 2020 and references to other "Fiscal" years mean the year that ended on December 31 of the year indicated. The term "we", "us" or the "Company" as used herein also refer, where appropriate, to the Company, together with its subsidiaries unless the context otherwise requires.

Revenues from continuing operations for Fiscal 2020 and 2019 were $14.5 million and $9.9 million, respectively. We incurred a net loss for Fiscal 2020 and 2019 of $2.1 million and $3.1 million, respectively.

As of December 31, 2020, we had working capital of approximately $9.6 million, including $1.6 million of marketable securities available for sale.

Contract Manufacturing Services

PMI provides consumer product development, pre-commercialization services, production, warehousing and distribution services for its customers. Our manufacturing facility, which is located in Lebanon, Pennsylvania, is registered with the U.S. Food and Drug Administration (the "FDA") and is a certified organic and kosher.

As part of the sale of our former Cold-EEZE® business in March 2017 (see "Discontinued Operations" below), PMI entered into a manufacturing agreement with Mylan Consumer Healthcare Inc. (formerly known as Meda Consumer Healthcare Inc.) ("MCH") and Mylan Inc. (together with MCH, "Mylan") to supply various Cold-EEZE® lozenge products to Mylan following the sale for a period of five years with annual renewal options.

For each of Fiscal 2020 and 2019, our revenues from continuing operations have come principally from our contract manufacturing services. Two third-party contract manufacturing customers accounted for 47.1% and 17.2%, respectively, of our Fiscal 2020 revenues from continuing operations. The loss of sales to any one or more of these large third-party contract manufacturing customers could have a material adverse effect on our business operations and financial condition, unless we are able to increase revenue from other sources.

TK Supplements® Product Line

Our TK Supplements® product line is dedicated to promoting better health, energy and sexual vitality. Each of our herbal supplements is researched to determine the optimum blend of ingredients to ensure our customers receive premium quality products. To achieve this, we formulate with the highest quality ingredients derived from nature and ingredients enhanced by science. Our TK Supplements® product line includes Legendz XL®, a male sexual enhancement and Triple Edge XL®, an energy and stamina booster.

In Fiscal 2020, we extended our distribution of Legendz XL® to include more customer accounts including national chain drug retailers, internet-based retailers and several regional retailers and leveraged our existing infrastructure and retail distribution platform. We have produced and refined a television commercial and initiated television and digital media testing for Legendz XL® for marketing to consumers. We have also completed a broad series of clinical studies that support important product claims that we have incorporated into our product packaging and marketing communications for Legendz XL®.

We also introduced Triple Edge XL® to a limited number of retail customers in Fiscal 2020 and have gained distribution with one large national chain drug retailer.

We anticipate growth from our TK Supplements® product line as we optimize our market strategy and expand our channels of distribution. There can be no assurance that our strategic focus will result in any revenue growth.

Diagnostic Services Segment

ProPhase Diagnostics offers a variety of important medical diagnostic testing services, including, among other, COVID-19 testing and (RPP) molecular tests. We offer both nasal swab testing and saliva testing, and are a preferred lab for Spectrum Solutions, the manufacturer and supplier of the first FDA EUA (Emergency Use Authorization) authorized saliva collection kit used for COVID-19 testing. We currently operate two lab facilities including, (i) our facility located in Old Bridge, New Jersey, acquired in October 2020, with a capacity to process up to 10,000 COVID-19 tests per day, and (ii) our facility located in Garden City, New York, which opened in January 2021, and commenced operations in January 2021, with a capacity to process up to 50,000 COVID-19 tests per day.

Discontinued Operations

Effective March 29, 2017, we sold our intellectual property rights and other assets related to the Cold-EEZE® brand and product line, including all then current and pipeline over-the-counter allergy, cold, flu, multi-symptom relief and immune support treatments for adults and children to the extent each was, or was intended to be, branded "Cold-EEZE®", including all formulations and derivatives thereof (collectively referred to as the "Cold-EEZE® business") to Mylan. As a consequence of the sale of the Cold-EEZE® business, for Fiscal 2020 and Fiscal 2019, we have classified all residual income and expenses attributable to the Cold-EEZE® business.

For Fiscal 2020, we recognized income of $201,000 as a gain from discontinued operations. For Fiscal 2019, we incurred a loss of $40,000 from discontinued operations.

Seasonality of the Business

Our contract manufacturing revenues are subject to seasonal fluctuations. As the majority of products that we manufacture for our customers are OTC healthcare and cold remedy products, our revenues tend to be higher in the first, third and fourth quarters during the cold season. Generally, a cold season is defined as the period from September to March when the incidence of the common cold rises as a consequence of the change in weather and other factors. Revenues are generally at their lowest levels during the second quarter when contract manufacturing demand generally declines.

Patents, Trademarks and Royalty Agreements

We do not currently own any patents. We maintain various trademarks for our TK Supplements® products including Legendz XL® and Triple Edge XL®.

Government Regulation

Our business is subject to extensive governmental regulation by various federal, state, and local agencies.

U.S. Food and Drug Administration

Pharmaceutical Regulation

The manufacturing and distribution of pharmaceutical products are subject to extensive regulation by the federal government, primarily through the FDA and the Drug Enforcement Administration ("DEA"), and to a lesser extent by state and local government agencies. The Food, Drug, and Cosmetic Act ("FFDCA") and other federal statutes and regulations govern or influence the manufacture, labeling, testing, storage, record keeping, approval, advertising and promotion of OTC pharmaceutical products.

Facilities used in the manufacture, packaging, labeling and repackaging of drug products, including OTC drug products, must be registered with the FDA and are subject to FDA inspection to ensure that drug products are manufactured in accordance with current Good Manufacturing Practice ("cGMPs").

FDA approval is required before any "new drug" may be marketed, including new formulations, strengths, dosage forms and generic versions of previously approved drugs. Generally, to obtain FDA approval of a "new drug" a company must file a New Drug Application ("NDA") or Abbreviated New Drug Application ("ANDA").

Under the OTC monograph system, selected OTC drugs are generally recognized as safe and effective and do not require the submission and approval of a NDA or ANDA prior to marketing.

The FDA OTC monographs include well-known ingredients and specify requirements for permitted indications, required warnings and precautions, allowable combinations of ingredients and dosage levels. Drug products marketed under the OTC monograph system must conform to specific quality, formula and labeling requirements; however, these products can be developed and marketed without prior FDA approval unlike products requiring a submission and approval of an ANDA or NDA. In general, it is less costly to develop and bring to market a product regulated under the OTC monograph system. From time to time, adequate information may become available to the FDA regarding certain prescription drug products that will allow the reclassification of those products as no longer requiring the approval of an ANDA or NDA prior to marketing. For this reason, there may be increased competition and lower profitability related to a particular OTC-switch product should it be reclassified to the OTC monograph system.

The FDA and the United States Pharmacopeia Convention (the "USP") have embarked on an initiative to modernize the monograph requirements of OTC drugs. We are monitoring the situation and will make appropriate adjustments to remain in compliance. In addition, regulations may change from time to time, requiring formulation, packaging or labeling changes for certain products. We cannot predict whether new legislation regulating our activities will be enacted or what effect any legislation would have on our business.

Noncompliance with applicable requirements can result in product recalls, seizure of products, injunctions, suspension of production and/or distribution, refusal of the government or third parties to enter into contracts with us, withdrawal or suspension of the applicable regulator's review of our drug applications, civil penalties and criminal fines, and disgorgement of profits.

Dietary Supplement Regulation

The FDA regulates dietary supplements under a different set of regulations than those covering "conventional" foods and drug products (prescription and OTC). Under the Dietary Supplement Health and Education Act (the "DSHEA"), which was passed in 1994, dietary supplements that were in commerce prior to 1994 are broadly presumed safe. For these supplements, manufacturers do not need to register their products with the FDA nor get FDA approval before producing or selling them. Manufacturers must make sure that product label information is truthful and not misleading. For these products, the FDA is responsible for taking action against any unsafe or misbranded dietary supplement product after it reaches the market. All new ingredients marketed within dietary supplements after 1994 that are not found in food must meet a stricter set of regulations and notification prior to release in the marketplace.

In June 2007, pursuant to the authority granted by the FFDCA as amended by DSHEA, the FDA published detailed cGMP regulations that govern the manufacturing, packaging, labeling, and holding operations of dietary supplement manufacturers. The cGMP regulations, among other things, impose significant recordkeeping requirements on manufacturers. The cGMP requirements are in effect for all manufacturers, and the FDA is conducting inspections of dietary supplement manufacturers pursuant to these requirements. The failure of a manufacturing facility to comply with the cGMP regulations renders products manufactured in such facility "adulterated" and subjects such products and the manufacturer to a variety of potential FDA enforcement actions.

In addition, under the Food Safety Modernization Act, (the "FSMA"), which was enacted on January 2, 2011, the manufacturing of dietary ingredients contained in dietary supplements are subject to similar or even more burdensome manufacturing requirements, which has the potential to increase the costs of dietary ingredients and subject suppliers of such ingredients to more rigorous inspections and enforcement. The FSMA requires importers of food, including dietary supplements and dietary ingredients, to conduct verification activities to ensure that the food they might import meets applicable domestic requirements. The FSMA also expands the reach and regulatory powers of the FDA with respect to the production and importation of food, including dietary supplements. The expanded reach and regulatory powers include the FDA's ability to order mandatory recalls, administratively detain domestic products, require certification of compliance with domestic requirements for imported foods associated with safety issues and administratively revoke manufacturing facility registrations, effectively enjoining manufacturing of dietary ingredients and dietary supplements without judicial process. The regulation of dietary supplements may increase or become more restrictive in the future.

Under FFDCA, dietary supplements are subject to both adulteration and misbranding provisions. Adulterated products are those that contain unlisted ingredients or are not prepared or packaged under the FDA cGMPs for dietary supplements and misbranded products are those with false or misleading labels. Adulterated or misbranded products are subject to the full range of civil and criminal enforcement measures under the FFDCA and all violations of FFDCA are subject to criminal enforcement at the FDA's discretion.

We are also subject to the Dietary Supplement and Nonprescription Drug Consumer Protection Act, which was passed in 2006 to amend the FFDCA with respect to serious adverse event reporting for dietary supplements and nonprescription drugs, among other things. The law requires that the manufacturer, packer or distributor of a dietary supplement or OTC drug notify the FDA of all serious adverse events it receives associated with their dietary supplement or OTC product within 15 business days. Serious adverse events are defined as those that result in death, a life-threatening experience, in-patient hospitalization, a persistent or significant disability or incapacity, congenital anomaly or birth defect, as well as situations where medical/surgical intervention is required to prevent the previously listed events.

Diagnostic Testing Services

The FDA has regulatory responsibility for diagnostic testing instruments, test kits, reagents and other devices used by clinical laboratories. The FDA enforces laws and regulations that govern the development, testing, manufacturing, performance, labeling, advertising, marketing, distribution and surveillance of diagnostic products, including COVID-19 diagnostics authorized by FDA under an Emergency Use Authorization, and it regularly inspects and reviews the manufacturing processes and product performance of diagnostic products.

Since 2014, there have been ongoing discussions and advocacy between stakeholders, including the clinical laboratory industry, the FDA, and Congress, about potential FDA regulation of laboratory-developed tests (LDTs), which are assays developed and performed in-house by clinical laboratories and can be made available to the public without pre-market review by the FDA (although COVID-19 diagnostic PCR LDTs have been subject to FDA pre-market requirements as modified by guidance issued by FDA on February 29, 2020, as a consequence of the national health emergency). Various regulatory and legislative proposals are under consideration, including some that could increase general FDA oversight of clinical laboratories and LDTs. The outcome and ultimate impact of such proposals on our business is difficult to predict at this time.

Consumer Product Safety Commission

Under the Poison Prevention Packaging Act ("PPPA"), the Consumer Product Safety Commission ("CPSC") has authority to require that certain dietary supplements and certain pharmaceuticals have child-resistant packaging to help reduce the incidence of accidental poisonings. The CPSC has published regulations requiring iron-containing dietary supplements and various pharmaceuticals to have child resistant packaging, and has established rules for testing the effectiveness of child-resistant packaging and for ensuring senior adult effectiveness.

The Consumer Product Safety Improvement Act of 2008 ("CPSIA") amended the Consumer Product Safety Act ("CPSA") to require that the manufacturer of any product that is subject to any CPSC rule, ban, standard or regulation certify that based on a reasonable testing program the product complies with CPSC requirements. This certification applies to pharmaceuticals and dietary supplements that require child-resistant packaging under the PPPA. The CPSC lifted the stay of enforcement of the certification requirement and the regulation has been in effect since February 9, 2010.

Federal Trade Commission

Advertising of our products in the United States is subject to regulation by the Federal Trade Commission (the "FTC") under the Federal Trade Commission Act (the "FTC Act"). Under the FTC's Substantiation Doctrine, an advertiser is required to have a "reasonable basis" for all objective product claims before the claims are made. Failure to adequately substantiate claims may be considered either deceptive or unfair practices. Pursuant to this FTC requirement, we are required to have adequate substantiation for all material advertising claims that we make for any products sold in the United States.

In recent years, the FTC has initiated numerous investigations of and actions against companies that sell dietary supplements. The FTC has issued guidance to assist companies in understanding and complying with its substantiation requirement. We believe that we have adequate substantiation for all material advertising claims that we make for our products in the United States, and we believe that we have organized the documentation to support our advertising and promotional practices in compliance with these guidelines. However, no assurance can be given that the FTC would reach the same conclusion if it were to review or question our substantiation for our advertising claims in the United States.

The FTC may enforce compliance with the law in a variety of ways, both administratively and judicially, using compulsory process, cease and desist orders, and injunctions. FTC enforcement can result in orders requiring, among other things, limits on advertising, corrective advertising, consumer redress, divestiture of assets, rescission of contracts, and such other relief as the agency deems necessary to protect the public. Violation of these orders could result in substantial financial or other penalties. Although we have not been the subject of any action by the FTC, no assurance can be given that the FTC will not question our advertising or other operations in the United States in the future. Any action in the future by the FTC could materially and adversely affect our ability to successfully market our products in the United States.

Clinical Laboratory Improvement Act of 1967, and the Clinical Laboratory Improvement Amendments of 1988 (CLIA)

The performance of laboratory diagnostic testing is subject to extensive U.S. regulation, and many of these statutes and regulations have not been interpreted by the courts. CLIA extends federal oversight to virtually all physician practices performing clinical laboratory testing and to clinical laboratories operating in the United States by requiring that they be certified by the federal government or, in the case of clinical laboratories, by a federally approved accreditation agency. Standards for testing under CLIA are based on the complexity of the tests performed by the laboratory, with tests classified as "high complexity," "moderate complexity," or "waived." Laboratories performing high-complexity testing are required to meet more stringent requirements than moderate-complexity laboratories. The sanction for failure to comply with CLIA requirements may be suspension, revocation or limitation of a laboratory's CLIA certificate, which is necessary to conduct business, as well as significant fines and/or criminal penalties. In addition, we are subject to regulation under state law. State laws may require that laboratories and/or laboratory personnel meet certain qualifications, specify certain quality controls or require maintenance of certain records. Applicable statutes and regulations could be interpreted or applied by a prosecutorial, regulatory or judicial authority in a manner that would adversely affect our business. Potential sanctions for violation of these statutes and regulations include significant fines and the suspension or loss of various licenses, certificates and authorizations, which could have a material adverse effect on our business. In addition, compliance with future legislation could impose additional requirements on us, which may be costly.

Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act (HIPAA) was designed to address issues related to the security and confidentiality of health information and to improve the efficiency and effectiveness of the healthcare system by facilitating the electronic exchange of information in certain financial and administrative transactions. These regulations apply to health plans and healthcare providers that conduct standard transactions electronically and healthcare clearinghouses (covered entities). Six such regulations include: (i) the Transactions and Code Sets Rule; (ii) the Privacy Rule; (iii) the Security Rule; (iv) the Standard Unique Employer Identifier Rule, which requires the use of a unique employer identifier in connection with certain electronic transactions; (v) the National Provider Identifier Rule, which requires the use of a unique healthcare provider identifier in connection with certain electronic transactions; and (vi) the Health Plan Identifier Rule, which required the use of a unique health plan identifier in connection with certain electronic transactions. We believes that we are in compliance in all material respects with each of the HIPAA Rules identified above.

The Privacy Rule regulates the use and disclosure of protected health information (PHI) by covered entities. It also sets forth certain rights that an individual has with respect to his or her PHI maintained by a covered entity, such as the right to access or amend certain records containing PHI or to request restrictions on the use or disclosure of PHI. The Privacy Rule requires covered entities to contractually bind third parties, known as business associates, in the event that they perform an activity or service for or on behalf of the covered entity that involves the creation, receipt, maintenance, or transmission of PHI. We believe that we are in compliance in all material respects with the requirements of the HIPAA Privacy Rule.

On February 6, 2014, the Centers for Medicare and Medicaid Services ("CMS") and the Department of Health and Human Services ("HHS") published final regulations that amended the HIPAA Privacy Rule to provide individuals (or their personal representatives) with the right to receive copies of their test reports from laboratories subject to HIPAA, or to request that copies of their test reports be transmitted to designated third parties. We believe our policies and procedures and privacy notice comply with the Privacy Rule access requirements.

On December 12, 2018, HHS issued a request for information (RFI) seeking input from the public on how the HIPAA regulations and the Privacy Rule, in particular, could be modified to amend existing, or impose additional, obligations relating to the processing of PHI. Subsequent to the RFI, on January 21, 2021, HHS published a notice of proposed rulemaking ("NPRM") containing potential modifications to the Privacy Rule addressing standards that may impede the transition to value-based health care. We are monitoring the NPRM process. If modifications to the Privacy Rule are adopted, they may impact our compliance obligations under HIPAA.

The U.S. Health Information Technology for Economic and Clinical Health Act (HITECH), which was enacted in February 2009, with regulations effective on September 23, 2013, strengthened and expanded the HIPAA Privacy and Security Rules and their restrictions on use and disclosure of PHI. HITECH includes, but is not limited to, prohibitions on exchanging PHI for remuneration and additional restrictions on the use of PHI for marketing. HITECH also fundamentally changes a business associate's obligations by imposing a number of Privacy Rule requirements and a majority of Security Rule provisions directly on business associates that were previously only directly applicable to covered entities. Moreover, HITECH requires covered entities to provide notice to individuals, HHS, and, as applicable, the media when unsecured PHI is breached, as that term is defined by HITECH. Business associates are similarly required to notify covered entities of a breach. We believe our policies and procedures are fully compliant with HIPAA as modified by the HITECH requirements.

The administrative simplification provisions of HIPAA mandate the adoption of standard unique identifiers for healthcare providers. The intent of these provisions is to improve the efficiency and effectiveness of the electronic transmission of health information. The National Provider Identifier Rule requires that all HIPAA-covered healthcare providers, whether they are individuals or organizations, must obtain an NPI to identify themselves in standard HIPAA transactions. NPI replaces the unique provider identification number and other provider numbers previously assigned by payers and other entities for the purpose of identifying healthcare providers in standard electronic transactions. The Company believes that it is in compliance with the HIPAA National Provider Identifier Rule in all material respects.

The Health Plan Identifier (HPID) was a unique identifier designed to furnish a standard way to identify health plans in electronic transactions. CMS published the final rule adopting the HPID for health plans required by HIPAA on September 12, 2012. Effective October 31, 2014, CMS announced a delay, until further notice, in enforcement of regulations pertaining to health plan enumeration and use of the HPID in HIPAA transactions adopted in the HPID final rule. On October 28, 2019, CMS published a final rule rescinding the adopted standard unique HPID and implementation specifications and requirements for its use and other entity identifier and implementation specifications for its use, effective December 27, 2019. This delay remains in effect. We will continue to monitor future developments related to the HPID and respond accordingly.

Violations of the HIPAA provisions could result in civil and/or criminal penalties, including significant fines and up to 10 years in prison. HITECH also significantly strengthened HIPAA enforcement by increasing the civil penalty amounts that may be imposed, requiring HHS to conduct periodic audits to confirm compliance and authorizing state attorneys general to bring civil actions seeking either injunctions or damages in response to violations of the HIPAA privacy and security regulations that affect the privacy of state residents.

The total cost associated with meeting the ongoing requirements of HIPAA and HITECH is not expected to be material to the Company's operations or cash flows. However, future regulations and interpretations of HIPAA and HITECH could impose significant costs on the Company.

In addition to the HIPAA regulations described above, numerous other data protection, privacy and similar laws govern the confidentiality, security, use, and disclosure of personal information. These laws vary by jurisdiction, but they most commonly regulate or restrict the collection, use, and disclosure of medical and financial information and other personal information. In the U.S., some state laws are more restrictive and, therefore, are not preempted by HIPAA. Penalties for violation of these laws may include sanctions against a laboratory's licensure, as well as civil and/or criminal penalties.

Congress and state legislatures also have been considering new legislation relating to privacy and data protection. For example, on June 28, 2018, the California legislature passed the California Consumer Privacy Act (CCPA), which became effective January 1, 2020. The CCPA created new transparency requirements and granted California residents several new rights with regard to their personal information. In addition, in November 2020, California voters approved the California Privacy Rights Act (CPRA) ballot initiative, which introduced significant amendments to the CCPA and established and funded a dedicated California privacy regulator, the California Privacy Protection Agency (CPPA). The amendments introduced by the CPRA go into effect on January 1, 2023, and new implementing regulations are expected to be introduced by the CPPA. Failure to comply with the CCPA may result in, among other things, significant civil penalties and injunctive relief, or potential statutory or actual damages. In addition, California residents have the right to bring a private right of action in connection with certain types of incidents. These claims may result in significant liability and potential damages. The Company implemented processes to manage compliance with the CCPA and continues to assess the impact of the CPRA on the Company's business as additional information and guidance becomes available.

Effective August 14, 2020, the Substance Abuse and Mental Health Services Administration of HHS (SAMHSA) announced the finalization of proposed changes to the Confidentiality of Substance Use Disorder Patient Records regulation, 42 Code of Federal Regulations Part 2. This regulation protects the confidentiality of patient records relating to the identity, diagnosis, prognosis, or treatment that are maintained in connection with the performance of any federally assisted program or activity relating to substance use disorder education, prevention, training, treatment, rehabilitation, or research. Under the regulation, patient identifying information may only be released with the individual's written consent, subject to certain limited exceptions. The latest changes to this regulation seek to better facilitate care coordination, while maintaining more stringent confidentiality of substance use disorder information. The Company adopted changes to its policies and procedures necessary for compliance.

Other Regulatory Oversight

We are also subject to regulation under various state, local, and international laws that include provisions governing, among other things, the formulation, manufacturing, packaging, labeling, advertising, and distribution of dietary supplements and OTC drugs. For example, Proposition 65 in the State of California is a list of substances deemed to pose a risk of carcinogenicity or birth defects at or above certain levels. If any such ingredient exceeds the permissible levels in a dietary supplement, cosmetic, or drug, the product may be lawfully sold in California only if accompanied by a prominent warning label alerting consumers that the product contains an ingredient linked to cancer or birth defect risk. Private attorney general actions as well as California attorney general actions may be brought against non-compliant parties and can result in substantial costs and fines.

Reimbursement

Billing for diagnostic testing services is complex and subject to extensive and non-uniform rules and administrative requirements. Depending on the billing arrangement and applicable law, we bill various payers, such as patients, insurance companies, Medicare, Medicaid, clinicians, hospitals and employer groups. Failure to accurately bill for our services could have a material adverse effect on our business.

We bill third-party payors, both commercial and government, using Current Procedural Terminology, or CPT, codes, which are published by the American Medical Association, or AMA. In April 2014, Congress passed the Protecting Access to Medicare Act of 2014, or PAMA, which included substantial changes to the way in which clinical laboratory services are priced and paid under Medicare. On June 23, 2016, CMS published the final rule implementing the reporting and rate-setting requirements. Under PAMA, laboratories that receive the majority of their Medicare revenue from payments made under the CLFS or the Physician Fee Schedule are required to report to CMS, beginning in 2017 and every three years thereafter (or annually for an advanced diagnostic laboratory test, or ADLT), private payor payment rates and volumes for clinical diagnostic laboratory tests, or CDLTs . Laboratories that fail to report the required payment information may be subject to substantial civil monetary penalties. We do not believe that any of our tests meet the current definition of ADLTs. We therefore report private payor rates for our tests every three years.

As required under PAMA, CMS uses the data reported by laboratories to develop Medicare payment rates for laboratory tests equal to the volume-weighted median of the private payor payment rates. For tests furnished on or after January 1, 2019, Medicare payments for CDLTs are based upon reported private payor rates. For a CDLT that is assigned a new or substantially revised CPT code, the initial payment rate is assigned using the gap-fill methodology, as under prior law.

On December 20, 2019, President Trump signed the Further Consolidated Appropriations Act, which included the Laboratory Access for Beneficiaries Act, or LAB Act. The LAB Act delayed by one year the reporting of payment data under PAMA f or CDLTs that are not ADLTs until the first quarter of 2021. The Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, which was signed into law on March 27, 2020, delayed the reporting period by an additional year, until the first quarter of 2022. As a result, Medicare payment rates determined by data reported in 2017 will continue through December 31, 2022.

In addition, under PAMA, as amended by the LAB Act, any reduction to a particular payment rate resulting from the new methodology is limited to 10% per test per year in 2020 and to 15% per test per year in each of the years 2021 through 2023. The CARES Act delayed the 15% cut scheduled to take effect on January 1, 2021, for one year.

Fraud and Abuse Laws and Regulations

Existing U.S. laws governing federal healthcare programs, including Medicare and Medicaid, as well as similar state laws, impose a variety of broadly described fraud and abuse prohibitions on healthcare providers, including clinical laboratories. These laws are interpreted liberally and enforced aggressively by multiple government agencies, including the U.S. Department of Justice, OIG and various state agencies. Historically, the clinical laboratory industry has been the focus of major governmental enforcement initiatives. The U.S. government's enforcement efforts have been conducted under regulations such as HIPAA, which includes several provisions related to fraud and abuse enforcement, including the establishment of a program to coordinate and fund U.S., state and local law enforcement efforts, and the Deficit Reduction Act of 2005, which includes requirements directed at Medicaid fraud, including increased spending on enforcement and financial incentives for states to adopt false claims act provisions similar to the U.S. False Claims Act. Amendments to the False Claims Act, and other enhancements to the U.S. fraud and abuse laws enacted as part of the ACA, have further increased fraud and abuse enforcement efforts and compliance risks. For example, the ACA established an obligation to report and refund overpayments from Medicare or Medicaid within 60 days of identification (whether or not paid through any fault of the recipient); failure to comply with this requirement can give rise to additional liability under the False Claims Act and Civil Monetary Penalties statute.

The U.S. Anti-Kickback Statute prohibits knowingly providing anything of value in return for, or to induce the referral of, Medicare, Medicaid or other U.S. healthcare program business. Violations can result in imprisonment, fines, penalties, and/or exclusion from participation in U.S. healthcare programs. The OIG has published "safe harbor" regulations that specify certain arrangements that are protected from prosecution under the Anti-Kickback Statute if all conditions of the relevant safe harbor are met. Failure to fit within a safe harbor does not necessarily constitute a violation of the Anti-Kickback Statute; rather, the arrangement would be subject to scrutiny by regulators and prosecutors and would be evaluated on a case-by-case basis. Many states have their own Medicaid anti-kickback laws, and several states also have anti-kickback laws that apply to all payers (i.e., not just government healthcare programs).

From time to time, the OIG issues alerts and other guidance on certain practices in the healthcare industry that implicate the Anti-Kickback Statute or other fraud and abuse laws. OIG Special Fraud Alerts and Advisory Opinions relevant to the Company set forth a number of practices allegedly engaged in by some clinical laboratories and healthcare providers that raise issues under the U.S. fraud and abuse laws, including the Anti-Kickback Statute. These practices include: (i) providing employees to furnish valuable services for physicians (other than collecting patient specimens for testing) that are typically the responsibility of the physicians' staff; (ii) offering certain laboratory services at prices below fair market value in return for referrals of other tests that are billed to Medicare at higher rates; (iii) providing free testing to physicians' managed care patients in situations where the referring physicians benefit from such reduced laboratory utilization; (iv) providing free pickup and disposal of biohazardous waste for physicians for items unrelated to a laboratory's testing services; (v) providing general-use facsimile machines or computers to physicians that are not exclusively used in connection with the laboratory services; (vi) providing free testing for healthcare providers, their families and their employees (i.e., so-called "professional courtesy" testing); (vii) compensation paid by laboratories to physicians for blood specimen processing and for submitting patient data to registries; and (viii) the provision of discounts on laboratory services billed to customers in return for the referral of U.S. healthcare program business.

In addition to the Anti-Kickback Statute, in October 2018, the U.S. enacted the Eliminating Kickbacks in Recovery Act of 2018 (EKRA), as part of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act). EKRA is an all-payer anti-kickback law that makes it a criminal offense to pay any remuneration to induce referrals to, or in exchange for, patients using the services of a recovery home, a substance use clinical treatment facility, or laboratory. Although it appears that EKRA was intended to reach patient brokering and similar arrangements to induce patronage of substance use recovery and treatment, the language in EKRA is broadly written. As drafted, an EKRA prohibition on incentive compensation to sales employees is inconsistent with the federal anti-kickback statute and regulations, which permit payment of employee incentive compensation, a practice that is common in the industry. Significantly, EKRA permits the U.S. Department of Justice to issue regulations clarifying EKRA's exceptions or adding additional exceptions, but such regulations have not yet been issued. The Company is working through its trade association to address the scope of EKRA and is seeking clarification or correction.

Enrollment and re-enrollment in U.S. healthcare programs, including Medicare and Medicaid, are subject to certain program integrity requirements intended to protect the programs from fraud, waste, and abuse. In September 2019, CMS published a final rule implementing program integrity enhancements to provider enrollment requiring Medicare, Medicaid, and Children's Health Insurance Program (CHIP) providers and suppliers to disclose on an enrollment application or a revalidation application any current or previous direct or indirect affiliation with a provider or supplier that (1) has uncollected debt; (2) has been or is subject to a payment suspension under a federal health care program; (3) has been or is excluded by the OIG from Medicare, Medicaid, or CHIP; or (4) has had its Medicare, Medicaid, or CHIP billing privileges denied or revoked. This rule permits CMS to deny enrollment based on such an affiliation when CMS determines that the affiliation poses an undue risk of fraud, waste, or abuse. CMS is phasing in this new affiliation disclosure requirement.

Under another U.S. statute, known as the Stark Law or "physician self-referral" prohibition, physicians who have a financial or a compensation relationship with a commercial laboratory may not, unless an exception applies, refer Medicare or Medicaid patients for testing to the laboratory, regardless of the intent of the parties. Similarly, laboratories may not bill Medicare or Medicaid for services furnished pursuant to a prohibited self-referral. There are several Stark Law exceptions that are relevant to arrangements involving clinical laboratories, including: i) fair market value compensation for the provision of items or services; ii) payments by physicians to a laboratory for commercial laboratory services; iii) ancillary services (including laboratory services) provided within the referring physician's own office, if certain criteria are satisfied; iv) physician investment in a company whose stock is traded on a public exchange and has stockholder equity exceeding $75.0 million; and v) certain space and equipment rental arrangements that are set at a fair market value rate and satisfy other requirements. Many states have their own self-referral laws as well, which in some cases apply to all patient referrals, not just government reimbursement programs.

In December 2020, the OIG and CMS published final rules to amend the regulations implementing the Anti-Kickback Statute and the Stark Law, respectively. The amendments are primarily intended to alleviate perceived impediments to coordinated care and value-based compensation arrangements through new safe harbors to the Anti-Kickback Statute and new exceptions to the Stark Law, and have varying degrees of applicability to laboratories. The CMS final rule incorporates laboratories and permits support for value-based arrangements, under certain conditions for purposes of the Stark Law. However, the OIG final rule excludes laboratories from protection under the Anti-Kickback Statute safe harbors for value-based arrangements.

There are a variety of other types of U.S. and state fraud and abuse laws, including laws prohibiting submission of false or fraudulent claims. The Company seeks to conduct its business in compliance with all U.S. and state fraud and abuse laws. The Company is unable to predict how these laws will be applied in the future, and no assurances can be given that its arrangements will not be subject to scrutiny under such laws. Sanctions for violations of these laws may include exclusion from participation in Medicare, Medicaid, and other U.S. or state healthcare programs, significant criminal and civil fines and penalties, and loss of licensure. Any exclusion from participation in a U.S. healthcare program, or material loss of licensure, arising from any action by any federal or state regulatory or enforcement authority, would likely have a material adverse effect on the Company's business. In addition, any significant criminal or civil penalty resulting from such proceedings could have a material adverse effect on the Company's business.

Competition

We compete with other contract manufacturers of OTC healthcare products. These suppliers range widely in size. Management believes that our manufacturing capacity and abilities offer a significant advantage over many of our competitors in the full service contract development and manufacturing industry. We have over 20 years of manufacturing experience and industry know how in large scale batch production of OTC lozenge products. The markets for OTC healthcare products and dietary supplements are highly competitive. Many of the participants in these industries have substantially greater capital resources, technical staffs, facilities, marketing resources, product development, and distribution experience than we do. We believe that our ability to compete in these industries will continue to depend on a number of factors, including product quality and price, availability, speed to market, consumer marketing, reliability, credit terms, brand name recognition, delivery time and post-sale service and support.

Our principal competition for our lab diagnostic services are commercial laboratories, such as Quest Diagnostics Incorporated and Laboratory Corporation of America Holdings, both all of which have significant infrastructures and resources to support their diagnostic processing services. In addition, we compete with large, multispecialty group medical clinics, health systems and academic medical university-based clinics may provide in-house clinical laboratories offering COVID-19 and other RPP Molecular tests. Additionally, we compete against regional clinical laboratories providing diagnostic testing, including Interpace Biosciences, Inc.

Human Capital Management

We consider talent attraction, development, engagement and retention a key driver to our business success. We are committed to developing a comprehensive, cohesive and positive company culture and employee experience. At December 31, 2020, we employed 95 full-time employees, of which 47 were engaged in our contract manufacturing operations and 37 employees were providing diagnostic services. The remaining employees were involved in an executive, sales, marketing or administrative capacity.

We emphasize a number of measures and objectives in managing our human capital assets, including, among others, employee safety and wellness; talent acquisition and retention, employee engagement, development and training, diversity and inclusion, and compensation. None of our employees are represented by a labor organization or under any collective-bargaining arrangements. We consider our employee relations to be good.

We are committed to fostering an environment where all employees can grow and thrive. A diverse workforce results in a broader range of perspectives, helping drive our commitment to innovation. Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors and consultants. The principal purposes of our cash and equity incentive plans are to attract, retain and reward personnel through the granting of cash-based and stock-based compensation awards, in order to increase stockholder value and the success of our Company by motivating such individuals to perform to the best of their abilities and achieve our objectives.

The success of our business is fundamentally connected to the well-being of our employees. We understand that good health leads to better performance. We provide our employees and their families with access to a variety of flexible and convenient health and wellness programs, health reimbursement accounts and retirement savings plan Our health and wellness programs include benefits that provide support to manage events that may require time away from work or that impact their financial well-being and that support their physical and mental health by providing tools and resources to help them improve or maintain their health status and encourage engagement in healthy behaviors. We regularly evaluate our benefits package to make modifications that are aligned with the competitive landscape, legislative changes, and the unique needs of our business and culture.

Corporate Information

ProPhase was initially organized in Nevada in July 1989. Effective June 18, 2015, we changed our state of incorporation from the State of Nevada to the State of Delaware. Our principal executive offices are located at 711 Stewart Avenue, Garden City, New York 11530 and our telephone number is 215-345-0919.

Where You Can Find Other Information

We file periodic and current reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). We make available on our website (www.ProPhaseLabs.com) free of charge our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and any amendments to or exhibits included in those reports as soon as reasonably practical after we electronically file such materials with or furnish them to the SEC. Information appearing on our website is not part of this Annual Report. In addition, the SEC maintains an Internet site (www.sec.gov) that contains reports, proxy and information statements regarding issuers that file electronically with the SEC, including the Company.

Item 1A. Risk Factors

The following discussion addresses risks and uncertainties that could cause, or contribute to causing, actual results to differ from our expectations in material ways. In evaluating our business, investors should pay particular attention to the risks and uncertainties described below and in other sections of this Annual Report and in our subsequent filings with the SEC. These risks and uncertainties, or other events that we do not currently anticipate or that we currently deem immaterial also may affect our results of operations, cash flows and financial condition. The trading price of our common stock could also decline due to any of these risks. The following information should be read in conjunction with Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and related notes included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report.

Risks Related to Our Business

We have a history of losses.

We have experienced net losses from continuing operations before income tax for our last two fiscal years. As of December 31, 2020, we had working capital of approximately $9.6 million, which we believe is an acceptable and adequate level of working capital to support our business for at least the next twelve months ending March 2022. Following the sale of our Cold-EEZE™ business in March 2017, we have been actively exploring new product technologies, applications, product line extensions and other new product opportunities. In October 2020, we purchased our first CLIA licensed laboratory in Old Bridge, New Jersey, where we offer a variety of important medical tests, including, among others, COVID-19 diagnostic testing and Respiratory Pathogen Panel (RPP) Molecular tests. In December 2020, we expanded our diagnostic services to a second location in Garden City, New York. We may in the future consider and pursue investments and acquisitions in other sectors and industries. There can be no assurance that our diagnostic services business will succeed or that we will be successful in initiating or acquiring any new lines of business in the future, or that any such new lines of business will achieve profitability.

The loss of sales to any one or more of our large third-party contract manufacturing customers could have a material adverse effect on our business operations and financial condition.

For each of Fiscal 2020 and 2019, our revenues from continuing operations came principally from our contract manufacturing services. Two third-party contract manufacturing customers, accounted for 47.1% and 17.2%, respectively of Fiscal 2020 revenues. Three third-party contract manufacturing customers, accounted for 36.5%, 30.5% and 11.1%, respectively, of Fiscal 2019 revenues. The loss of sales to any one or more of these third-party contract manufacturing customers could have a material adverse effect on our business operations and financial condition, unless we are able to increase revenue from other sources.

We have a limited operating history in the diagnostic testing services business. There can be no assurance that we will be able to successfully offer, perform or generate revenues from our lab diagnostic services.

Despite our management's extensive experience in the healthcare industry, we had no specific experience operating a diagnostic services business prior to entering this field in November 2020. We face substantial risks and uncertainties to which our diagnostic services business is subject. To address these risks and uncertainties, we must, among other things, successfully execute our business strategy, respond to competitive developments, and attract and retain qualified personnel. We cannot assure you that we will operate profitably or that our business strategy will be successful. As a result, our diagnostic services business may not succeed.

Our ability to generate revenues from COVID-19 and other RPP molecular testing, and our ability to generate profits from our diagnostic services business, will depend on a variety of factors, including:

- the level of demand for COVID-19 and other diagnostic testing, the price we are able to receive for performing our testing services, and the length of time for which that demand persists;
- the availability of COVID-19 testing from other laboratories;
- the period of time for which we are able to serve as an authorized laboratory offering COVID-19 testing under various Emergency Use Authorizations;
- our ability to maintain our status as an authorized laboratory to perform COVID-19 and other diagnostic testing and related services and to respond to any changes in regulatory requirements;
- the potential for supply disruptions and our reliance on certain single-source suppliers;
- the potential for disruption in the delivery of patient samples to our laboratory;
- the capacity of our laboratory to satisfy both COVID-19 testing and other testing demands;
- the extent to which we choose to allocate limited laboratory capacity, supplies and other resources to areas of our business other than COVID-19 testing;
- the complexity of billing for, and collecting revenue for, our testing services;
- our ability to maintain laboratory operations during the COVID-19 pandemic and to perform the test accurately and punctually;
- our ability to expand and or diversity our diagnostic services and
- the ease of use of our ordering and reporting process.

In addition, the process of building and expanding our lab diagnostic service business may divert resources and distract management's attention from other areas of our business that may be more profitable or strategic. If we are unable to successfully provide diagnostic services while continuing to operate our existing manufacturing and dietary supplements business, our results of operations, financial position and reputation may suffer.

If demand for COVID-19 testing decreases or becomes no longer necessary and we are unable to generate sufficient profits from other RPP Molecular tests, our business could be materially harmed and our $3.0 million Secured Promissory Note receivable could become uncollectable.

There can be no assurance that demand for our COVID-19 testing services will continue to exist in the future due to successful containment efforts, the successful vaccination of a majority of Americans, or due to other events. If there is no demand for our COVID-19 testing services, and we are unable to generate sufficient profits from other RPP Molecular tests, our business could be materially harmed. Similarly, the business of the issuer of our $3.0 million secured note ("Secured Note"), who is also in the diagnostic test processing business, could also be harmed, leading to their inability to repay amounts due and owed to us under the Secured Note. If the issuer is unable to pay amounts owed to us under the Secured Note receivable, we may be required to pursue legal remedies in order to recoup amounts owed to us.

We may require additional capital to support our growing diagnostic services business and product development and commercialization programs and additional funding may not be available to us on acceptable terms, or at all.

We may require additional capital to support our growing diagnostic services business and consumer product development and commercialization programs. The amount of capital that may be needed to support our business will depend on many factors which may include, but are not limited to (i) the revenue we generate from our lab diagnostic services, contract manufacturing services and dietary supplement sales, (ii) the expenses we incur in growing our lab diagnostic business and marketing our manufacturing capabilities and dietary supplement line; (iii) the cost involved in applying for and obtaining FDA, international regulatory or other technical approvals, if required, and (iv) whether we elect to establish partnering or other strategic arrangements for the development, sales, manufacturing and marketing of our products.

Income from our diagnostic services business, contract manufacturing business and TK Supplements® products line may not generate all the funds we need to support the growth of our diagnostic services business and future product development and commercialization. To the extent that we do not generate sufficient cash from operations, we may, in the short and long-term, seek to raise capital through the issuance of equity securities or through other financing sources. To the extent that we seek to raise additional funds by issuing equity securities, our stockholders may experience significant dilution. Any debt financing, if available, may include financial and other covenants that could restrict our use of the proceeds from such financing or impose other business and financial restrictions on us. In addition, we may consider alternative approaches such as licensing, joint venture, or partnership arrangements to provide long term capital. Additional funding may not be available to us on acceptable terms, or at all.

The customers for whom we contract manufacture may significantly influence our business, financial condition and results of operations.

Our contract manufacturing business is dependent on demand for the products we manufacture for our customers and we have no control or influence over the market demand for those products. Demand for our customers' products may be adversely affected by, among other things, regulatory issues, the loss of patent or other intellectual property rights protection, the emergence of competing products, competition from other contract manufacturers, negative public or consumer perception of those products or our industry and changes in the marketing strategies for such products. If production volumes of products that we manufacture for third-parties and related revenues are not maintained or if there is any change in the terms or termination of our manufacturing agreement with Mylan or any of our other significant customers, it may have a material adverse impact on our business, financial condition and results of operations.

Disruptions to our supply chain or increases in the price or adulteration of key raw materials needed for our businesses could materially and adversely affect our business, financial condition and results of operations.

Disruptions to our supply chain, including our access to raw materials necessary for our contract manufacturing business and TK Supplements® product line as well as access to COVID-19 testing supplies and personal protective equipment for our diagnostic services business, could have a material impact on our business, financial condition and results of operations. The COVID-19 pandemic has adversely impacted, and may continue to adversely impact, third parties that are critical to our businesses, including vendors, suppliers, and business partners. While our businesses have not been impacted up to this point by the COVID-19 pandemic, it is difficult if not impossible to predict, whether that may change in the future.

Our TK Supplements® products and the products we manufacture for third parties are composed of certain key raw materials. If the prices of these raw materials were to increase significantly, it could result in a significant increase to us in the prices charged to us for our own branded products and third-party products. Raw material prices may increase in the future and we may not be able to pass on those increases to customers who purchase our products or to the customers whose products we manufacture. A significant increase in the price of raw materials that cannot be passed on to customers could have a material adverse impact on our business, financial condition and results of operations.

We are reliant upon the supply of raw materials that meet our specifications and the specifications of third parties for whom we manufacture. If any raw material is adulterated and does not meet our specifications or third parties' specifications, it could significantly impact our ability to manufacture products and could materially and adversely impact our business, financial condition and results of operations.

In addition, if we are no longer able to obtain the resources, raw materials or components we need from one or more of our suppliers on terms reasonable to us or at all, including as a result of the increased demand that may be placed on our suppliers as a result of public health epidemics such as the COVID-19 pandemic, our customer relationships could be materially and adversely affected, which could have a material impact on our business, financial condition and results of operations.

Disruptions at our PMI manufacturing facilities or any loss of manufacturing certifications could materially and adversely affect our business, financial condition, results of operations and customer relationships.

Any significant disruption at our manufacturing facility for any reason, including regulatory requirements, an FDA determination that the facility is not in compliance with the applicable cGMP regulations, the loss of certifications, power interruptions, destruction or damage to the facility or disruptions related to the COVID-19 pandemic, could disrupt our ability to manufacture products for our contract manufacturing customers and any of our own branded products. Any such disruption could have a material adverse effect on our business, financial condition and results of operations.

Our PMI manufacturing business is subject to seasonal fluctuations and may fluctuate from cold season to cold season.

Because the majority of sales from our PMI manufacturing facility are from cold remedy products, our sales are subject to seasonal fluctuations and influenced by the timing, length and severity of each cold season. Our revenues tend to be higher in the first, third and fourth quarters during the cold season. Generally, a cold season is defined as the period of September to March, when the incidence of the common cold rises as a consequence of the change in weather and other factors.

Our product development and commercialization efforts may be unsuccessful.

There are numerous risks associated with OTC product development and commercialization. We may be subject to delays and/or be unable to successfully implement our business plan and strategy to develop and commercialize one or more OTC products and/or dietary supplements. The successful commercialization and market acceptance of any products we develop will be subject to, among other things, consumer purchasing trends, health and wellness trends, regulatory factors, retail acceptance and overall economic and market conditions. As a consequence, we may suspend or abandon some or all of our proposed new products before they ever become commercially viable. Even if we successfully develop and obtain approval of a new product, if we cannot successfully commercialize it in a timely manner, our business and financial condition may be materially adversely affected.

Our business is subject to significant competitive pressures.

We compete with other contract manufacturers of OTC drug and dietary supplement products. These suppliers range widely in size. We compete primarily on the basis of price, quality and service. Management believes that our manufacturing capacity and abilities offer a significant advantage over many of our competitors in the full service contract development and manufacturing industry. We have over 20 years of manufacturing experience and industry know how in large scale batch production of OTC lozenge products. To the extent that any of our competitors are able to offer better prices, quality and/or services, however, we could lose customers and our sales and margins may decline.

The OTC healthcare products and dietary supplements industries are highly competitive. Many of the participants in these industries have substantially greater capital resources, technical staffs, facilities, marketing resources, product development, and distribution experience than we do. We believe that our ability to continue to compete in these industries will depend on a number of factors, including product quality and price, availability, speed to market, consumer marketing, reliability, credit terms, brand name recognition, delivery time and post-sale service and support. However, our failure to appropriately and timely respond to consumer preferences and demand for new products could significantly harm our business, financial condition and results of operations. Furthermore, unfavorable publicity or consumer perception of products we develop and commercialize could have a material adverse effect on our business and operations.

Our principal competition for our lab diagnostic services are commercial laboratories, such as Quest Diagnostics Incorporated and Laboratory Corporation of America Holdings, both all of which have significant infrastructures and resources to support their diagnostic processing services. In addition, we compete with large, multispecialty group medical clinics, health systems and academic medical university-based clinics may provide in-house clinical laboratories offering COVID-19 and other RPP Molecular tests. Additionally, we compete against regional clinical laboratories providing diagnostic testing, including Interpace Biosciences, Inc. If we are unable to compete effectively, our earnings may be significantly negatively impacted.

Our success is dependent on key personnel.

Our success depends, in part, upon the continued service of key personnel, such as Mr. Ted Karkus, Chairman and Chief Executive Officer and certain managers and strategists within the Company. The loss of the services of any one of them could have a material adverse effect on us.

In order to be successful, we must retain and motivate executives and other key employees, including those in managerial, technical, marketing and health product positions. In particular, our product generation efforts depend on hiring and retaining qualified health and science professionals. Competition for skilled employees who can perform the services that we require is intense and hiring, training, motivating, retaining and managing employees with the skills required is time-consuming and expensive. If we are not able to hire sufficient professional staff to support our operations, or to train, motivate, retain and manage the employees we do hire, it could have a material adverse effect on our business operations or financial results.

Failure to protect our trademarks and other intellectual property could impact our business.

We will rely on trademark laws to protect our proprietary rights in any products we develop and commercialize. Monitoring the unauthorized use of our intellectual property will be difficult. Litigation may be necessary to enforce our intellectual property rights or to determine the validity and scope of the proprietary rights of others. Litigation of this type could result in substantial costs and diversion of resources, may result in counterclaims or other claims against us and could significantly harm our results of operations. In addition, the laws of some foreign countries do not protect our proprietary rights to the same extent as do the laws of the United States. From time to time, we may apply to have certain trademarks registered. There is no guarantee that such trademark registrations will be granted. The unauthorized reproduction of our trademarks could diminish the value of our brand and its market acceptance, competitive advantages or goodwill, which could adversely affect our business.

Our ability to use our net operating loss carryforwards to offset future taxable income may be subject to certain limitations.

In general, under Section 382 of the Internal Revenue Code of 1986, as amended (the "Section 382"), a corporation that undergoes an "ownership change" is subject to limitations on its ability to use its pre-change net operating loss carryforwards (the "NOLs"), to offset future taxable income. Future changes in our stock ownership, some of which are outside of our control, could result in an ownership change under Section 382. Furthermore, our ability to use NOLs of companies that we may acquire in the future may be subject to limitations.

Based on our Section 382 analysis, we do not believe our current net operating loss carryforwards are subject to these limitations as of December 31, 2020.

Adverse credit market conditions may significantly affect our access to capital, cost of capital and ability to meet liquidity needs.

Disruptions, uncertainty or volatility in the credit markets could adversely impact the availability and cost of credit to us in the future. Accordingly, we may be forced to delay raising capital or pay unattractive interest rates, which could increase our interest expense, decrease our profitability and significantly reduce our financial flexibility. Longer-term disruptions in the capital and credit markets as a result of uncertainty, changing or increased regulation, reduced alternatives or failures of significant financial institutions could adversely affect our access to liquidity needed for our business. Any disruption could require us to take measures to conserve cash until the markets stabilize or until alternative credit arrangements or other funding for our business needs can be arranged. Such measures could include deferring capital expenditures or other discretionary uses of cash. Overall, our results of operations, financial condition and cash flows could be materially adversely affected by disruptions in the credit markets.

System failures could adversely affect our results of operations and financial condition.

Like many companies, our business is highly dependent upon our information technology infrastructure (websites, accounting and manufacturing applications, and product and customer information databases) to manage effectively and efficiently our operations, including order entry, customer billing, accurate tracking of purchases and volume incentives and managing accounting, finance and manufacturing operations. The occurrence of a natural disaster, security breach or other unanticipated problem could result in interruptions in our day-to-day operations that could adversely affect our business. A long-term failure or impairment of any of our information systems could have a material adverse effect on our results of operations and financial condition.

Risks Related to Governmental Regulation and Litigation

Our contract manufacturing and dietary supplement businesses are subject to extensive governmental regulation.

We are subject to laws and regulations that cover:

- the formulation, manufacturing, packaging, labeling, distribution, importation, sale and storage of our products;
- the health and safety of our products;
- trade practice and direct selling laws; and
- product claims and advertising.

Compliance with these laws and regulations is time consuming and expensive. Moreover, new regulations could be adopted that would severely restrict the products we sell or manufacture or our ability to continue our business. We are unable to predict the nature of any future laws, regulations, interpretations or applications, nor can we predict what effect additional governmental regulations or administrative orders, when and if promulgated, would have on our business in the future. These future changes could, however, require the reformulation or elimination of certain products; imposition of additional record keeping and documentation requirements; imposition of new federal reporting and application requirements; modified methods of importing, manufacturing, storing or distributing certain products; and expanded or different labeling and substantiation requirements for certain products and ingredients. Any or all of these requirements could harm our business.

In July 2011, the FDA issued draft guidance governing the notification of new dietary ingredients (“NDIs”) and in August 2016, the FDA issued revised draft guidance. Although FDA guidance is not mandatory, it is a strong indication of the FDA’s current views, including its position on enforcement. We believe that the draft guidance, if implemented as proposed, could have a material impact on our operations. FDA enforcement of the NDI guidance as written could require us to incur additional expenses, which could be significant, and negatively affect our business in several ways, including, but not limited to, the detention and refusal of admission of imported products, the injunction of manufacturing of any dietary ingredients or dietary supplements until the FDA determines that those ingredients or products are in compliance, and the potential imposition of penalties for non-compliance.

Our diagnostic business could be harmed by the loss or suspension of a license or imposition of a fine or penalties under, or future changes in, or interpretations of, the law or regulations of the Clinical Laboratory Improvement Act of 1967, and the Clinical Laboratory Improvement Amendments of 1988 (CLIA), or those of Medicare, Medicaid or other national, state or local agencies in the United States.

The performance of laboratory testing is subject to extensive U.S. regulation, and many of these statutes and regulations have not been interpreted by the courts. CLIA extends federal oversight to virtually all physician practices performing clinical laboratory testing and to clinical laboratories operating in the United States by requiring that they be certified by the federal government or, in the case of clinical laboratories, by a federally approved accreditation agency. The sanction for failure to comply with CLIA requirements may be suspension, revocation or limitation of a laboratory's CLIA certificate, which is necessary to conduct business, as well as significant fines and/or criminal penalties. In addition, we expect to be subject to regulation under state law. State laws may require that laboratories and/or laboratory personnel meet certain qualifications, specify certain quality controls or require maintenance of certain records. Applicable statutes and regulations could be interpreted or applied by a prosecutorial, regulatory or judicial authority in a manner that would adversely affect our business. Potential sanctions for violation of these statutes and regulations include significant fines and the suspension or loss of various licenses, certificates and authorizations, which could have a material adverse effect on our business. In addition, compliance with future legislation could impose additional requirements on us, which may be costly.

U.S. Food and Drug Administration (FDA) regulation of diagnostic products could result in increased costs and the imposition of fines or penalties, and could have a material adverse effect upon our business.

The FDA has regulatory responsibility for instruments, test kits, reagents and other devices used by clinical laboratories. The FDA enforces laws and regulations that govern the development, testing, manufacturing, performance, labeling, advertising, marketing, distribution and surveillance of diagnostic products, including COVID-19 diagnostics authorized by FDA under an Emergency Use Authorization, and it regularly inspects and reviews the manufacturing processes and product performance of diagnostic products.

FDA regulation of the diagnostic products we use could result in increased costs and administrative and legal actions for noncompliance, including warning letters, fines, penalties, product suspensions, product recalls, injunctions and other civil and criminal sanctions, which could have a material adverse effect on our business, financial condition, results of operation and cash flows.

If we fail to comply with the complex federal, state, local and foreign laws and regulations that apply to our business, we could suffer severe consequences that could materially and adversely affect our operating results and financial condition.

We expect our diagnostic testing operations to be subject to extensive federal, state, local and foreign laws and regulations, all of which are subject to change. These laws and regulations currently include, among other things:

- CLIA, which requires that laboratories obtain certification from the federal government, and state licensure laws;
- CMS and FDA laws and regulations;
- HIPAA, which imposes comprehensive federal standards with respect to the privacy and security of protected health information and requirements for the use of certain standardized electronic transactions, and amendments to HIPAA under HITECH, which strengthen and expand HIPAA privacy and security compliance requirements, increase penalties for violators, extend enforcement authority to state attorneys general and impose requirements for breach notification;
- state laws regulating genetic testing and protecting the privacy of genetic test results, as well as state laws protecting the privacy and security of health information and personal data and mandating reporting of breaches to affected individuals and state regulators;
- the federal anti-kickback law, or the Anti-Kickback Statute, which prohibits knowingly and willfully offering, paying, soliciting, receiving, or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing, arranging for, or recommending of an item or service that is reimbursable, in whole or in part, by a federal health care program;
- other federal and state fraud and abuse laws, such as anti-kickback laws, prohibitions on self-referral, and false claims acts, which may extend to services reimbursable by any third-party payor, including private insurers;

- the federal Physician Payments Sunshine Act, which requires medical device manufactures to track and report to the federal government certain payments and other transfers of value made to physicians and teaching hospitals and ownership or investment interests held by physicians and their immediate family members;

- Section 216 of the federal Protecting Access to Medicare Act of 2014, which requires applicable laboratories to report private payor data in a timely and accurate manner beginning in 2017 and every three years thereafter (and in some cases annually);

- state laws that impose reporting and other compliance-related requirements;

- state billing laws, including regulations on "pass through billing" which may limit our ability to submit claims for payment and/or mark up the cost of services in excess of the price paid for such services, and "direct-bill" laws which may limit our ability to purchase services from a laboratory and bill for the services ordered;

- similar foreign laws and regulations that apply to us in the countries in which we operate.

These laws and regulations are complex and are subject to interpretation by the courts and by government agencies. Our failure to comply could lead to civil or criminal penalties, exclusion from participation in state and federal health care programs, or prohibitions or restrictions on our laboratory's ability to provide or receive payment for our services. Any action taken against us by a governmental entity or private party could, regardless of their outcome, damage our reputation and adversely affect important business relationships with third parties, including managed care organizations, and other private third-party payors.

We use potentially hazardous materials, chemicals and patient samples in our business and any disputes relating to improper handling, storage or disposal of these materials could be time consuming and costly.

Our lab diagnostic services involves the controlled use of hazardous laboratory materials and chemicals, including small quantities of acid and alcohol, and patient samples. We are subject to U.S. laws and regulations related to the protection of the environment, the health and safety of employees and the handling, transportation and disposal of medical specimens, infectious and hazardous waste. We could be liable for accidental contamination or discharge or any resultant injury from hazardous materials, and conveyance, processing, and storage of and data on patient samples. If we fail to comply with applicable laws or regulations, we could be required to pay penalties or be held liable for any damages that result and this liability could exceed our financial resources. Further, future changes to environmental health and safety laws could cause us to incur additional expense or restrict operations.

In the event of a lawsuit or investigation concerning such hazardous materials, we could be held responsible for any injury caused to persons or property by exposure to, or release of, these hazardous materials or patient samples that may contain infectious materials. The cost of this liability could exceed our resources. While we expect to maintain broad form liability insurance coverage for these risks, the level or breadth of our coverage may not be adequate to fully cover potential liability claims.

Failure to accurately bill for testing services, or to comply with applicable laws relating to government health care programs, could have a material adverse effect on our business.

Billing for diagnostic testing services is complex and subject to extensive and non-uniform rules and administrative requirements. Depending on the billing arrangement and applicable law, we bill various payers, such as patients, insurance companies, government groups, Medicare and Medicaid. We expect that the majority of our billing and related operations will be provided by a third party. Failure to accurately bill for our services could have a material adverse effect on our business. In addition, failure to comply with applicable laws relating to billing government health care programs may result in various consequences, including the return of overpayments, civil and criminal fines and penalties, exclusion from participation in government health care programs and the loss of various licenses, certificates and authorizations necessary to operate our business, as well as incur additional liabilities from third-party claims, all of which could have a material adverse effect on our business. Certain violations of these laws may also provide the basis for a civil remedy under the federal False Claims Act, including fines and damages of up to three times the amount claimed. The *qui tam* provisions of the federal False Claims Act and similar provisions in certain state false claims acts allow private individuals to bring lawsuits against health care companies on behalf of the government.

Although we expect to be in compliance, in all material respects, with applicable laws and regulations, there can be no assurance that a regulatory agency or tribunal would not reach a different conclusion. The federal and state governments have substantial leverage in negotiating settlements since the amount of potential damages and fines far exceeds the rates at which services will be reimbursed, and the government has the remedy of excluding a non-compliant provider from participation in the Medicare and Medicaid programs. We expect that federal and state governments continue aggressive enforcement efforts against perceived health care fraud. Legislative provisions relating to health care fraud and abuse provide government enforcement personnel with substantial funding, powers, penalties and remedies to pursue suspected cases of fraud and abuse.

Our failure to comply with FTC regulations could result in substantial monetary penalties and could adversely affect our operating results.

The FTC exercises jurisdiction over the advertising of dietary supplements and has instituted numerous enforcement actions against OTC drug companies for failure to have adequate substantiation for claims made in advertising or for the use of false or misleading advertising claims. Failure by us to comply with applicable regulations could result in substantial monetary penalties, which could have a material adverse effect on our financial condition or results of operations.

Laws and regulations regarding direct selling may prohibit or restrict our ability to sell our products in some markets or require us to make changes to our business model in some markets.

Direct selling companies are subject to laws and regulations by various government agencies. These laws and regulations are generally intended to prevent fraudulent or deceptive practices and to protect consumers. The FTC periodically investigates and brings enforcement actions against direct selling companies based on alleged pyramid selling activity and/or false and misleading claims made by the direct selling company or its independent distributors. Direct selling companies that have been the subject of an FTC enforcement action have generally been required to make significant changes to their business model and pay significant monetary fines. Being the target of an investigation or enforcement action by the FTC could have a material adverse effect on our results of operations and financial condition.

We depend on third parties to provide services critical to our diagnostic testing business, and we depend on them to comply with applicable laws and regulations. Additionally, any breaches of the information technology systems of third parties could have a material adverse effect on our operations.

We depend on third parties to provide services critical to our diagnostic testing business, including diagnostic lab equipment, supplies, ground and air transport of clinical and diagnostic testing supplies and specimens, research products, and people, among other services. Third parties that provide services to us are subject to similar risks related to security of customer-related information and compliance with U.S., state, local, or international environmental, health and safety, and privacy and security laws and regulations as we are. Any failure by third parties to comply with applicable laws, or any failure of third parties to provide services more generally, could have a material impact on us, whether because of the loss of the ability to receive services from the third parties, our legal liability for the actions or inactions of third parties, or otherwise. In addition, third parties to whom we outsource certain services or functions may process personal data, or other confidential information belonging to us. A breach or attack affecting these third parties could also harm our business, results of operations and reputation.

If our products do not have the effects intended or cause undesirable side effects, our business may suffer.

Although many of the ingredients in our current dietary supplement products are vitamins, minerals, and other substances for which there is a long history of human consumption, they also contain innovative ingredients or combinations of ingredients. While we believe that all of these products and the combinations of ingredients in them are safe when taken as directed, the products could have certain undesirable side effects if not taken as directed or if taken by a consumer who has certain medical conditions. In addition, these products may not have the effect intended if they are not taken in accordance with certain instructions, which include certain dietary restrictions. Furthermore, there can be no assurance that any of the products, even when used as directed, will have the effects intended or will not have harmful side effects in an unforeseen way or on an unforeseen cohort. If any of our products or products we develop or commercialize in the future are shown to be harmful or generate negative publicity from perceived harmful effects, our business, financial condition, results of operations, and prospects could be harmed significantly.

We must comply with complex and overlapping laws protecting the privacy and security of health information and personal data.

There are a number of state, federal and international laws protecting the privacy and security of health information and personal data. Under the administrative simplification provisions of HIPAA, HHS has issued regulations which establish uniform standards governing the conduct of certain electronic health care transactions and protecting the privacy and security of PHI used or disclosed by health care providers and other covered entities.

The privacy regulations regulate the use and disclosure of PHI by health care providers engaging in certain electronic transactions or "standard transactions." They also set forth certain rights that an individual has with respect to his or her PHI maintained by a covered health care provider, including the right to access or amend certain records containing PHI or to request restrictions on the use or disclosure of PHI. The HIPAA security regulations establish administrative, physical, and technical standards for maintaining the integrity and availability of PHI in electronic form. These standards apply to covered health care providers and also to "business associates" or third parties providing services involving the use or disclosure of PHI. The HIPAA privacy and security regulations establish a uniform federal "floor" and do not supersede state laws that are more stringent or provide individuals with greater rights with respect to the privacy or security of, and access to, their records containing PHI. As a result, we may be required to comply with both HIPAA privacy regulations and varying state privacy and security laws.

Moreover, HITECH, among other things, established certain health information security breach notification requirements. In the event of a breach of unsecured PHI, a covered entity must notify each individual whose PHI is breached, federal regulators and in some cases, must publicize the breach in local or national media. Breaches affecting 500 individuals or more are publicized by federal regulators who publicly identify the breaching entity, the circumstances of the breach and the number of individuals affected.

These laws contain significant fines and other penalties for wrongful use or disclosure of PHI. Given the complexity of HIPAA and HITECH and their overlap with state privacy and security laws, and the fact that these laws are rapidly evolving and are subject to changing and potentially conflicting interpretation, our ability to comply with the HIPAA, HITECH and state privacy requirements is uncertain and the costs of compliance are significant. Adding to the complexity is that our planned operations are currently evolving and the requirements of these laws will apply differently depending on such things as whether or not we bill electronically for our services, or provide services involving the use or disclosure of PHI and incur compliance obligations as a business associate. The costs of complying with any changes to the HIPAA, HITECH and state privacy restrictions may have a negative impact on our operations. Noncompliance could subject us to criminal penalties, civil sanctions and significant monetary penalties as well as reputational damage.

We are also required to collect and maintain personal information about our employees as well as receive and transfer certain payment information, to accept payments from our customers, including credit card information. Most states have adopted laws requiring notification of affected individuals and state regulators in the event of a breach of personal information, which is a broader class of information than the health information protected by HIPAA. Many state laws impose significant data security requirements, such as encryption or mandatory contractual terms to ensure ongoing protection of personal information. Activities outside of the United States implicate local and national data protection standards, impose additional compliance requirements, and generate additional risks of enforcement for non-compliance. The collection and use of such information may be subject to contractual obligations as well. If the security and information systems that we or our outsourced third-party providers use to store or process such information are compromised or if we, or such third parties, otherwise fail to comply with these laws, regulations, and contractual obligations, we could face litigation and the imposition of penalties that could adversely affect our financial performance.

We must comply with all applicable privacy and data security laws in order to operate our business and may be required to expend significant capital and other resources to ensure ongoing compliance, to protect against security breaches and hackers or to alleviate problems caused by such breaches. Breaches of health information and/or personal data may be extremely expensive to remediate, may prompt federal or state investigation, fines, civil and/or criminal sanctions and significant reputational damage.

We may be subject to product liability claims.

As a direct marketer and manufacturer of products designed for human consumption, we are subject to product liability claims if the use of our products or the products that we manufacture for third parties are alleged to have resulted in injury or to include inadequate instructions for use or inadequate warnings concerning possible side effects and interactions with other substances. Our current products and the products that we currently manufacture for third parties are not subject to pre-market regulatory approval in the United States and could contain contaminated substances.

While we currently maintain product liability insurance, a successful claim brought against us related to our branded products or products that we manufacture for third parties in excess of, or outside of, our existing insurance coverage, could result in increased costs and could adversely affect our reputation with customers, which could in turn materially adversely affect our business, financial condition and results of operations.

Risks Related to Our Common Stock and Governance Matters

Future sales of shares of our common stock in the public market could adversely affect the trading price of shares of our common stock and our ability to raise funds in new stock offerings.

Future sales of substantial amounts of shares of our common stock in the public market, or the perception that such sales are likely to occur, could affect prevailing trading prices of our common stock. Moreover, the perceived risk of this potential dilution could cause stockholders to attempt to sell their shares and investors to "short" our stock, a practice in which an investor sells shares that he or she does not own at prevailing market prices, hoping to purchase shares later at a lower price to cover the sale. As each of these events would cause the number of shares of common stock being offered for sale to increase, our common stock's market price would likely further decline. All of these events could combine to make it very difficult for us to sell equity or equity-related securities in the future at a time and price that we deem appropriate.

If securities or industry analysts do not publish research or reports about our business or if they issue an adverse or misleading opinion regarding our stock, our stock price and trading volume could decline.

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. If any of the analysts who cover us issue an adverse or misleading opinion regarding us, our business model, products or stock performance, our stock price would likely decline. If one or more of these analysts cease coverage of us or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline. Moreover, the unpredictability of our financial results likely reduces the certainty, and therefore reliability, of the forecasts by securities or industry analysts of our future financial results, adding to the potential volatility of our stock price.

Our Chief Executive Officer and Chairman of the Board of Directors owns a substantial amount of our common stock.

As of March 31, 2021, our Chief Executive Officer and Chairman of the Board of Directors beneficially owned approximately 29.3% of our common stock. As such, our Chief Executive Officer may exert significant influence over the outcome of all matters submitted to stockholders for approval, including the election of directors. Consequently, he exercises substantial influence over major decisions including major corporate actions such as mergers and other business combinations transactions which could result in or prevent a change of control of the Company. Circumstances may occur in which the interests of our Chief Executive Officer could be in conflict with the interests of other stockholders. Accordingly, a stockholder's ability to influence us through voting their shares may be limited.

Our Certificate of Incorporation and By-laws contain certain provisions that may be barriers to a takeover.

Our Certificate of Incorporation and By-laws contain certain provisions which may deter, discourage, or make it difficult for another person or entity to gain control of the Company through a tender offer, merger, proxy contest or similar transaction or series of transactions. These provisions may deter a future tender offer or other takeover attempt which could include a premium over the market price of our common stock at the time. Such provisions could depress the trading price of our common stock.

We have agreed to indemnify our officers and directors from liability.

Our Certificate of Incorporation and our By-laws provide that we will indemnify, to the fullest extent permitted by the Delaware General Corporation Law, any person who is or was made a party to, or is or was threatened to be made a party to, any pending, completed, or threatened action, suit or proceeding because he or she is or was a director, officer, employee or agent of the Company or is or was serving at the Company's request as a director, officer, employee or agent of any corporation, partnership, joint venture, trust or other enterprise. These provisions permit us to advance expenses to an indemnified party in connection with defending any such proceeding, upon receipt of an undertaking by the indemnified party to repay those amounts if it is later determined that the party is not entitled to indemnification. We entered into indemnity agreements with each member of our board of directors. These agreements provide, among other things, that we will indemnify each officer and director in the event they become a party or otherwise a participant in any action or proceeding on account of their service as a director or officer of the Company (or service for another corporation or entity in any capacity at the request of the Company) to the fullest extent permitted by applicable law. The indemnification provisions may reduce the likelihood of derivative litigation against directors and officers and discourage or deter stockholders from suing directors or officers for breaches of their duties to the Company, even though such an action, if successful, might otherwise benefit the Company or its stockholders. In addition, to the extent that we expend funds to indemnify directors and officers, funds will be unavailable for operational purposes.

Item 1B. Unresolved Staff Comments

Not applicable.

Item 2. Properties

Our corporate headquarters are located in Garden City, New York. We leased this property commencing in December 2020. Our headquarters are approximately 25,000 square feet and are comprised of lab diagnostic area with storage area and office space. Our second location is approximately 4,000 square feet and is comprised of lab diagnostic area with storage area and office space in Old Bridge, NJ. We leased additional administrative office space of approximately 2,000 square feet in Fort Washington, PA. Our principal manufacturing facility is located in Lebanon, Pennsylvania. The facility was purchased in October 2004. The facility has a total area of approximately 57,500 square feet and is comprised of manufacturing, warehousing and office space. We believe that our existing facilities are adequate at this time and do not anticipate the need for additional facilities in the foreseeable future.

Item 3. Legal Proceedings

From time to time, we have been and may again become involved in legal proceedings arising in the ordinary course of business, including the lawsuit discussed below. We are not presently a party to any material litigation.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

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

Market Information

Our common stock is currently traded on The Nasdaq Capital Market under the trading symbol "PRPH."

As of March 24, 2021, there were approximately 200 holders of record.

Securities Authorized Under Equity Compensation Plans

See Part III, Item 12. "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" for information relating to our equity compensation plans.

Recent Sales of Unregistered Securities

None.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

Item 6. Reserved

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

The following discussion and analysis should be read together with our financial statements and the related notes appearing elsewhere in this Annual Report. This discussion contains forward-looking statements reflecting our current expectations that involve risks and uncertainties. See "Special Note Regarding Forward-Looking Statements" for a discussion of the uncertainties, risks and assumptions associated with these statements. Actual results and the timing of events could differ materially from those discussed in our forward-looking statements as a result of many factors, including those set forth under "Risk Factors" and elsewhere in this Annual Report.

General

We are a diversified medical science and technology company with deep experience with OTC consumer healthcare products and dietary supplements. We conduct our operations through two operating segments: consumer products and diagnostic services. Until late 2020 we were engaged in the research, development, manufacture, distribution, marketing and sale of OTC consumer healthcare products and dietary supplements in the United States. However, in December 2020, we also began to offer COVID-19 and other respiratory pathogen panel (RPP) molecular tests through our new diagnostic services business.

Our wholly-owned subsidiary, PMI, is a full-service contract manufacturer and private label developer of a broad range of non-GMO, organic and natural-based cough drops and lozenges and OTC drug and dietary supplement products. The dietary supplements are developed and marketed under the TK Supplements® brand name.

Our wholly-owned subsidiary, ProPhase Diagnostics, formed on October 9, 2020, offers a variety of important medical tests, including COVID-19 and (RPP) molecular tests. On October 23, 2020, we completed the acquisition of all of the issued and outstanding shares of capital stock of Confucius Plaza Medical Laboratory Corp. ("CPM") for approximately $2.5 million in cash, subject to certain adjustments, pursuant to the terms of a Stock Purchase Agreement, by and among the Company, CPM, Pride Diagnostics and other parties named therein CPM (which is now known as ProPhase Diagnostics NJ, Inc.) is the owner of a 4,000 square foot CLIA accredited laboratory located in Old Bridge, New Jersey, which ProPhase Diagnostics acquired as part of the transaction. As a result of the acquisition of CPM in October 2020, we entered into a new business line, diagnostic services. In December 2020, we expanded our diagnostic services business with the signing of a lease and the recent build out of a second, larger CLIA accredited laboratory in Garden City, New York. Operations at this second facility commenced in January 2021.

We continue to actively pursue acquisition opportunities for other companies, technologies and products within and outside the consumer healthcare products and diagnostics services industries.

Results of Operations from Continuing Operations

Fiscal 2020 compared with Fiscal 2019

Net sales for Fiscal 2020 increased $4.6 million to $14.5 million as compared to $9.9 million for Fiscal 2019. The increase in net sales for Fiscal 2020 as compared to Fiscal 2019 is principally due to increased third party customer orders in contract manufacturing and revenue of $1.3 million related to our new diagnostic services business.

Cost of sales for Fiscal 2020 were $9.9 million as compared to $7.3 million for Fiscal 2019. We realized a gross profit $4.6 million for Fiscal 2020 as compared to $2.6 million for Fiscal 2019. For Fiscal 2020, our gross margin was 31.8% as compared to 26.5% for Fiscal 2019. Such increase in gross margin for Fiscal 2020 as compared to Fiscal 2019 is principally due to (i) an increase in the absorption of fixed production costs and (ii) fluctuations in our product mix and pricing fluctuations from period to period and increased margins generally associated with the new diagnostic services business. Gross margins have historically been influenced by fluctuations in quarter-to-quarter production volume, fixed production costs and related overhead absorption, raw ingredient costs, inventory mark to market write-downs and timing of shipments to customers.

Sales and marketing expense for Fiscal 2020 was $1.3 million as compared to $1.0 million for Fiscal 2019. The increase in sales and marketing expenses of $245,000 was related to an increase in advertising expenses for our retail consumer products and the new diagnostic services business.

Administrative expense increased $2.2 million for Fiscal 2020 to $6.7 million as compared to $4.5 million in Fiscal 2019. The increase in administrative expense for Fiscal 2020 as compared to Fiscal 2019 was principally due to greater professional and legal fees resulting from, in part, our entry into the diagnostic services business. In addition, share-based compensation expense increased by $715,000.

Research and development costs for Fiscal 2020 and 2019 were $663,000 and $332,000, respectively. The increase of $301,000 in research and development costs for Fiscal 2020 as compared to Fiscal 2019 was principally due to validation costs associated with diagnostic services in the current period.

Net interest income for Fiscal 2020 was $62,000 as compared to $133,000 for Fiscal 2019. The decrease in interest income in Fiscal 2020 as compared to Fiscal 2019 is principally due to a lower average account balance in our investment account. Interest expense for Fiscal 2020 was $295,000 as compared to $0 for Fiscal 2019. The increase in interest expenses in Fiscal 2020 as compared to Fiscal 2019 is principally due to the interest on the unsecured promissory notes issued in September 2020.

As a result of the effects of the above, the loss from continuing operations for Fiscal 2020 was $2.33 million, or ($0.18) per share, as compared to a loss from continuing operations of $3.1 million, or ($0.27) per share, for Fiscal 2019. In Fiscal 2020, we recognized a $1.9 million gain on the sales of real estate that contributed to a lower loss from operation. The gain from discontinued operations for Fiscal 2020 was $201,000, or $0.02 per share, as compared to a loss of $40,000, or ($0.00) per share, for Fiscal 2019. Net loss for Fiscal 2020 was $2.1 million, or ($0.18) per share, as compared to $3.1 million, or ($0.27) per share for Fiscal 2019.

Liquidity and Capital Resources

Our aggregate cash and cash equivalents and marketable securities as of December 31, 2020 were $8.5 million as compared to $1.4 million at December 31, 2019. Our working capital was $9.6 million and $9.0 million as of December 31, 2020 and 2019, respectively. The increase of $7.1 million in our cash and cash equivalents and marketable securities balance for the 12 months ended December 31, 2020 was principally due the following (i) the release of the escrow funds of $4.8 million by Mylan, (ii) our receipt of two loans for total proceeds of $10 million,and (ii) the sale of our corporate headquarters for $2.2 million offset by (i) the issuance of a net $3.00 million promissory note receivable, (ii) acquisition of a new CLIA accredited laboratory for $2.5 million, and (iii) our investment in capital expenditures, prepaid supplies and inventory for our the diagnostic services business of $5.1 million.

As a consequence of the seasonality of our business, we realize variations in operating results and demand for working capital from quarter to quarter.

COVID-19

The COVID-19 pandemic has not had a material impact on our business to date, although we did experience higher than normal net sales for Fiscal 2020, primarily as a result of increased customer demand for our OTC healthcare and cold remedy products as a result of the COVID-19 pandemic.

In October 2020, we acquired our first CLIA accredited laboratory that offers a variety of important medical tests, including, among others, COVID-19 diagnostic testing services. In December 2020, we acquired our second diagnostic testing facility. While we expect revenues to continue to increase as result of our new business line, we will need to continue to make substantial investments to secure the necessary equipment, supplies and personnel to provide these services. There can be no assurance that our efforts to offer and perform COVID-19 testing will be successful and that we will be able to generate a profit.

The ultimate impact of COVID-19 on our business will depend on many factors beyond our knowledge or control, including the duration and severity of the outbreak, the timing, scope and effectiveness of federal, state and local governmental responses to the COVID-19 pandemic, and the extent of business disruptions caused by the pandemic, including as a result of travel restrictions, quarantines, social distancing requirements and business closures in the United States and other countries in order to contain and treat the virus. We may also be impacted by changes in the severity of the COVID-19 pandemic at different times in the various cities and regions where we operate and offer diagnostic testing services. Also, there can be no assurance that demand for our COVID-19 testing services will continue to exist in the future due to successful containment efforts, the successful vaccination of a majority of Americans, or due to other events. If there is no demand for our COVID-19 testing services, and we are unable to generate sufficient profits from other RPP Molecular tests, our business could be materially harmed. For these reasons, we are unable to estimate the extent to which COVID-19 will negatively impact our financial results or liquidity.

The COVID-19 pandemic has had a negative impact on the global capital markets and economies worldwide and could ultimately have a material adverse impact on our ability to raise capital needed to develop and commercialize products.

September 2020 Notes

On September 15, 2020, we issued two unsecured, partially convertible promissory notes (the “September 2020 Notes”) for an aggregate principal amount of $10 million to two investors. We intend to use the proceeds from the September 2020 Notes for working capital and general corporate purposes, which may include capital expenditures, product development and commercialization expenditures, and acquisitions of companies, businesses, technologies and products.

September 2020 Notes

On September 15, 2020, we issued two unsecured, partially convertible, promissory notes (the “September 2020 Notes”) for an aggregate principal amount of $10 million to two investors. We used the proceeds from the September 2020 Notes for working capital and general corporate purposes, which included capital expenditures and acquisitions of companies, businesses.

January 2021 Offerings

In January 2021, we completed two separate equity offerings whereby we issued a total of 3,550,000 shares of our common stock for net proceeds of $40.6 million. The net proceeds derived from these equity offerings will be used principally for the expansion of our diagnostics services business.

General

Management is not aware of any other trends, events or uncertainties that have or are reasonably likely to have a material negative impact upon our (i) short-term or long-term liquidity, or (ii) revenue or income from continuing operations. Any challenge to our trademark rights could have a material adverse effect on our future; however, we are not aware of any condition that would make such an event probable. Our business is subject to seasonal variations that impact our liquidity and working capital during the course of our fiscal year and is now subject to the demand for COVID testing in our diagnostic services business.

To the extent that we do not generate sufficient cash from operations, our cash balances will decline. We may also use our cash to explore and/or acquire new product technologies, applications, product line extensions, new contract manufacturing applications and other new business opportunities. In the event that our available cash is insufficient to support such initiatives and the development of our new diagnostic service business, we may need to incur indebtedness or issue common stock to finance plans for growth. Volatility in the credit markets and the liquidity of major financial institutions may have an adverse effect on our ability to fund our business strategy through borrowings, under either existing or newly created loan instruments, or the sale of securities in the public or private markets on terms that we believe to be reasonable, if at all.

Impact of Inflation

We are subject to normal inflationary trends and anticipate that any increased costs would be passed on to our customers. Inflation has not had a material effect on our business.

Critical Accounting Policies and Estimates

Our significant accounting policies are described in Note 2 of the Notes to Consolidated Financial Statements included under Item 8 of this Part II. However, certain accounting policies are deemed "critical", as they require management's highest degree of judgment, estimates and assumptions. These accounting policies, estimates and disclosures have been discussed with the Audit Committee of our Board of Directors. A discussion of our critical accounting policies and estimates, the judgments and uncertainties affecting their application and the likelihood that materially different amounts would be reported under different conditions or using different assumptions are as follows:

Use of Estimates

The preparation of financial statements and the accompanying notes thereto, in conformity with generally accepted accounting principles in the United States of America ("GAAP"), requires management to make estimates and assumptions that affect reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the respective reporting periods. Examples include the provision for bad debt, sales returns and allowances, inventory obsolescence, useful lives of property and equipment, impairment of goodwill, intangibles and property and equipment, income tax valuations and assumptions related to accrued advertising. The estimates and assumptions are based on historical experience, current trends and other factors that management believes to be relevant at the time the financial statements are prepared. Management reviews the accounting policies, assumptions, estimates and judgments on a quarterly basis. Actual results could differ from those estimates.

Revenue Recognition and Accounts Receivables

We generate revenue principally through two types of revenue streams, diagnostic services and consumer products with two types of customers, contract manufacturing customers and retail customers. The process for estimating revenues and the ultimate collection of receivables involves assumptions and judgments.

Revenue from our diagnostic services are recognized when the lab test is complete and the diagnostic test result is provided to the customer. Revenue from our consumer products is recognized when the shipments to contract manufacturing and retailer customers are recognized at the time ownership is transferred to the customer. In 2020, we had $14.5 million of net sales of which approximately $12.3 million were from contract manufacturing customers, $1.0 million of our sales were from retailer sales and $1.2 million were from diagnostic services. We bill the providers at standard price and take into consideration for negotiated discounts and an anticipated reimbursement remittance adjustments based on, the payer portfolio, when revenue is recorded. We use the most expected value method to estimate the transaction price for reimbursements that may vary from the listed contract price.

Revenue Recognition – Sales Allowances

When providing for the appropriate sales returns, allowances, cash discounts and cooperative incentive promotion costs ("sales allowances"), we apply a uniform and consistent method for making certain assumptions for estimating these provisions. These estimates and assumptions are based on historical experience, current trends and other factors that management believes to be relevant at the time the financial statements are prepared. Management reviews the accounting policies, assumptions, estimates and judgments on a quarterly basis. Actual results could differ from those estimates.

Our return policy accommodates returns for (i) discontinued products, (ii) store closings and (iii) products that have reached or exceeded designated expiration date. The following is a summary of the change in the return provision for the years ended December 31, 2019 to the year ended December 31, 2020 (in thousands):

	Amount
Return provision at December 31, 2019	$ 169
Net change in the return provision Fiscal 2020	122
Return provision at December 31, 2020	$ 291

For Fiscal 2020, the return provision increased by $122,000. The increase in the return provision was principally due to net returns associated with Fiscal 2020.

A one percent deviation for these sales allowance provisions for Fiscal 2020 and 2019 would affect net sales by approximately $10,000 and $8,600, respectively.

Additionally, accrued advertising and other allowances from retail as of December 31, 2020 include $463,000 for cooperative incentive promotion costs, which is reported as accrued advertising and other allowances under current liabilities. As of December 31, 2019, accrued advertising and other allowances from retail revenue include $92,000 for cooperative incentive promotion costs, which is reported as accrued advertising and other allowances under current liabilities.

Goodwill and Long lived Assets

We review our goodwill at least annually for impairment as well as the carrying value of goodwill and our long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of these assets may not be fully recoverable. When it is determined that the carrying amount of long-lived assets or goodwill is impaired, impairment is measured by comparing an asset's estimated fair value to its carrying value. The determination of fair value is based on quoted market prices in active markets, if available, or independent appraisals; sales price negotiations; or projected future cash flows discounted at a rate determined by management to be commensurate with our business risk. The estimation of fair value utilizing discounted forecasted cash flows includes significant judgments regarding assumptions of revenue, operating and marketing costs; selling and administrative expenses; interest rates; property and equipment additions and retirements; and industry competition, general economic and business conditions, among other factors.

Management has determined that there was no impairment to our long-lived assets and goodwill on the basis of a review of a discounted cash flow analysis, which for goodwill is performed at the level of the subsidiaries to which the goodwill relates. If there is a material change in the assumptions used in the determination of fair value or a material change in the conditions or circumstances influencing fair value, we could be required to recognize a material impairment charge.

Income Taxes

Accounting for income taxes requires recognition of deferred tax liabilities and assets for the expected future tax consequences of events that have been included in the financial statements or tax returns. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities. These deferred taxes are measured by applying the provisions of tax laws in effect at the balance sheet date, including the impact of the TCJA enacted on December 22, 2017. The TCJA made broad and significant changes to the U.S. tax code that affects the year ended December 31, 2017, including, but not limited to, a change in the federal rate from 35% to 21% effective January 1, 2018.

We recognizes in income the effect of a change in tax rates on deferred tax assets and liabilities in the period that includes the TCJA enactment date. We utilize the asset and liability approach which requires the recognition of deferred tax assets and liabilities for the future tax consequences of events that have been recognized in our financial statements or tax returns. In estimating future tax consequences, we generally consider all expected future events other than enactments of changes in the tax law or rates. Until sufficient taxable income to offset the temporary timing differences attributable to operations and the tax deductions attributable to option, warrant and stock activities are assured, a valuation allowance equaling the total net current and non-current deferred tax asset is being provided.

Recently Adopted Accounting Standards

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-02, Leases (Topic 842) in order to increase transparency and comparability among organizations by, among other provisions, recognizing lease assets and lease liabilities on the balance sheet for those leases classified as operating leases under previous GAAP. For public companies, ASU 2016-02 is effective for fiscal years beginning after December 15, 2018 (including interim periods within those periods) using a modified retrospective approach and early adoption is permitted. In transition, entities may also elect a package of practical expedients that must be applied in its entirety to all leases commencing before the adoption date, unless the lease is modified, and permits entities to not reassess (a) the existence of a lease, (b) lease classification or (c) determination of initial direct costs, as of the adoption date, which effectively allows entities to carryforward accounting conclusions under previous GAAP. In July 2018, the FASB issued ASU 2018-11, Leases (Topic 842): Targeted Improvements, which provides entities an optional transition method to apply the guidance under Topic 842 as of the adoption date, rather than as of the earliest period presented. We adopted Topic 842 on January 1, 2019, using the optional transition method to apply the new guidance as of January 1, 2019, rather than as of the earliest period presented, and elected the package of practical expedients described above. The adoption of this standard did not have a material impact on our consolidated financial statements.

In June 2018, the FASB issued ASU 2018-07 "Improvements to Nonemployee Share-Based Payment Accounting", which simplifies the accounting for share-based payments granted to nonemployees for goods and services. Under the ASU, most of the guidance on such payments to nonemployees would be aligned with the requirements for share-based payments granted to employees. The amendments are effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted, but not earlier than an entity's adoption date of Topic 606. We adopted this standard on January 1, 2019. The adoption of this standard did not have a material impact on our consolidated financial statements.

Recently Issued Accounting Standards, Not Yet Adopted

In September 2016, the FASB issued ASU 2016-13, Financial Instruments - Credit Losses (Topic 326). The ASU sets forth a "current expected credit loss" (CECL) model which requires the Company to measure all expected credit losses for financial instruments held at the reporting date based on historical experience, current conditions, and reasonable supportable forecasts. This replaces the existing incurred loss model and is applicable to the measurement of credit losses on financial assets measured at amortized cost and applies to some off-balance sheet credit exposures. In February 2020, the FASB issued ASU 2020-02, Financial Instruments - Credit Losses (Topic 326), which amends the effective date of the original pronouncement for smaller reporting companies. ASU 2016-13 and its amendments will be effective for the Company for interim and annual periods in fiscal years beginning after December 15, 2022. The Company is currently assessing the impact of the adoption of this ASU on its financial statements.

In December 2019, the FASB issued ASU No. 2019-12, "Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes ("ASU 2019-12"), which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. The Company is currently evaluating the impact of this standard on its consolidated financial statements and related disclosures.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Like virtually all commercial enterprises, we may be exposed to the risk ("market risk") that the cash flows to be received or paid relating to certain financial instruments could change as a result of changes in interest rate, exchange rates, commodity prices, equity prices and other market changes.

Our operations are not subject to risks of material foreign currency fluctuations, nor do we use derivative financial instruments in our investment practices. We place our marketable investments in instruments that meet high credit quality standards. We do not expect material losses with respect to our investment portfolio or excessive exposure to market risks associated with interest rates. The impact on our results of one percentage point change in short-term interest rates would not have a material impact on our future earnings, fair value, or cash flows related to investments in cash equivalents or interest-earning marketable securities.

Current economic conditions may cause a decline in business and consumer spending which could adversely affect our business and financial performance including the collection of accounts receivables, realization of inventory and recoverability of assets. In addition, our business and financial performance may be adversely affected by current and future economic conditions, including a reduction in the availability of credit, financial market volatility and recession.

Item 8. Financial Statements and Supplementary Data

INDEX TO FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and
Stockholders of ProPhase Labs, Inc., Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of ProPhase Labs, Inc., Inc. and subsidiaries (the "Company" or "ProPhase") as of December 31, 2020 and the related consolidated statements of operations and comprehensive income (loss), statements of changes in stockholders' equity, and cash flows for the year ended December 31, 2020, and the related notes (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 as of December 31, 2020 and the results of its operations and its cash flows for the year ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

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 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 the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the 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 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 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 audit 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 audit provides a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated 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 consolidated 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 consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Critical Audit Matter Description

Secured Promissory Note Receivable ("the Note") Realization

The Note, as amended and restated, was entered into with a company (the borrower) pursuant to which ProPhase loaned $3.0 million while also entering into a consulting agreement with the borrower, as disclosed in Notes 12 and 16. In January 2021, the consulting agreement was terminated and the Note was amended. The January 2021 amendment required repayments to be based, in part, on a percentage of certain diagnostic test revenue, as defined, performed by the borrower. The ultimate realization of the Note requires management to make significant assumptions and subjective judgments about the ability to receive repayment from a percentage of the borrower's diagnostic test revenue, as well as from the borrower's creditworthiness and viability. Given the subjectivity of these estimates, performing audit procedures to evaluate whether the note receivable was appropriately recorded at December 31, 2020 required a high degree of auditor judgment and an increased extent of effort.

How We Addressed the Matter in Our Audit

Addressing this matter involved procedures to test whether the underlying data used in management's projections, including diagnostic test volume and revenue the borrower achieved prior to this amendment, as well as the payments remitted to date. Our procedures also included reviewing the borrowers diagnostic test volume reported through the financial statement issuance date but not yet been remitted to the Company. We further evaluated how this information and other assumptions were used to forecast the future repayment stream based on the borrower's expected diagnostic testing. Further, we made direct inquires and reviewed management's assessment of the borrowers current financial condition regarding their creditworthiness and viability.

Critical Audit Matter Description

Diagnostic Service Variable Consideration and Receivable Allowances

As described in Note 2 to the consolidated financial statements, the Company's diagnostic revenue is derived from third party insurers and government agencies. Management estimates the amount of consideration it expects to receive for providing the diagnostic services based on reimbursement allowances from insurance providers (including payer denials) and uninsured patient reimbursement allowances from government agency programs. Net revenues and accounts receivable recognized are billed based on standard test rates, net of allowances for expected reimbursements. Given the nature of these estimates and the variables, performing audit procedures to evaluate appropriate revenue recognition required a high degree of auditor judgment and an increased extent of effort.

How We Addressed the Matter in Our Audit

Addressing the matter involved performing procedures which included gaining an understanding of the internal controls relating to the diagnostic services' billing and collection process and testing the completeness and accuracy of the Company's billing system. These procedures also included, among other things, performing transaction testing on a sample of diagnostic tests performed which included assessing payer mix and reimbursements to date for each respective payer. We also compared management's estimated allowances at year-end to actual reimbursements received through the financial statement issuance date, weighted by payer mix.

/s/ Friedman LLP
We have served as the Company's auditor since 2020.

East Hanover, New Jersey
March 31, 2021

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
ProPhase Labs, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of ProPhase Labs, Inc. and Subsidiaries (the "Company") as of December 31, 2019, and the related consolidated statements of operations and other comprehensive income (loss), stockholders' equity, and cash flows for the year then ended, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the consolidated financial position of the Company as of December 31, 2019 and the consolidated results of their operations and their cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

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 the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

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

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our 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 provide a reasonable basis for our opinion.

/s/ EisnerAmper LLP

We have served as the Company's auditor from 2010 through 2020.

EISNERAMPER LLP
Iselin, New Jersey
March 26, 2020

PROPHASE LABS, INC AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)

	December 31, 2020	December 31, 2019
ASSETS		
Current assets		
Cash and cash equivalents	$ 6,816	$ 434
Marketable debt securities, available for sale	1,639	926
Escrow receivable	-	4,812
Accounts receivable, net	3,155	2,010
Inventory, net	3,039	1,459
Prepaid expenses and other current assets	1,238	304
Total current assets	15,887	9,945
Property, plant and equipment, net of accumulated depreciation of $5,021 and $6,252, respectively	3,578	2,329
Secured promissory note receivable, net	2,750	-
Prepaid expenses, net of current portion	2,084	-
Right-of-use asset, net	4,731	-
Intangible asset, net of accumulated amortization of $73	1,234	-
Goodwill	901	-
Other assets	240	-
TOTAL ASSETS	**$ 31,405**	**$ 12,274**
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	$ 3,771	$ 432
Accrued advertising and other allowances	463	92
Lease liabilities	329	-
Other current liabilities	1,731	409
Total current liabilities	6,294	933
Non-current liabilities:		
Deferred revenue, net of current portion	162	110
Unsecured convertible promissory notes, net	9,991	-
Lease liabilities, net of current portion	4,402	-
Total non-current liabilities	14,555	110
Total liabilities	20,849	1,043
COMMITMENTS AND CONTINGENCIES		
Stockholders' equity		
Preferred stock authorized 1,000,000, $.0005 par value, no shares issued	-	-
Common stock authorized 50,000,000, $.0005 par value, issued 28,256,275 and 28,225,615 shares, respectively	14	14
Additional paid-in capital	61,674	60,215
Accumulated deficit	(3,631)	(1,506)
Treasury stock, at cost, 16,652,022 and 16,652,022 shares, respectively	(47,490)	(47,490)
Accumulated comprehensive loss	(11)	(2)
Total stockholders' equity	10,556	11,231
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	**$ 31,405**	**$ 12,274**

See accompanying notes to consolidated financial statements

PROPHASE LABS, INC & SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS AND
OTHER COMPREHENSIVE INCOME (LOSS)
(in thousands, except per share amounts)

	For the Years Ended	
	December 31, 2020	**December 31, 2019**
Net sales	$ 14,514	$ 9,876
Cost of sales	9,908	7,261
Gross profit	4,606	2,615
Operating expenses:		
Sales and marketing	1,287	1,042
General and administration	6,671	4,480
Research and development	633	332
Total operating expenses	8,591	5,854
Gain on sale of real estate	1,892	-
Loss from operations	(2,093)	(3,239)
Interest income, net	62	133
Interest expense	(295)	-
Loss from continuing operations	(2,326)	(3,106)
Discontinued Operations:		
Income (loss) from discontinued operations	201	(40)
Income (loss) from discontinued operations	201	(40)
Net loss	**$ (2,125)**	**$ (3,146)**
Other comprehensive loss:		
Unrealized gain (loss) on marketable debt securities	(9)	22
Total comprehensive loss	$ (2,134)	$ (3,124)
Basic and diluted earnings (loss) per share:		
Loss from continuing operations	$ (0.20)	$ (0.27)
Income (loss) from discontinued operations	0.02	(0.00)
Net loss per share	$ (0.18)	$ (0.27)
Weighted average common shares outstanding:		
Basic and diluted	11,595	11,564

See accompanying notes to consolidated financial statements

PROPHASE LABS, INC & SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands, except share data)

	Common Stock Shares Outstanding, Net of Shares of Treasury Stock	Par Value	Additional Paid in Capital	Accumulated Deficit	Accumulated Comprehensive Income (loss)	Treasury Stock	Total
Balance as of January 1, 2019	**11,549,519**	**$ 14**	**$ 59,471**	**$ 4,533**	**$ (24)**	**$ (47,490)**	**$ 16,504**
Cash dividends	-	-	-	(2,893)	-	-	(2,893)
Unrealized gain on marketable debt securities, net of realized losses of $12, net of taxes	-	-	-	-	22	-	22
Stock-based compensation	24,074	-	744	-	-	-	744
Net loss	-	-	-	(3,146)	-	-	(3,146)
Balance as of December 31, 2019	**11,573,593**	**14**	**60,215**	**(1,506)**	**(2)**	**(47,490)**	**11,231**
Unrealized loss on marketable debt securities, net of realized losses of $4, net of taxes	-	-	-	-	(9)	-	(9)
Stock-based compensation	30,660	-	1,459	-	-	-	1,459
Net loss	-	-	-	(2,125)	-	-	(2,125)
Balance as of December 31, 2020	**11,604,253**	**$ 14**	**$ 61,674**	**$ (3,631)**	**$ (11)**	**$ (47,490)**	**$ 10,556**

See accompanying notes to consolidated financial statements

PROPHASE LABS, INC & SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	For the Years Ended	
	December 31, 2020	**December 31, 2019**
Cash flows from operating activities		
Net loss	$ (2,125)	$ (3,146)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Realized (gain) loss on marketable debt securities	(2)	12
(Gain) loss on discontinued operations, net of taxes	(201)	40
Depreciation and amortization	449	398
Amortization of debt discount	1	-
Amortization on right-of-use assets	9	-
Lower of cost or net realizable value inventory adjustment	68	-
Consulting expense paid through reduction of secured promissory note receivable	250	
Stock-based compensation expense	1,459	744
Gain on sale of real estate	(1,892)	-
Changes in operating assets and liabilities:		
Accounts receivable	(1,039)	936
Inventory	(1,468)	444
Prepaid and other assets	(3,005)	(8)
Other assets	(240)	-
Accounts payable and accrued expenses	3,339	(14)
Lease liabilities	(9)	-
Other liabilities	1,814	(247)
Net cash provided by (used in) operating activities	(2,592)	(841)
Cash flows from investing activities		
Issuance of secured promissory note receivable	(3,000)	-
Purchase of marketable securities	(4,560)	(3,137)
Proceeds from sale of marketable debt securities	3,840	8,908
Escrow receivable	4,812	-
Capital expenditures	(1,689)	(228)
Acquisition of Confucius Labs	(2,500)	-
Proceeds from sale of building, net	2,081	-
Net cash (used in) provided by investing activities	(1,016)	5,543
Cash flows from financing activities		
Payment of dividends	-	(5,822)
Issuance costs on unsecured convertible promissory notes	(10)	-
Proceeds from unsecured convertible promissory notes	10,000	-
Net cash provided by (used in) financing activities	9,990	(5,822)
Increase (decrease) in cash and cash equivalents	6,382	(1,120)
Cash and cash equivalents, at the beginning of the year	434	1,554
Cash and cash equivalents, at the end of the year	**$ 6,816**	**$ 434**
Supplemental disclosures:		
Cash paid for income taxes	$ -	$ 103
Interest payment on the promissory ntoes	$ 250	$ -
Supplemental disclosure of non-cash investing and financing activities:		
Right-of-use assets and lease liability recorded upon adoption of ASC 842	$ 4,740	-
Net unrealized (loss) gain, investments in marketable debt securities	$ (9)	$ 22

See accompanying notes to consolidated financial statements

Note 1 – Organization and Business

ProPhase Labs, Inc. ("ProPhase or the "Company") is a diversified medical science and technology company with deep experience with over-the-counter ("OTC") consumer healthcare products and dietary supplements. We conduct our operations through two operating segments: consumer products and diagnostic services. Until late 2020, we were engaged in the research, development, manufacture, distribution, marketing and sale of OTC consumer healthcare products and dietary supplements in the United States. However, commencing in December 2020, we also began offering COVID-19 and other respiratory pathogen panel (RPP) molecular tests through our new diagnostic service business.

Our wholly-owned subsidiary, Pharmaloz Manufacturing, Inc. ("PMI"), is a full-service contract manufacturer and private label developer of a broad range of non-GMO, organic and natural-based cough drops and lozenges and OTC drug and dietary supplement products.

Our wholly-owned subsidiary, ProPhase Diagnostics, Inc., ("ProPhase Diagnostics"), which was formed on October 9, 2020, offers a variety of medical tests, including COVID-19 and Respiratory Pathogen Panel (RPP) Molecular tests. On October 23, 2020, we completed the acquisition of all of the issued and outstanding shares of capital stock of Confucius Plaza Medical Laboratory Corp. ("CPM") for approximately $2.5 million in cash (see Note 3) which a 4,000 square foot Clinical Laboratory Improvement Amendments ("CLIA") accredited laboratory located in Old Bridge, New Jersey. As a result of the acquisition of CPM in October 2020, we entered into a new business line, diagnostic services. In December 2020, we expanded our diagnostic service business with the signing of a lease and the recent build out of a second, larger CLIA accredited laboratory in Garden City, New York. Operations at this second facility commenced in January 2021.

In addition, we continue to actively pursue acquisition opportunities for other companies, technologies and products within and outside the consumer products industry.

We use a December 31 year-end for financial reporting purposes. References in this Annual Report to "Fiscal 2020" mean the fiscal year ended December 31, 2020 and references to other "Fiscal" years mean the year that ended on December 31 of the year indicated. The term "we", "us" or the "Company" as used herein also refer, where appropriate, to the Company, together with its subsidiaries unless the context otherwise requires.

We own and operate a manufacturing facility and manufacturing business in Lebanon, Pennsylvania, and relocated our headquarters in Garden City, New York as of January 2021. As part of the sale of the Cold-EEZE® business, we entered into a manufacturing agreement with Mylan Consumer Healthcare Inc. (formerly known as Meda Consumer Healthcare Inc.) ("MCH") and Mylan Inc. (together with MCH, "Mylan") and our wholly-owned subsidiary, Pharmaloz Manufacturing, Inc. ("PMI"), to supply various Cold-EEZE® lozenge products to Mylan. In addition to the production services we provide to Mylan under the manufacturing agreement, we also produce OTC healthcare and dietary supplement products for other third-party customers in addition to performing operational tasks such as warehousing and shipping.

We are also engaged in development and distribution of a product line of OTC dietary supplements under the brand name of TK Supplements®. The TK Supplements® product line comprises two men's health products: (i) Legendz XL® for sexual health, and (ii) Triple Edge XL®, an energy booster plus testosterone support. In addition to developing direct-to-consumer marketing strategies for Legendz XL®, we are currently in distribution in a national chain drug retailers and several regional retailers.

Note 2 – Summary of Significant Accounting Policies

Basis of Presentation

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

Segments

Operating segments are defined as components of an enterprise that engage in business activities for which separate financial information is available and is evaluated by the Chief Operating Decision Maker ("CODM"), which for the Company is its Chief Executive Officer, in deciding how to allocate resources and assess performance. The Company has two operating segments: diagnostic services and consumer products.

Seasonality of the Business and Liquidity

A significant portion of our net sales are derived from our contract manufacturing of OTC healthcare and dietary supplement products sold in the United States. In addition, we are engaged in market activities for the TK Supplements® product line of dietary supplements and diagnostic services.

Our consumer sales are influenced by and subject to (i) the timing of acceptance of our TK Supplements® products in the marketplace, and (ii) fluctuations in the timing of purchase and the ultimate level of demand for the OTC healthcare and cold remedy products that we manufacture for others, which are a function of the timing, length and severity of each cold season. Generally, a cold season is defined as the period from September to March when the incidence of the common cold rises as a consequence of the change in weather and other factors. We generally experience in the first, third and fourth quarter higher levels of net sales from our contract manufacturing of OTC healthcare and cold remedy products. Revenues are generally at their lowest levels in the second quarter when customer demand generally declines.

The diagnostic service business is influenced by the level of demand for COVID-19 and other diagnostic testing, the price we are able to receive for performing our testing services, and the length of time for which that demand persists, as well as the availability of COVID-19 testing from other laboratories and the period of time for which we are able to serve as an authorized laboratory offering COVID-19 testing under various Emergency Use Authorizations.

As of December 31, 2020, we had working capital of approximately $9.6 million, including $1.6 million marketable securities available for sale.

Use of Estimates

The preparation of financial statements and the accompanying notes thereto, in conformity with generally accepted accounting principles in the United States of America ("GAAP"), requires management to make estimates and assumptions that affect reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the respective reporting periods. Examples include the provision for bad debt, sales returns and allowances, diagnostic services reimbursements, inventory obsolescence, useful lives of property and equipment, impairment of property and equipment, income tax valuations and assumptions related to accrued advertising. When providing for the appropriate sales returns, allowances, cash discounts and cooperative incentive promotion costs ("sales allowances"), we apply a uniform and consistent method for making certain assumptions for estimating these provisions. These estimates and assumptions are based on historical experience, current trends and other factors that management believes to be relevant at the time the financial statements are prepared. Management reviews the accounting policies, assumptions, estimates and judgments on a quarterly basis. Actual results could differ from those estimates.

Cash and Cash Equivalents

We consider all highly liquid investments with an initial maturity of three months or less at the time of purchase to be cash equivalents. Cash equivalents include cash on hand and monies invested in money market funds. The carrying amount approximates the fair market value due to the short-term maturity of these investments.

Marketable Debt Securities

We have classified our investments in marketable debt securities as available-for-sale and as a current asset. Our investments in marketable securities are carried at fair value, with unrealized gains and losses included as a separate component of stockholders' equity. Realized gains and losses from our marketable securities are recorded as other interest income (expense). The investments carry maturity dates between one and three years from date of purchase with interest rates of 0.85% - 3.35% during Fiscal 2020. The following is a summary of the components of our marketable securities and the underlying fair value input level tier hierarchy (see long-lived assets below) (in thousands):

	As of December 31, 2020		
	Amortized Cost	**Unrealized Losses**	**Fair Value**
U.S. government obligations	$ 1,021	$ (7)	$ 1,014
Corporate obligations	629	(4)	625
	$ 1,650	$ (11)	$ 1,639

	As of December 31, 2019		
	Amortized Cost	**Unrealized Losses**	**Fair Value**
U.S. government obligations	$ 125	$ -	$ 125
Corporate obligations	803	(2)	801
	$ 928	$ (2)	$ 926

Inventory, net

Inventory is valued at the lower of cost, determined on a first-in, first-out basis ("FIFO"), or net realizable value. Inventory items are analyzed to determine cost and the net realizable value and appropriate valuation adjustments are established. At December 31, 2020 and 2019, the financial statements include adjustments to reduce inventory for excess, obsolete or short-dated shelf-life inventory of $167,000 and $360,824, respectively, The components of inventory are as follows (in thousands):

	December 31, 2020	December 31, 2019
Raw materials	$ 3,460	$ 1,024
Work in process	437	299
Finished goods	170	136
	$ 4,067	$ 1,459

Property, Plant and Equipment

Property, plant and equipment are recorded at cost. We use the straight-line method in computing depreciation for financial reporting purposes. Depreciation expense is computed in accordance with the following ranges of estimated asset lives: building and improvements – ten to thirty-nine years; machinery and equipment – three to seven years; computer equipment and software – three to five years; and furniture and fixtures – five years.

Concentration of Risks

Future revenues, costs, margins and profits will continue to be influenced by our ability to maintain our manufacturing availability and capacity together with our marketing and distribution capabilities and the regulatory requirements associated with the development of OTC consumer healthcare products, dietary supplements and other remedies in order to compete on a national level and/or international level. In addition, with the October 2020 acquisition of CPM and the commencement of operations in February 2021 at our new Garden City, New York CLIA accredited laboratory, our diagnostic service business has significant availability and capacity which will be influence by the demand of diagnostic testing services, particularly COVID-19 as well as our marketing and service capabilities and regulatory requirements associated with operating under and maintaining our CLIA license.

Our business is subject to federal and state laws and regulations adopted for the health and safety of users of our products. The manufacturing and distribution of OTC healthcare and dietary supplement products are subject to regulations by various federal, state and local agencies, including the Food and Drug Administration ("FDA") and, as applicable, the Homeopathic Pharmacopoeia of the United States.

Financial instruments that potentially subject us to significant concentrations of credit risk consist principally of cash investments, marketable debt securities, and trade accounts receivable. Our marketable securities are fixed income investments, which are highly liquid and can be readily purchased or sold through established markets.

We maintain cash and cash equivalents with certain major financial institutions. As of December 31, 2020, our cash and cash equivalents balance was $6.8 million and our bank balance was $7.4 million. Of the total bank balance, $0.5 million was covered by federal depository insurance and $6.9 million was uninsured at December 31, 2020.

Trade accounts receivable potentially subject us to credit concentrations from time-to-time as a consequence of the timing, payment pattern and ultimate purchase volumes or shipping schedules with our consumer products customer of the demand for our diagnostic services. We extend credit to our customers based upon an evaluation of the customer's financial condition and credit history and generally we do not require collateral. Our customers include two customer classifications (i) consumer products companies and large national chain, regional, specialty and local retail stores associated with our consumer products business and (ii) healthcare institutions, insurance companies, corporation and individuals associated with our diagnostic services business. These credit concentrations may impact our overall exposure to credit risk, either positively or negatively, in that our customers may be similarly affected by changes in economic, regulatory or other conditions that may impact the timing and collectability of amounts, reimbursement rates of amounts due to us. Based on our evaluation of our customer's financial condition, payment patterns, balances due to us and other factors, we did not offset our account receivable with an allowance for bad debt at December 31, 2020 and December 31, 2019.

We also assess our note holder's (see Note 12 & 16) financial condition, balances due to us and other factors, and based on this assessment. Based on this assessment, such notes are expected to be fully realizable and no reserve was deemed necessary at December 31, 2020.

In addition, see Note 13 - Customer Concentration Risk.

Leases

Effective January 1, 2019, we adopted Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 842, *Leases* ("ASC 842"), using the required modified retrospective approach and utilizing the effective date as its date of initial application, for which prior periods are presented in accordance with the previous guidance in ASC 840, *Leases* ("ASC 840").

At the inception of an arrangement, we determine whether the arrangement is or contains a lease based on the unique facts and circumstances present in the arrangement. Most leases with a term greater than one year are recognized on the balance sheet as right-of-use assets and short-term and long-term lease liabilities, as applicable. We have elected not to recognize on the balance sheet leases with terms of 12 months or less. We typically only include an initial lease term in its assessment of a lease arrangement. Options to renew a lease are not included in the Company's assessment unless there is reasonable certainty that we will renew.

Operating lease liabilities and their corresponding right-of-use assets are recorded based on the present value of lease payments over the expected remaining lease term. Certain adjustments to the right-of-use asset may be required for items such as incentives received. The interest rate implicit in our leases is typically not readily determinable. As a result, we utilize our incremental borrowing rate, which reflects the fixed rate at which the Company could borrow on a collateralized basis the amount of the lease payments in the same currency, for a similar term and in a similar economic environment. (See Note 10)

In accordance with ASC 842, components of a lease should be allocated between lease components (e.g., land, building, etc.) and non-lease components (e.g., common area maintenance, consumables, etc.). The fixed and in-substance fixed contract consideration (including any consideration related to non-components) must be allocated based on the respective relative fair values to the lease components and non-lease components.

Long-lived Assets

We review the carrying value of our long-lived assets with definite lives whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. When indicators of impairment exist, we determine whether the estimated undiscounted sum of the future cash flows of such assets is less than their carrying amounts. If less, an impairment loss is recognized in the amount, if any, by which the carrying amount of such assets exceeds their respective fair values. The determination of fair value is based on quoted market prices in active markets, if available, or independent appraisals; sales price negotiations; or projected future cash flows discounted at a rate determined by management to be commensurate with our business risk. The estimation of fair value utilizing discounted forecasted cash flows includes significant judgments regarding assumptions of revenue, operating and marketing costs; selling and administrative expenses; interest rates; property and equipment additions and retirements; industry competition; and general economic and business conditions, among other factors.

Goodwill and Indefinite Lived Intangible Assets

Goodwill is the excess of purchase price over the fair value of identified net assets of businesses acquired. Intangible assets with indefinite useful lives are measured at their respective fair values as of the acquisition date. We do not amortize goodwill and intangible assets with indefinite useful lives. Intangible assets related to IPR&D projects, if any, are considered to be indefinite lived until the completion or abandonment of the associated R&D efforts. If and when development is complete, which generally occurs if and when regulatory approval to market a product is obtained, the associated assets would be deemed finite lived and would then be amortized based on their respective estimated useful lives at that point in time.

We review goodwill and indefinite-lived intangible assets at least annually for possible impairment. Goodwill and indefinite-lived intangible assets are reviewed for possible impairment between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of the reporting unit or the indefinite-lived intangible assets below their carrying values.

Fair Value of Financial Instruments

Fair value is based on the prices that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In order to increase consistency and comparability in fair value measurements, a three-tier fair value hierarchy prioritizes the inputs used to measure fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs for which little or no market data exists, therefore requiring an entity to develop its own assumptions.

Marketable securities and assets held for sale are reflected in the consolidated financial statements at carrying value which approximates fair value. We account for our marketable securities at fair value, with the net unrealized gains or losses reported as a component of accumulated other comprehensive income or loss. The components of marketable debt securities are as follows (in thousands):

	As of December 31, 2020			
	Level 1	Level 2	Level 3	Total
Marketable debt securities				
U.S. government obligations	$ -	$ 1,014	$ -	$ 1,014
Corporate obligations	-	625	-	625
	$ -	$ 1,639	$ -	$ 1,639

	As of December 31, 2019			
	Level 1	Level 2	Level 3	Total
Marketable debt securities				
U.S. government obligations	$ -	$ 125	$ -	$ 125
Corporate obligations	-	801	-	801
	$ -	$ 926	$ -	$ 926

There were no transfers of marketable debt securities between Levels 1, 2 or 3 for the Fiscal 2020 and 2019.

Revenue Recognition

We recognize revenue that represents the transfer of promised goods or services to customers at an amount that reflects the consideration that is expected to be received in exchange for those goods or services. We recognize revenue when performance obligations with our customers have been satisfied. At contract inception, we evaluate the contract to determine if revenue should be recognized using the following five steps: (1) identify the contract with the customer; (2) identify the performance obligations; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations; and (5) recognize revenue when (or as) the entity satisfies a performance obligation.

Performance Obligations

We have historically generated sales principally through two types of customers, contract manufacturing and retail customers. Sales from product shipments to contract manufacturing and retailer customers are recognized at the time ownership is transferred to the customer. Revenue from diagnostic services are recognized when the results are made available to the customer. Net sales from consumer products were $13.2 million and $1.3 million for diagnostic services, for Fiscal 2020 and $9.9 million for consumer products and no sales for diagnostic service in Fiscal 2019.

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer and is the unit of account. A contract's transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied. The Company's performance obligation for contract manufacturing and retail customers is to provide the goods ordered by the customer. For diagnostic services, the Company has one performance obligation, which is to provide the results of the laboratory test to the customer.

Transaction Price

For contract manufactures and retail revenue, the transaction price is fixed based upon either (i) the terms of a combined Master Agreement and each related purchase order, or (ii) if there is no Master Agreement, the price per the individual purchase order received from each customer. The customers are invoiced at an agreed upon contractual price for each unit ordered and delivered by the Company.

Revenue from retail customers is reduced for trade promotions, estimated sales returns and other allowances in the same period as the related sales are recorded. No such allowance is applicable to our contract manufacturing customers. We estimate potential future product returns and other allowances related to current period revenue. We analyze historical returns, current trends, and changes in customer and consumer demand when evaluating the adequacy of the sales returns and other allowances.

We do not accept returns in the contract manufacturing revenue stream. Our return policy for retailer customers accommodates returns for (i) discontinued products, (ii) store closings and (iii) products that have reached or exceeded their designated expiration date. We do not impose a period of time within which product may be returned. All requests for product returns must be submitted to us for pre-approval. We will not accept return requests pertaining to customer inventory "Overstocking" or "Resets". We will accept return requests for only products in its intended package configuration. We reserve the right to terminate shipment of product to customers who have made unauthorized deductions contrary to our return policy or pursue other methods of reimbursement. We compensate the customer for authorized returns by means of a credit applied to amounts.

Accrued advertising and other allowances from continuing operations as of December 31, 2020 included (i) $291,000 for estimated returns and allowances which is reported as a liability and (ii) $463,000 for cooperative and incentive promotion costs which is also reported as a liability. There were no accrued advertising and other allowances from discontinued operations as of December 31, 2020 As of December 31, 2019, accrued advertising and other allowances from continuing operations included (i) $37,000 for estimated returns which is reported as a liability and (ii) $92,000 for cooperative and incentive promotion costs which is also reported as a liability. Accrued advertising and other allowances from discontinued operations as of December 31, 2019 included (i) $132,000 for estimated returns, which is reported as a reduction to account receivables, and (ii) $76,000 for cooperative incentive promotion costs, which is reported as accrued advertising and other allowances under current liabilities.

We experienced a reduction in the estimate for returns and cooperative and incentive allowance costs in the amount of $201,000 which was recognized as income from discontinued operations associated with the sale of the Cold-EEZE® Business in Fiscal 2020. See Note 9.

For the diagnostic services business, a revenue transaction is initiated when we receive a requisition order to perform a diagnostic test. The information provided on the requisition form is used to determine the party that will be billed for the testing performed and the expected reimbursement. We provide diagnostic services to a range of customers, including health plans, government agencies and consumers. In many cases, the customer that orders our services is not responsible for paying for these services. Depending on the billing arrangement and applicable law, the payer may be the patient or a third party, such as a health plan, Medicare or Medicaid program and other government reimbursement programs. We bill the providers at standard price and take into consideration negotiated discounts and anticipated reimbursement remittance adjustments based on the payer portfolio, when revenue is recorded. We use the most expected value method to estimate the transaction price for reimbursements that vary from the listed contract price.

Recognize Revenue When the Company Satisfies a Performance Obligation

Performance obligations related to contract manufacturing and retail customers are satisfied at a point in time when the goods are shipped to the customer as (i) we have transferred control of the assets to the customers upon shipping, and (ii) the customer obtains title and assumes the risks and rewards of ownership after the goods are shipped. For diagnostic services, the Company satisfies its performance obligation at the point in time that the results are made available to the customer, which is when the customer benefits from the information contained in the results and obtains control.

Contract Balances

As of December 31, 2020, we have deferred revenue of $331,000 in relation to R&D stability and release testing programs recognized as contract manufacturing revenue. As of December 31, 2019, deferred revenue was $214,000. Deferred revenues primarily consist of amounts that have been billed to or received from customers in advance of revenue recognition and prepayments received from customers in advance of services performed for the R&D work. We recognize deferred revenues as revenues when the services are performed and the corresponding revenue recognition criteria are met. Customer prepayments are generally applied against invoices issued to customers when services are performed and billed.

The following table disaggregates the Company's deferred revenue by recognition period (in thousands):

	Deferred Revenue
Recognition Period	
0-12 Months	$ 169
13-24 Months	84
Over 24 Months	78
Total	$ 331

Disaggregation of Revenue

We disaggregate revenue from contracts with customers into three categories: contract manufacturing and retail customers and lab processing services. We determined that disaggregating revenue into these categories achieves the disclosure objective to depict how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors.

The following table disaggregates the Company's revenue by revenue source for Fiscal 2020 and 2019 (in thousands):

	For the Years Ended	
Revenue by Customer Type	December 31, 2020	December 31, 2019
Contract manufacturing	$ 12,252	$ 8,974
Retail and others	985	902
Diagnostic services	1,277	-
Total revenue	$ 14,514	$ 9,876

Sales Tax Exclusion from the Transaction Price

We exclude from the measurement of the transaction price all taxes assessed by a governmental authority that are both imposed on and concurrent with a specific revenue-producing transaction and collected by the Company from the customer.

Shipping and Handling Activities

We account for shipping and handling activities that we perform as activities to fulfill the promise to transfer the good.

Advertising and Incentive Promotions

Advertising and incentive promotion costs are expensed within the period in which they are utilized. Advertising and incentive promotion expense is comprised of (i) media advertising, presented as part of sales and marketing expense, (ii) cooperative incentive promotions and coupon program expenses, which are accounted for as part of net sales, and (iii) free product, which is accounted for as part of cost of sales. Advertising and incentive promotion expenses incurred from continuing operations for Fiscal 2020 and 2019 were $766,000 and $443,000, respectively.

Share-Based Compensation

We recognize all share-based payments to employees and directors, including grants of stock options, as compensation expense in the financial statements based on their grant date fair values. The grant date fair values of stock options are determined through the use of the Black-Scholes option pricing model. The compensation cost is recognized as an expense over the requisite service period of the award, which usually coincides with the vesting period. We account for forfeitures as they occur.

Stock and stock options to purchase our common stock have been granted to employees pursuant to the terms of certain agreements and stock option plans (see Note 5). Stock options are exercisable during a period determined by us, but in no event later than seven years from the date granted. For Fiscal 2020 and 2019, we charged to operations $1,178,000 and $744,000, respectively, for share-based compensation expense for the aggregate fair value of stock grants issued and vested stock options earned.

Research and Development

R&D costs are charged to operations in the period incurred, R&D costs incurred for Fiscal 2020 and 2019 were $633,000 and $332,000, respectively. R&D costs are principally related to personnel expenses and new product development initiatives and costs associated with the OTC health care products, dietary supplements and validation fees in association with the diagnostic services business including the validation work of the diagnostic services business.

Income Taxes

We utilize the asset and liability approach, which requires the recognition of deferred tax assets and liabilities for the future tax consequences of events that have been recognized in our financial statements or tax returns. In estimating future tax consequences, we generally consider all expected future events other than enactments of changes in the tax law or rates. Until sufficient taxable income to offset the temporary timing differences attributable to operations and the tax deductions attributable to option, warrant and stock activities are assured, a valuation allowance equaling the total deferred tax asset is being provided.

We utilize a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount, which is more than fifty percent likely of being realized upon ultimate settlement. Any interest or penalties related to income taxes will be recorded as interest or administrative expense, respectively.

As a result of our losses from continuing operations, we have recorded a full valuation allowance against a net deferred tax asset. Additionally, we have not recorded a liability for unrecognized tax benefit.

Recently Issued Accounting Standards, Not Yet Adopted

In September 2016, the FASB issued ASU 2016-13, Financial Instruments - Credit Losses (Topic 326). The ASU sets forth a "current expected credit loss" (CECL) model which requires the Company to measure all expected credit losses for financial instruments held at the reporting date based on historical experience, current conditions, and reasonable supportable forecasts. This replaces the existing incurred loss model and is applicable to the measurement of credit losses on financial assets measured at amortized cost and applies to some off-balance sheet credit exposures. In February 2020, the FASB issued ASU 2020-02, Financial Instruments - Credit Losses (Topic 326), which amends the effective date of the original pronouncement for smaller reporting companies. ASU 2016-13 and its amendments will be effective for the Company for interim and annual periods in fiscal years beginning after December 15, 2022. The Company is currently assessing the impact of the adoption of this ASU on its financial statements.

In December 2019, the FASB issued ASU No. 2019-12, "Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes ("ASU 2019-12"), which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. The Company is currently evaluating the impact of this standard on its consolidated financial statements and related disclosures.

Note 3 – Business Acquisition

On October 23, 2020, we completed the acquisition of all of the issued and outstanding shares of capital stock of "CPM" for approximately $2.5 million in cash, subject to certain adjustments, pursuant to the terms of a Stock Purchase Agreement, by and among the Company, "CPM", Pride Diagnostics LLC ("Pride Diagnostics") and the members of Pride Diagnostics (together with Pride Diagnostics, the "Seller Parties"), and Arvind Gurnani, as representative of the Seller Parties. "CMP" Labs (now known as ProPhase Diagnostics NJ, Inc.) includes a 4,000 square foot (CLIA) accredited laboratory located in Old Bridge, New Jersey. On October 23, 2020 (the "Effective Date"), we entered into a Consulting Agreement with Mr. Gurnani for a six-month period from the Effective Date for an aggregate total of $300,000, which was subsequently terminated after two months of service.

Based on the preliminary valuation, the total consideration of $2.5 million has been allocated to assets acquired and liabilities assumed based on their respective fair values as follows (amount in thousands):

Clinical lab material	$	180
Lab equipment		112
Definite-lived intangible asset		1,307
Total assets acquired		1,599
Liabilities assumed		-
Net identifiable assets acquired		**1,599**
Goodwill		901
Total consideration	**$**	**2,500**

Goodwill has been measured as the excess of the total consideration over the amounts assigned to the identifiable assets acquired and liabilities assumed in the amount of $901,000, which was primarily related to the acquisition of the assembled workforce. Other definite-lived intangible asset of approximate $1.3 million were related to the CLIA license which was determined to have an estimated useful life of three years.

We have not presented unaudited pro forma combined results of operations as if CPM was acquired as of the beginning of fiscal year 2019 because CPM had no revenue and minimal expenses and, as such, would have been immaterial to our reported losses.

The preliminary purchase price allocation is adjusted, as necessary, up to one year after the acquisition closing date if management obtains more information regarding asset valuations and liabilities assumed.

Note 4 – Property, Plant and Equipment

The components of property and equipment are as follows (in thousands):

	December 31, 2020	December 31, 2019	Estimated Useful Life
Land	$ 352	$ 504	
Building improvements	1,729	3,113	10-39 years
Machinery and laboratory equipment	5,443	4,285	3-7 years
Computer equipment	881	472	3-5 years
Furniture and fixtures	194	207	5 years
	8,599	8,581	
Less: accumulated depreciation	(5,021)	(6,251)	
Total property, plant and equipment, net	$ 3,578	$ 2,329	

Depreciation expense incurred for Fiscal 2020 and 2019 were $375,000 and $398,000, respectively.

On July 10, 2020, we entered into an Agreement of Sale and Purchase (the “Sale Agreement”) with Lenape Valley Foundation (the “Purchaser”), pursuant to which we agreed to sell our then corporate headquarters land and building located in Doylestown, Pennsylvania to the Purchaser for $2.2 million.

On November 13, 2020, we closed on the sale of our former corporate headquarters and relocated our headquarters to Garden City, New York in January 2021. The total sales price of the property, which was paid in cash, was $2.2 million, less closing costs and related expenses of approximately $134,000. As a consequence of the sale, we recorded $1.9 million gain from the sale of the real estate for Fiscal 2020.

Note 5 – Stockholders' Equity

Our authorized capital stock consists of 50 million shares of common stock and one million shares of preferred stock, $0.0005 par value ("Preferred Stock") per share.

Preferred Stock

The preferred stock authorized under our certificate of incorporation may be issued from time to time in one or more series. As of December 31, 2020, no shares of preferred stock have been issued. Our board of directors have the full authority permitted by law to establish, without further stockholder approval, one or more series of preferred stock and the number of shares constituting each such series and to fix by resolution voting powers, preferences and relative, participating, optional and other special rights of each series of preferred stock, and the qualifications, limitations or restrictions thereof, if any. Subject to the limitation on the total number of shares of preferred stock that we have authority to issue under our certificate of incorporation, the board of directors is also authorized to increase or decrease the number of shares of any series, subsequent to the issue of that series, but not below the number of shares of such series then-outstanding. In case the number of shares of any series is so decreased, the shares constituting such decrease will resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. We may, subject to any required stockholder approval amend from time to time our certificate of incorporation to increase the number of authorized shares of preferred stock or common stock or to make other changes or additions to our capital structure or the terms of our capital stock.

Common Stock Dividends

On December 24, 2018, the Board declared a special cash dividend of $0.25 per share on the Company's common stock to holders of record on January 10, 2019, resulting in the payment of $2.9 million to stockholders on January 24, 2019.

On November 20, 2019, the Board declared a special cash dividend of $0.25 per share on the Company's common stock to holders of record on December 3, 2019, resulting in the payment of $2.9 million to stockholders on December 12, 2019.

In Fiscal 2020, no cash dividends were declared.

The 2010 Directors' Equity Compensation Plan

On May 5, 2010, our stockholders approved the 2010 Directors' Equity Compensation Plan which, was has been subsequently amended and restated by our stockholders (the "2010 Directors' Plan"). A primary purpose of the 2010 Directors' Plan is to provide us with the ability to pay all or a portion of the fees of directors in stock instead of cash. The 2010 Directors' Plan provides that the total number of shares of common stock that may be issued is equal to 675,000 shares.

During Fiscal 2020 and 2019, 30,660 and 24,074 shares, respectively, were granted to our directors under the 2010 Directors' Plan. We recorded $53,000 and $62,000 of director fees during Fiscal 2020 and Fiscal 2019, respectively, in connection with these grants.

During Fiscal 2020, 200,000 options were granted to our directors under the 2010 Directors' Plan at an exercise price of $2.83, the closing price of the Company's common stock on the date of grant. The stock options will vest in four quarterly installments. We recorded $165,000 of compensation expenses for directors during Fiscal 2020, in connection with these grants. No options were granted in Fiscal 2019.

At December 31, 2020, there were 200,000 options outstanding and there were 128,126 shares of common stock available to be issued pursuant to the terms of the 2010 Directors' Plan. No stock options were exercised during the Fiscal 2020.

The 2010 Equity Compensation Plan

On May 5, 2010, our stockholders approved the 2010 Equity Compensation Plan, which has been subsequently amended and restated by our stockholders (the "2010 Plan"). The 2010 Plan provides that the total number of shares of common stock that may be issued under the 2010 Plan is 3.9 million shares.

During Fiscal 2020,513,000 stock options were granted to our employees and non-employees under the 2010 Plan at an exercise price between $2.64 - $8.82 the closing price of the Company's common stock on the date of grant with 25% of the stock options vested on the grant date, and 75% vesting over a 3-year period in equal annually installments. In addition, 510,000 options were granted during Fiscal 2020 in excess of the total amount allocated in the 2010 Plan. These options were excluded from the stock compensation expense calculation as the options require stockholder approval before we recognize the compensation expense.

During Fiscal 2019, the Company granted 200,000 stock options at an exercise price of $2.01, the closing price of the Company's common stock on the date of grant, to certain employees. The stock options will vest in four equal annual installments beginning on the date of grant.

As of December 31, 2020, there were 1,295,000 stock options outstanding and 15,659 stock options available to be issued pursuant to the terms of the 2010 Plan.

The 2018 Stock Incentive Plan

On April 12, 2018, our stockholders approved the 2018 Stock Incentive Plan (the "2018 Stock Plan"). The 2018 Stock Plan provides for the grant of incentive stock options to eligible employees of the Company, and for the grant of nonstatutory stock options to eligible employees, directors and consultants. The purpose of the 2018 Stock Plan is to advance the interests of the Company and its stockholders by providing an incentive to attract, retain, and reward persons performing services for the Company and by motivating such persons to contribute to the growth and profitability of the Company. The 2018 Stock Plan provides that the total number of shares that may be issued pursuant to the 2018 Stock Plan is 2.3 million shares. At April 12, 2018, all 2.3 million shares have been granted in the form of stock options to Ted Karkus (the "CEO Option"), our Chief Executive Officer and, to date, no stock options have been exercised under the 2018 Stock Plan. We will recognize approximately $59,000 of share-based compensation expense over a weighted average period of 0.2 years.

The 2018 Plan requires certain proportionate adjustments to be made to the stock options granted under the 2018 Plan upon the occurrence of certain events, including a special distribution (whether in the form of cash, shares, other securities, or other property) in order to maintain parity. Accordingly, the Compensation Committee of the board of directors, as required by the terms of the 2018 Stock Plan, adjusted the terms of the CEO Option, such that the exercise price of the CEO Option was reduced from $3.00 per share to $2.00 per share, effective as of September 5, 2018, the date the special $1.00 special cash dividend was paid to stockholders. The exercise price of the CEO Option was further reduced from $2.00 to $1.75 per share, effective as of January 24, 2019, the date the $0.25 special cash dividend was paid to stockholders. The exercise price of the CEO Option was further reduced from $1.75 to $1.50 per share, effective as of December 12, 2019, the date another $0.25 special cash dividend was paid to stockholders.

The following table summarizes stock options activities during Fiscal 2020 and 2019 for both 2010 Plan and 2018 Stock Plan (in thousands, except per share data). All outstanding options are expected to vest.

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in years)	Total Intrinsic Value
Outstanding as of January 1, 2019	2,980	$ 1.82	4.8	$ 3,235
Granted	200	2.01	6.9	-
Forfeited/expired	(98)	2.81	-	-
Outstanding as of December 31, 2019	3,082	1.67	3.7	1,085
Granted	713	4.58	7.0	-
Outstanding as of December 31, 2020	3,795	$ 2.21	3.4	$ 26,441
Options vested and exercisable	3,007	$ 1.83	2.9	$ 22,101

The following table summarizes weighted average assumptions used in determining the fair value of the stock options at the date of grant during Fiscal 2020 and 2019:

	For the years ended December 31,	
	2020	2019
Exercise price	$ 4.58	$ 2.01
Expected term (years)	4.2	4.5
Expected stock price volatility	52%	42%
Risk-free rate of interest	0%	2%
Expected dividend yield (per share)	0%	0%

The expected stock price volatility is based on the Company's historical common stock trading prices and the expected term is based on the period that the Company's stock-based awards are expected to be outstanding based on the simplified method. The fair value of the stock options at the time of the grant in Fiscal 2020 and 2019 was $1.4 million and $148,000, respectively. For Fiscal 2020 and 2019, we charged to operations approximately $1.2 million and $0.7 million, respectively, for share-based compensation expense for the aggregate fair value of the vested stock options earned.

Warrants

During the second and third quarter of Fiscal 2020, 450,000 three year warrants were issued to various consultants with vesting terms of one year or less and exercise prices of $3.00 to $5.00 per share. The following table summarizes warrants activities during Fiscal 2020 (in thousands, except per share data).

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in years)
Outstanding as of January 1, 2020	-	$ -	-
Warrants granted	450	3.22	3.0
Outstanding as of December 31, 2020	**450**	**$ 3.22**	2.7
Warrants vested and exercisable	115	$ 3.43	2.7

The following table summarizes weighted average assumptions used in determining the fair value of the warrants at the date of grant during Fiscal 2020:

	For the year ended December 31, 2020
Exercise price	$ 3.22
Expected term (years)	2.0
Expected stock price volatility	58%
Risk-free rate of interest	0%
Expected dividend yield (per share)	0%

As of December 31, 2020, there were 450,000 warrants outstanding and we recognized $178,000 of share-based compensation expense during Fiscal 2020.

Note 6 – Defined Contribution Plans

We maintain the ProPhase Labs, Inc. 401(k) Savings and Retirement Plan, a defined contribution plan for our employees. Our contributions to the plan are based on the amount of the employee plan contributions and compensation. Our contributions to the plan in Fiscal 2020 and 2019 were $71,000 and $84,000, respectively.

Note 7 – Income Taxes

The components of the provision (benefit) for income taxes, in the consolidated statements of operations are as follows (in thousands):

	For the Years Ended	
	December 31, 2020	December 31, 2019
Continuing Operations		
Current		
Federal	$ -	$ -
State	12	-
	12	-
Deferred		
Federal	-	-
State	-	-
Income taxes from Continuing Operations	12	-
Discontinued Operations		
Current		
Federal	-	-
State	-	-
	-	-
Deferred		
Federal	-	-
State	-	-
Income taxes from Discontinued Operations	-	-
Total	$ 12	$ -

A reconciliation of the statutory federal income tax expense (benefit) to the effective tax is as follows (in thousands):

	2020	2019
Statutory rate - federal	$ (377)	$ (660)
State taxes, net of federal benefit	(31)	(7)
Permanent differences and other	159	145
Income tax from continuing operation before valuation allowance	(249)	(522)
Change in valuation allowance	261	(522)
Income tax expense	12	-
Total	$ 12	$ -

The tax effects of the primary "temporary differences" between values recorded for assets and liabilities for financial reporting purposes and values utilized for measurement in accordance with tax laws giving rise to our deferred tax assets are as follows (in thousands):

	For the Years Ended	
	December 31, 2020	December 31, 2019
Net operating loss and capital loss carryforward	$ 5,020	$ 4,605
Right of use asset	1,086	-
Other	370	198
Capital lease obligations	(1,086)	-
Depreciation	(419)	(93)
Valuation allowance	(4,971)	(4,710)
Total	$ -	$ -

We recognize tax assets and liabilities for the future tax consequences related to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, and for net operating loss carryforwards. Management evaluated the deferred tax assets for recoverability using a consistent approach that considers the relative impact of negative and positive evidence, including historical profitability and projections of future reversals of temporary differences and future taxable income. We are required to establish a valuation allowance for deferred tax assets if management determines, based on available evidence at the time the determination is made, that it is not more likely than not that some portion or all of the deferred tax assets will be realized.

A valuation allowance for all of our net deferred tax assets has been provided as we are unable to determine, at this time, that the generation of future taxable income against which the net operating losses ("NOL") carryforwards could be used is more likely than not. As a result of ongoing losses from continuing operations the Company has concluded that it is more likely than not that it will not realize all of its deferred tax assets relating to federal and state filing jurisdictions. As of December 31, 2020, there is a valuation allowance of approximately $5.0 million. As of December 31, 2020, the Company has state NOL carryforwards of $1.1 million, which begin to expire in 2024 and federal NOL carryforwards of $3.9 million. The amount of the federal NOL generated prior to the 2017 legislation commonly referred to as the Tax Cuts and Jobs Act ("TCJA") of $2.6 million may be carried forward for 20 years and begins to expire in 2032. The remaining amount of $1.3 million federal NOL generated in years 2018 and after may be carried forward indefinitely and its utilization is limited to 80% of taxable income for tax year's post 2020.

We file a consolidated federal income tax return and separate company state returns as well as combined state returns where applicable.

Note 8 – Other Current Liabilities

The following table sets forth the components of other current liabilities at December 31, 2020 and 2019, respectively (in thousands):

	December 31, 2020	December 31, 2019
Accrued payroll	$ 464	$ 57
Accrued commissions	461	-
Accrued expenses	304	218
Accrued returns	291	-
Accrued income tax payable	8	-
Accrued benefits	30	25
Accrued vacation	4	5
Deferred revenue	169	104
Total other current liabilities	$ 1,731	$ 409

Note 9 – Commitments and Contingencies

Escrow Receivable

Effective March 29, 2017, we sold our intellectual property rights and other assets related to our Cold-EEZE® brand and product line, including all then current and pipeline over-the-counter allergy, cold, flu, multi-symptom relief and immune support treatments for adults and children to the extent each was, or was intended to be, branded "Cold-EEZE®", including all formulations and derivatives thereof (collectively referred to as the "Cold-EEZE® Business") to Mylan Consumer Healthcare Inc. (formerly known as Meda Consumer Healthcare Inc.) ("MCH") and Mylan Inc. (together with MCH, "Mylan"). As a result of the sale of the Cold-EEZE® business, for Fiscal 2017, we have classified as discontinued operations (i) all income and expenses attributable to the Cold-EEZE® business, (ii) the gain from the sale of the Cold-EEZE® business, and (iii) the income tax expense attributed to the sale of the Cold-EEZE® business. Excluded from the sale of the Cold-EEZE® business were our accounts receivable and inventory. We have also retained all liabilities associated with our Cold-EEZE® business operations arising prior to March 29, 2017.

For Fiscal 2020 and 2019, we incurred income of $201,000 and costs of $40,000, respectively, which was recorded as income (loss) on sale of discontinued operations.

We have indemnification obligations to Mylan under the asset purchase agreement pursuant to which we sold the Cold-EEZE® business to Mylan, that may require us to make future payments to Mylan and other related persons for any damages incurred by Mylan or such related persons as a result of any breaches of our representations, warranties, covenants or agreements contained in the asset purchase agreement, or arising from the Retained Liabilities (as such term is defined in the asset purchase agreement) or certain third party claims specified in the asset purchase agreement. Generally, our representations and warranties survive for a period of 24 months from the closing date, which was March 29, 2017, other than certain fundamental representations which survive until the expiration of the applicable statute of limitations. There is a limited indemnification cap with respect to a majority of the Company's indemnification obligations under the asset purchase agreement with the exception of claims for actual fraud, the breach of any fundamental representations and certain other items, which have a larger indemnification cap (i.e., the purchase price).

Pursuant to the terms of the asset purchase agreement, we, Mylan, and an escrow agent entered into an Escrow Agreement at closing, pursuant to which Mylan deposited $5.0 million of the aggregate purchase price for the Cold-EEZE® business into an escrow account established with the escrow agent in order to satisfy, in whole or in part, certain of our indemnity obligations under the asset purchase agreement. Other than certain fundamental representations which survive until the expiration of the applicable statute of limitations, our representations and warranties under the agreement expired 24 months after the closing date, which was March 29, 2017.

On May 4, 2020, the final pending claim against our escrow account with Mylan was resolved and, as a result, the escrow agent released all funds from the escrow account to us on May 7, 2020, in the amount of $4.8 million.

Manufacturing Agreement

In connection with the asset purchase agreement with Mylan, the Company and its wholly-owned subsidiary, PMI, entered into a manufacturing agreement (the "Manufacturing Agreement") with Mylan. Pursuant to the terms of the Manufacturing Agreement, Mylan (or an affiliate or designee) purchased the inventory of the Company's Cold-EEZE® brand and product line, and PMI will manufacture certain products for Mylan, as described in the Manufacturing Agreement, at prices that reflect current market conditions for such products and include an agreed upon mark-up on our costs. Unless terminated sooner by the parties, the Manufacturing Agreement will remain in effect until March 29, 2022. Thereafter, the Manufacturing Agreement may be renewed by Mylan for up to five successive one-year periods by providing notice of its intent to renew not less than 90 days prior to the expiration of the then-current term.

Future Obligations

We have estimated future minimum obligations for an executive's employment agreement over the next five years as of December 31, 2020, as follows (in thousands):

	Employment Contracts
2021	$ 595
2022	675
2023	675
2024	675
2025	675
Total	$ 3,295

Litigation

In the normal course of our business, we may be named as a defendant in legal proceedings. It is our policy to vigorously defend litigation or to enter into a reasonable settlement where management deems it appropriate.

Note 10 – Leases

On October 23, 2020, we completed the acquisition of all of the issued and outstanding shares of capital stock of Confucius Plaza Medical Laboratory Corp. ("CPM") for approximately $2.5 million in cash, subject to certain adjustments, pursuant to the terms of a Stock Purchase Agreement, by and among the Company, CPM, Pride Diagnostics and other parties named therein CPM (which is now known as ProPhase Diagnostics NJ, Inc.) is the owner of a 4,000 square foot CLIA accredited laboratory located in Old Bridge, New Jersey, which ProPhase Diagnostics acquired as part of the transaction. As a result of this acquisition. ProPhase Diagnostics NJ, Inc. (f/k/a Confucius Labs) is the owner of a 4,000 square foot Clinical Laboratory Improvement Amendments (CLIA) accredited laboratory located in Old Bridge, New Jersey.

On December 8, 2020, the Company entered into a Lease Agreement (the "NY Lease") with BRG Office L.L.C. and Unit 2 Associates L.L.C. (the "Landlord"), pursuant to which the Company has agreed to lease certain premises located on the second floor (the "Leased Premises") of 711 Stewart Avenue, Garden City, New York (the "Building"). The Leased Premises serve as the Company's second location, offering a wide range of laboratory testing services for diagnosis, screening and evaluation of diseases, including COVID-19 and Respiratory Pathogen Panel Molecular tests.

The New York Lease is effective as of December 8, 2020 and commenced in December 2020 when the facility was made available to us by the Landlord. Payments on the lease will begin upon the date of the Landlord's substantial completion of certain improvements to the Leased Premises (the "Commencement Date"), as set forth in the NY Lease, targeted to be 35 days from the execution of the NY Lease. The initial term of the NY Lease is 10 years and seven months (the "Initial Term"), unless sooner terminated as provided in the NY Lease. We may extend the term of the NY Lease for one additional option period of five years. We have the option to terminate the NY Lease on the sixth anniversary of the Commencement Date, provided that we give the Landlord written notice not less than nine months and not more than 12 months in advance and that we pay the Landlord a termination fee as more particularly described in the NY Lease. The Landlord will provided a construction allowance to the Company in an aggregate amount not to exceed $250,795, to reimburse the Company for the cost of certain improvements to be made by the Company to the Leased Premises.

For the first year of the NY Lease, we will pay a base rent of $56,963 per month (subject to a seven month abatement period), with a gradual rental rate increase of 2.75% for each 12 month period thereafter in lieu of paying its proportionate share of common area operating expenses, culminating in a monthly base rent of $74,716 during the final months of the Initial Term. In addition to the monthly base rent, we are responsible for its proportionate share of real estate tax escalations in accordance with the terms of the NY Lease.

We also have a right of first refusal to lease certain additional space located on the ground floor of the Building containing 4,500 square feet and 4,600 square feet, as more particularly described in the NY Lease. We also has a right of first offer to purchase the Building during the term of the NY Lease.

At December 31, 2020, we had operating lease liabilities of approximately $4.7 million and right of use assets of approximately $4.7 million, which were included in the consolidated balance sheet.

The following summarizes quantitative information about our operating leases (amounts in thousands):

	For the Year Ended December 31, 2020
Operating leases	
Operating lease cost	$ 11
Variable lease cost	1
Operating lease expense	12
Short-term lease rent expense	-
Total rent expense	$ 12

	For the Year Ended December 31, 2020
Operating cash flows used in operating leases	$ (11)
Right-of-use assets obtained in exchange for operating lease liabilities	$ 4,740
Weighted-average remaining lease term – operating leases (in years)	10.3
Weighted-average discount rate – operating leases	10.00%

Maturities of the Company's operating leases, excluding short-term leases, are as follows (amounts in thousands):

Year Ended December 31, 2021	$ 357
Year Ended December 31, 2022	774
Year Ended December 31, 2023	738
Year Ended December 31, 2024	747
Year Ended December 31, 2025	768
Thereafter	4,659
Total	8,043
Less present value discount	(3,312)
Operating lease liabilities	$ 4,731

Note 11 –Unsecured Convertible Promissory Notes Payable

On September 15, 2020, we issued two unsecured, partially convertible, promissory notes (the "September 2020 Notes") for an aggregate principal amount of $10 million to two investors (collectively, the "Lenders").

The September 2020 Notes are due and payable on September 15, 2023, and accrue interest at a rate of 10% per year from the closing date, payable on a quarterly basis, until the September 2020 Notes are repaid in full. We have the right to prepay the September 2020 Notes at any time after the 13 month anniversary of the closing date after providing written notice to the Lenders, and may prepay the September 2020 Notes prior to such time with the consent of the Lenders. The Lenders have the right, at any time, and from time to time, on and after the 13-month anniversary of the closing date to convert up to an aggregate of $3.0 million of the September 2020 Notes into common stock of the Company at a conversion price of $3.00 per share. Repayment of the Notes has been guaranteed by our wholly-owned subsidiary, PMI.

The September 2020 Notes contain customary events of default. If a default occurs and is not cured within the applicable cure period or is not waived, any outstanding obligations under the Notes may be accelerated. The September 2020 Notes also contain certain restrictive covenants which, among other things, restrict our ability to create, incur, assume or permit to exist, directly or indirectly, any lien (other than certain permitted liens described in the Notes) securing any indebtedness of the Company, and prohibits us from distributing or reinvesting the proceeds from any divestment of assets (other than in the ordinary course) without the prior approval of the Lenders.

Note 12 – Consulting Agreement and Secured Promissory Note Receivable

Consulting Agreement

On September 25, 2020 (the "Effective Date"), we entered into a Consulting Agreement with a consultant (the "Consulting Agreement"). The Consulting Agreement will be effective for a period commencing on the Effective Date and expiring on September 1, 2022; provided, however, that we may terminate this agreement at any time on five days' prior written notice.

During the term of the Consulting Agreement, the consultant will provide us with such regular and customary consulting advice as is reasonably requested by us. The consultant's duties will also include, among other things, (i) identifying and introducing us to new opportunities in the medical technology and testing fields, (ii) assisting and advising us in acquiring one or more CLIA certified labs suitable for COVID-19 and other testing ("Test Labs"), (see Notes 3 and 10); (iii) assisting us in equipping and staffing any Test Labs acquired by us; (iv) advising and assisting in the operation of such Test Labs; (v) validating and obtaining certification of such Test Labs; and (vi) assisting us in obtaining a flow of business, orders and revenues from multiple sources in the industry, including but not limited to at least one significant, nation-wide manufacturer and distributor of COVID-19 saliva sample collection test kits ("COVID-19 Test Kits").

The compensation to be paid to the consultant under the Consulting Agreement will be based on the following milestones:

- At such time as we complete the acquisition of our first Test Lab that has been validated and certified to process COVID-19 Test Kits collection test kits manufactured by a substantial, nation-wide manufacturer and distributor of COVID-19 Test Kits, the consultant will receive a consulting fee of $250,000;
- At such time as we have processed 50,000 COVID-19 Test Kits from a source introduced to us by the consultant, they will receive a consulting fee of $500,000;
- At such time as we have processed 50,000 COVID-19 Test Kits from a second source introduced by the consultant (*i.e.,* a source other than the source contemplated by the bullet immediately above) the consultant will receive a consulting fee of $250,000; and
- The consultant will receive consulting fees equal to 5% of the net revenues that we generate from processing COVID-19 Test Kits in the Test Labs where such revenues are from sources introduced to us by the consultant (excluding the revenues from the COVID-19 Test Kits set forth in the second and third bullets above).

All compensation earned by the consultant will first be applied to the acceleration and prepayment of all sums due to us, including but not limited to sums due pursuant to the Amended and Restated Secured Promissory Note ("Secured Note") described below. Under the terms of the Consulting Agreement, the consultant will not be entitled to receive any payments pursuant to the Consulting Agreement unless and until the Secured Note has been paid in full. The total compensation that the consultant will be entitled to earn or to receive under the Consulting Agreement (inclusive of amounts credited against the Secured Note) will be capped at $4.0 million. See Note 16 for amendment subsequent to year end.

Promissory Note and Security Agreement

On September 25, 2020 (the "Restatement Effective Date"), we also entered into an Amended and Restated Promissory Note and Security Agreement with the consultant, pursuant to which we loaned $3.0 million to the consultant (inclusive of $1.0 million in the aggregate previously loaned to the consultant, as described below).

The Secured Note amended and restated in its entirety (i) that certain Promissory Note and Security Agreement, dated July 21, 2020 (the "Original July 21 Note"), pursuant to which we loaned $750,000 to the consultant and (ii) that certain Promissory Note and Security Agreement, dated July 29, 2020 (the "Original July 29 Note", and, together with the Original July 21 Note, the "Original Notes"), pursuant to which we loaned $250,000 to the consultant.

The Secured Note bears interest at a rate of 15% per annum from and including the Restatement Effective Date until the principal amount is repaid in full plus any Principal Increases (as defined below) together with any accrued interest that has not been capitalized; *provided, however*, that upon the occurrence and during an Event of Default (as defined in the Secured Note), the interest rate payable under the Secured Note will automatically increase to 9% above the rate of interest then applicable to the Secured Note.

Interest under the Secured Note will be payable monthly in arrears on the first day of each month for the prior monthly period, as well as at maturity (whether upon demand, by acceleration or otherwise) (each such date, a "Payment Date"); provided, however, that prior to September 1, 2021, interest will be paid and capitalized in kind by increasing the principal amount of the Secured Note (any such increase, a "Principal Increase") by an amount equal to the interest accrued on the principal amount (as increased by the Principal Increases) during the prior month. On each Payment Date commencing after September 1, 2021, in addition to payments of interest described in the preceding sentence, the consultant will also make payments on the principal amount of the loan equal to 1/36 of the then outstanding principal amount. The amount of the monthly payments will be equal to the amount required to amortize fully the outstanding principal amount of the loan, together with interest, over a period of 36 months.

The entire remaining unpaid principal amount of the Secured Note, together with all accrued and unpaid interest thereon and all other amounts payable under the Secured Note, will be due and payable, if not sooner paid, on September 30, 2022. The Secured Note may be prepaid in full or in part at any time without penalty or premium.

The Secured Note contains customary events of default. If a default occurs and is not cured within the applicable cure period or is not waived, any outstanding obligations under the Secured Note may be accelerated.

The Secured Note contain customary representation and warranties and certain restrictive covenants which, among other things, restrict the consultant's ability to (i) sell, transfer, finance, lease, license, or dispose of all or substantially all of its property or assets, liquidate, windup, or dissolve, (ii) acquire all or substantially all of the property or assets of, or the equity interests in, any other person, (iii) participate in any merger, consolidation, share exchange, division, conversion, reclassification, or other absorption or reorganization, (iv) except for those existing as of the Restatement Effective Date, create, incur, assume, permit, or suffer to exist any pledges, liens, security interests, and other encumbrances of its property or assets, whether now owned or hereafter owned or acquired, and (v) create, incur or permit to exist any debt that is senior to, or *pari passu* with the Secured Note.

In order to secure the consultant's obligations under the Secured Note, the consultant granted to the Company a continuing security interest in certain property and assets.

On January 14, 2021, we entered into an Amendment and Termination Agreement (the "Agreement") with a consultant pursuant to which the parties amended that certain Amended and Restated Promissory Note and Security Agreement by and between the parties, dated September 25, 2020. Pursuant to the terms of the Agreement, the Company has loaned an additional $1 million to the consultant in consideration for consultant's agreement to cancel its existing consulting agreement with the Company, dated September 25, 2020 (the "Consulting Agreement"), and terminate the Company's obligation to pay the consultant additional consulting fees beyond the $250,000 already earned by the consultant under the Consulting Agreement. As a result, the initial principal amount due under the Note was increased from $2.75 million to $3.75 million plus all accrued and unpaid interest arising under the Note through and including January 14, 2021.

The consultant will sell and process its viral test by RT-PCR (together with other viral and other types of tests). Until the Secured Note is paid in full, for each COVID-19 Test Kit sold or processed from and after January 14, 2021, and for which payment of at least the specified amount, as defined for the Test is received by the consultant, the consultant will pay the Company a specified amount, as defined (the "Test Fee"). The total payments shall not exceed the aggregate amounts due under the Note and shall be applied first to Interest and other amounts due under the Note and then to the then-current outstanding principal. Test Fees will be due and payable on the tenth (10th) business day after the end of each month commencing in February, 2021, and until the Note is paid in full. We received the first payment in the amount of $95,000 with respect to the Test Fees from January 15 through February 2021.

On each Payment Date commencing on or after September 1, 2021, in addition to payments of Test Fees described above, the consultant shall also make payments in an amount equal to the greater of (x) the Test Fee, or (y) 1/36th of the then outstanding Principal Amount together with interest thereon and interest accruing on the Note, in accordance with the Note. Accordingly, commencing on September 1, 2021, the minimum number of monthly payments due and payable will be equal to the amount required to amortize fully the outstanding Principal Amount of the Loan, together with interest over a period of thirty six (36) months with level monthly payments.

October 2020 Promissory Note

On October 22, 2020, we entered into a promissory note with an unrelated third party pursuant to which we loaned $300,000 to such entity. The promissory note bears interest at a rate of 10% per annum and is due December 31, 2020 and was repaid in the first quarter of Fiscal 2021.

Note 13 – Significant Customers

Revenue from continuing operations for Fiscal 2020 and Fiscal 2019 was $14.5 million and $9.9 million, respectively. Two third-party contract manufacturing customers accounted for 47.1% and 17.2%, respectively, of our revenue from continuing operations for Fiscal 2020. Three third-party contract manufacturing customers accounted for 36.5%, 30.5% and 11.1%, respectively, of Fiscal 2019 revenues from continuing operations. The loss of sales to any of these large third-party contract manufacturing customers could have a material adverse effect on our business operations and financial condition.

We are subject to account receivable credit concentrations from time-to-time as a consequence of the timing, payment pattern and ultimate purchase volumes or shipping schedules with our customers. These concentrations may impact our overall exposure to credit risk, either positively or negatively, in that our customers may be similarly affected by changes in economic, regulatory or other conditions that may impact the timing and collectability of amounts due to us. Three of our customers represented 36%, 20% and 13% of our total trade receivable balances at December 31, 2020 and three of our customers represented 70%, 14% and 11% of our total trade receivable balances at December 31, 2019.

Note 14 – Segment Information

The Company has identified two operating segments, diagnostic services and consumer products, based on the manner in which the Company's CEO as CODM assesses performance and allocates resources across the organization. The operating segments are organized in a manner that depicts the difference in revenue generating synergies that include the separate processes, profit generation and growth of each segment. The diagnostic services segment provides COVID-19 diagnostic information services to a broad range of customers in the United States, including health plans, third party payers and government organizations. The consumer products segment is engaged in the research, development, manufacture, distribution, marketing and sale of OTC consumer healthcare products and dietary supplements in the United States.

The following table is a summary of segment information for Fiscal 2020 and Fiscal 2019. (amounts in thousands):

	For the Years Ended	
	December 31, 2020	December 31, 2019
Net sales		
Diagnostic services	$ 1,277	$ -
Consumer products	13,237	9,876
Consolidated net sales	14,514	9,876
Cost of sales	9,908	7,261
Depreciation expense		
Diagnostic services	110	-
Consumer products	16	82
Total Depreciation expense	126	82
Operating and other expenses	6,806	5,639
Income (loss) from continuing operations, before income taxes		
Diagnostic services	(344)	-
Consumer products	1,962	2,533
Unallocated corporate	(3,944)	(5,639)
Total loss from continuing operations, before income taxes	(2,326)	(3,106)
Income (Loss) from discontinued operations, before income taxes	201	(40)
Net Loss	$ (2,125)	$ (3,146)

The following table is a summary of segment information for Fiscal 2020 and Fiscal 2019. (amounts in thousands):

	December 31, 2020	December 31, 2019
ASSETS		
Diagnostic services	$ 13,410	$ -
Consumer products	6,261	5,872
Unallocated corporate	11,734	6,402
Total assets	$ 31,405	$ 12,274

Note 15 – Loss Per Share

Basic loss per share for continuing and discontinued operations are computed by dividing the respective net loss attributable to common stockholders by the weighted-average number of shares of our common stock outstanding for the period. Diluted loss per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that shared in the earnings of the entity. Diluted loss per share also utilize the treasury stock method which prescribes a theoretical buy-back of shares from the theoretical proceeds of all options and warrants outstanding during the period.

For Fiscal 2020 and 2019, dilutive loss per share were the same as basic earnings per share due to the inclusion of common stock in the form of stock options and warrants ("Common Stock Equivalents"), when in a net loss position would have an anti-dilutive effect on loss per share. For Fiscal 2020, there were 4,245,000 that were excluded from the loss per share computation as a consequence of their anti-dilutive effect. For Fiscal 2019, there were 3,082,000 that were excluded from the loss per share computation as a consequence of their anti-dilutive effect.

Note 16 – Subsequent Events

Registered Direct Offering

On January 5, 2021, we entered into a securities purchase agreement with certain accredited investors and qualified institutional buyers, pursuant to which we issued and sold to the Purchasers an aggregate of (i) 550,000 shares of our common stock, and (ii) warrants to purchase up to 275,000 shares of common stock in a registered direct offering.

The Shares were sold at a purchase price of $10.00 per share and derived net proceeds of $5.5 million, Each Warrant has an exercise price equal to $11.00 per share of common stock, will be exercisable at any time and from time to time, subject to certain conditions described in the Warrant, after the date of issuance, and will expire on the date that is three years from the date of issuance. The Shares and the Warrants are immediately separable and will be issued separately.

Consulting Agreement and Promissory Note Amendment

On January 14, 2021, we entered into an Amendment and Termination Agreement (the "Agreement") with a consultant pursuant to which the parties amended that certain Amended and Restated Promissory Note and Security Agreement by and between the parties, dated September 25, 2020. (See Note 12) Pursuant to the terms of the Agreement, the Company has loaned an additional $1 million to the consultant in consideration for consultant's agreement to cancel its existing consulting agreement with the Company, dated September 25, 2020 (the "Consulting Agreement"), and terminate the Company's obligation to pay the consultant an additional consulting fees beyond the $250,000 already earned by the consultant under the Consulting Agreement. As a result, the initial principal amount due under the Note was increased from $2.75 million to $3.75 million plus all accrued and unpaid interest arising under the Note through and including January 14, 2021.

The consultant will sell and process its viral test by RT-PCR (together with other viral and other types of tests). Until the Secured Note is paid in full, for each COVID-19 Test Kit sold or processed from and after January 14, 2021, and for which payment of at least the specified amount, as defined for the Test is received by the consultant, the consultant will pay the Company a specified amount, as defined (the "Test Fee"). The total payments shall not exceed the aggregate amounts due under the Note and shall be applied first to Interest and other amounts due under the Note and then to the then-current outstanding principal. Test Fees will be due and payable on the 10th business day after the end of each month commencing in February, 2021, and until the Note is paid in full. We received the first payment in the amount of $95,000 with respect to the Test Fees from January 15 through February 2021.

On each Payment Date commencing on or after September 1, 2021, in addition to payments of Test Fees described above, the consultant shall also make payments in an amount equal to the greater of (x) the Test Fee, or (y) 1/36th of the then outstanding Principal Amount together with interest thereon and interest accruing on the Secured Note, in accordance with the Secured Note. Accordingly, commencing on September 1, 2021, the minimum number of monthly payments due and payable will be equal to the amount required to amortize fully the outstanding Principal Amount of the Loan, together with interest over a period of 36 months with level monthly payments. The entire remaining unpaid principal amount of the Secured Note, together with all accrued and unpaid interest thereon is due and payable on September 30, 2022 or an earlier date as a result of a maturity, whether by acceleration or otherwise. The Secured Note may be prepaid in full or in part at any time without penalty or premium.

Public Offering

On January 18, 2021, we entered into an underwriting agreement for the public offering of three million shares of common stock, at a price to the public of $12.50 per share. On January 21, 2021, we completed the offering for net proceeds of $35.1 million, after deducting the underwriting discounts and commissions and estimated offering expenses.

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

On December 10, 2020 (the "Dismissal Date"), the Audit Committee of the Board of Directors of ProPhase Labs, Inc. (the "Company") dismissed EisnerAmper LLP ("EisnerAmper") as the Company's independent registered public accounting firm. Also on December 10, 2020, the Audit Committee recommended and approved the selection of Friedman LLP ("Friedman") as the Company's new independent registered public accounting firm

Item 9A. Controls and Procedures

Disclosure Controls and Procedures

We carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of December 31, 2020. This evaluation was carried out under the supervision and with the participation of our Principal Executive Officer and Principal Financial and Accounting Officer. Based upon that evaluation, our Principal Executive Officer and Principal Financial and Accounting Officer concluded that our disclosure controls and procedures were effective as of December 31, 2020.

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed with or submitted to the SEC under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is accumulated and communicated to management, including our Principal Executive Officer and Principal Financial and Accounting Officer, to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining an adequate system of internal control over financial reporting. Our system of internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America.

Our internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect our transactions and dispositions of our assets;
- provide reasonable assurance that our transactions are recorded as necessary to permit preparation of our financial statements in accordance with accounting principles generally accepted in the United States of America, and that our receipts and expenditures are being made only in accordance with authorizations of our management and our directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on the financial statements.

Because of its inherent limitations, a system of internal control over financial reporting can provide only reasonable assurance and may not prevent or detect misstatements. Further, because of changes in conditions, effectiveness of internal controls over financial reporting may vary over time. Our system contains self-monitoring mechanisms, and actions are taken to correct deficiencies as they are identified.

Our management conducted an evaluation of our effectiveness of the system of internal control over financial reporting based on the framework in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 Framework). Based upon our review, our management, including our Chief Executive Officer and Chief Financial Officer, concluded that the Company's internal controls over financial reporting were effective as of December 31, 2020.

Changes in Internal Control Over Financial Reporting

During 2020, there was no change in our internal control over financial reporting identified in connection with evaluation required by paragraph (d) of Rules 13a-15 or 15d-15 under the Exchange Act that occurred during the period covered by this report that has materially affected or is reasonably likely to materially affect our internal control over financial reporting.

Item 9B. Other Information

None

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required under this item is incorporated by reference from the Company's Proxy Statement for the 2021 Annual Meeting of Stockholders (the "2021 Proxy Statement") which is to be filed with the SEC not later than 120 days after the close of our fiscal year ended December 31, 2020 and is hereby incorporated by reference.

Item 11. Executive Compensation

The information required under this item is incorporated by reference to the 2021 Proxy Statement.

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

The information required under this item is incorporated by reference from the 2021 Proxy Statement.

Item 13. Certain Relationships and Related Transactions and Director Independence

The information required under this item is incorporated by reference from the 2021 Proxy Statement.

Item 14. Principal Accountant Fees and Services

The information required under this item is incorporated by reference from the 2021 Proxy Statement.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a)**(1) Financial Statements.**

The following consolidated financial statements of ProPhase Labs, Inc., together with the report thereon of Friedman LLP and EisnerAmper LLP, independent registered public accounting firms, are included in this Annual Report on Form 10-K.

(a)(2) Financial Statement Schedules.

All schedules have been omitted because they are not required or because the required information is given in the consolidated financial statements or Notes thereto set forth under Item 8 above.

(a)(3) Exhibits

Exhibit	Description
2.1†+	Asset purchase agreement, dated January 6, 2017, by and between ProPhase Labs, Inc., Meda Consumer Healthcare Inc. and Mylan Inc., as Buyer Guarantor (incorporated by reference to Exhibit 2.1 of the Current Report on Form 8-K (File No. 000-21617) filed on March 29, 2017).
2.2†+	Manufacturing Agreement, dated March 29, 2017, by and between Meda Consumer Healthcare Inc., Pharmaloz Manufacturing, Inc. and Prophase Labs, Inc. (incorporated by reference to Exhibit 2.2 of the Current Report on Form 8-K (File No. 000-21617) filed on March 29, 2017).
3.1	Certificate of Incorporation of the Company, (incorporated by reference to Exhibit 3.3 of the Current Report on Form 8-K (File No. 000-21617) filed on June 19, 2015).
3.2	Amended and Restated Bylaws of the Company (as of February 16, 2018) (incorporated by reference to Exhibit 3.1 of the Current Report on Form 8-K (File No. 000-21617) filed on February 21, 2018).
4.1	Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 of Form 10-KSB/A (File No. 000-21617) filed on April 4, 1997).

4.2	Form of Voting Agreement, dated January 6, 2017, by and between Meda Consumer Healthcare Inc. and the undersigned stockholders of ProPhase Labs, Inc. (incorporated by reference to Exhibit 4.1 of the Current Report on Form 8-K (File No. 000-21617) filed on January 9, 2017).
4.3	Description of Common Stock (incorporated by reference to Exhibit 4.3 of the Annual Report on Form 10-K (File No. 000-21617) filed on March 26, 2020).
10.1	Form of Indemnification Agreement between the Company and each of its Officers and Directors, dated August 19, 2009 (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 000-21617) filed on August 19, 2009).
10.2*	Amended and Restated 2010 Equity Compensation Plan (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K (File No. 000-21617) filed on May 24, 2018).
10.3*	Amended and Restated 2010 Directors' Equity Compensation Plan (incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K (File No. 000-21617) filed on May 24, 2018).
10.4*	Form of Option Agreement pursuant to 2010 Equity Compensation Plan (incorporated by reference to Exhibit 10.2 of the Quarterly Report on Form 10-Q (File No. 000-21617) filed on May 15, 2017).
10.5*	Form of Option Agreement pursuant to 2010 Directors' Equity Compensation Plan (incorporated by reference to Exhibit 10.5 of the Current Report on Form 8-K (File No. 000-21617) filed on May 10, 2010).
10.6*	Form of Restricted Stock Award Agreement pursuant to 2010 Directors' Equity Compensation Plan (incorporated by reference to Exhibit 10.6 of the Current Report on Form 8-K (File No. 000-21617) filed on May 10, 2010).
10.7*	Amended and Restated 2015 Executive Employment Agreement with Ted Karkus, effective February 23, 2018 (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 000-21617) filed on February 21, 2018).
10.8*	2018 Stock Incentive Plan (incorporated by reference to Exhibit 10.2 of the Current Report on Form 8-K (File No. 000-21617) filed on February 21, 2018).
10.9	Agreement of Sale and Purchase, dated July 10, 2020, by and between ProPhase Labs, Inc. and Lenape Valley Foundation (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 000-21617) filed on August 25, 2020).
10.10	Unsecured Convertible Promissory Note and Guaranty issued to JXVII Trust, dated September 15, 2020 (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 000-21617) filed on September 18, 2020).
10.11	Unsecured Convertible Promissory Note and Guaranty issued Justin J. Leonard, dated September 15, 2020 (incorporated by reference to Exhibit 10.2 of the Current Report on Form 8-K (File No. 000-21617) filed on September 18, 2020).
10.12	Sales Agreement dated September 23, 2020 between the Registrant and A.G.P./Alliance Global Partners (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 000-21617) filed on September 23, 2020).
10.13	Amended and Restated Promissory Note and Security Agreement, dated September 25, 2020, by and between ProPhase Labs, Inc. and Predictive Labs, Inc. (incorporated by reference to Exhibit 10.2 of the Current Report on Form 8-K (File No. 000-21617) filed on September 30, 2020).

10.14	Stock Purchase Agreement, dated October 22, 2020, by and among Confucius Plaza Medical Laboratory Corp., Pride Diagnostics LLC, the Members of Pride Diagnostics LLC and ProPhase Diagnostics, Inc. (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 000-21617) filed on October 26, 2020).
10.15	Form of Securities Purchase Agreement dated January 5, 2021 (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 000-21617) filed on January 7, 2021).
10.16	Form of Warrant (dated January 5, 2021) (incorporated by reference to Exhibit 10.2 of the Current Report on Form 8-K (File No. 000-21617) filed on January 7, 2021).
10.17	Amendment and Termination Agreement, dated and effective as of January 14, 2021 (incorporated by reference to Exhibit 10.2 of the Current Report on Form 8-K (File No. 000-21617) filed on January 15, 2021).
10.18	Lease agreement by and among ProPhase Diagnostics, Inc., BRG Office L.L.C. and Unit 2 Associates L.L.C. for the corporate headquarters and diagnostic lab facility located at 711 Stewart Avenue, Garden City, NY 11530
21.1	Subsidiaries of ProPhase Labs, Inc.
23.1	Consent of Friedman LLP, Independent Registered Public Accounting Firm.
23.2	Consent of EisnerAmper LLP, Independent Registered Public Accounting Firm.
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of the 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 the Chief Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

* Indicates a management contract or compensatory plan or arrangement
† Confidential treatment granted as to portions of the exhibit. Confidential materials omitted and filed separately with the Securities and Exchange Commission.
+ Certain schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted schedule or exhibit to the Securities and Exchange Commission upon request.

40**	101 INS — XBRL Instance Document
41**	101 SCH — XBRL Taxonomy Extension Schema Document
42**	101 CAL — XBRL Taxonomy Extension Calculation Linkbase Document
43**	101 DEF — XBRL Taxonomy Extension Definition Linkbase Document
44**	101 LAB — XBRL Taxonomy Extension Label Linkbase Document
45**	101 PRE — XBRL Taxonomy Extension Presentation Linkbase Document

Item 16. Form 10-K Summary

None.

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.

PROPHASE LABS, INC.

By: */s/ Ted Karkus*
Ted Karkus, Chairman of the Board,
Chief Executive Officer and Director

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Ted Karkus and Monica Brady, jointly and severally, his or her attorneys-in-fact, each with the power of substitution, for him or her in any and all capacities, to sign any amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his or her substitute or substitutes, may do or cause to be done by virtue hereof.

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

Signature	Title	Date
/s/ Ted Karkus Ted Karkus	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	March 31, 2021
/s/ Monica Brady Monica Brady	Chief Financial Officer (Principal Financial Officer)	March 31, 2021
/s/ Jason Barr Jason Barr	Director	March 31, 2021
/s/ Louis Gleckel Louis Gleckel	Director	March 31, 2021
/s/ Warren Hirsch Warren Hirsch	Director	March 31, 2021

Exhibit 10.18

Execution Copy

LEASE AGREEMENT

LANDLORD:

BRG OFFICE L.L.C. and
UNIT 2 ASSOCIATES L.L.C.,
as tenants in common,

TENANT:

PROPHASE DIAGNOSTICS, INC.

LIST OF EXHIBITS

A	Space Plan
B	Description of Work to be Performed
C	Rules and Regulations
D	PILOT Payment Schedule
E	Form of Tenant Agency Compliance Agreement
F	Form of SNDA
G	Parking Diagram

LEASE

This LEASE ("**Lease**") is made as of the ____ day of December, 2020, by and between **BRG OFFICE L.L.C. and UNIT 2 ASSOCIATES L.L.C., as tenants in common** ("**Landlord**"), and **PROPHASE DIAGNOSTICS, INC.** ("**Tenant**").

1. Lease of Premises.

(a) Landlord hereby leases to Tenant and Tenant hereby leases from Landlord approximately twenty-five thousand seven hundred ninety-five (25,795) rentable square feet located on and comprising a portion of the second floor (the "**Premises**", as more particularly shown on the space plan depicted on Exhibit A annexed hereto, hereinafter the ("**Space Plan**")) of the building (the "**Building**") known as and located at 711 Stewart Avenue, Garden City, New York, upon and subject to the terms, covenants and conditions contained in this Lease to be performed by each party. The Premises shall not include any portion of the "**Common Elements**" (hereafter defined) of the Building or shall not include any "**General Common Elements**" (hereafter defined) or Common Elements appurtenant to any unit in the Condominium (hereafter defined), however Tenant shall have use of the Common Elements and General Common Elements as defined in the Condominium Documents (as hereafter defined).

(b) Tenant acknowledges and agrees that Landlord's predecessor has converted the Building (in which the Premises is a part) to a condominium form of ownership ("**Condominium**") and the Building constitutes a separate condominium unit (defined hereafter as the "**Office Building Unit**"). Tenant acknowledges receipt of that certain "**No-Action Letter**" (hereafter defined) issued by the New York State Department of Law on July 13, 2012 as File No. NA12-0095, and that certain Declaration of Condominium (the "**Declaration**"), as the same may be amended from time to time, which has been recorded with the Nassau County Clerk's Office on March 26, 2013 (at Liber 12928, page 910) in accordance with the provisions of Article 9-B of the Real Property Law of the State of New York (the "**Condominium Act**") and the by-laws adopted by the Condominium. Tenant acknowledges and agrees that this Lease and all rights of Tenant hereunder are and shall otherwise be subject and subordinate in all respects to the provisions of the Declaration, the by-laws, the rules and regulations of the Condominium and all other documents pursuant to which the Condominium was established and operates (collectively, the "**Condominium Documents**").

Subject to the payment of "**Rent**" (hereafter defined) and other sums reserved in this Lease, Landlord hereby grants to Tenant the non-exclusive right to use, with all other tenants and occupants of the Building, their subtenants, licensees and invitees, subject to this Lease and the Condominium Documents, those areas of the Building ("**General Common Elements**"), that may be used in common with any unit owners of individual Units which comprise a portion of the Office Building Unit, those areas of the Building which the Premises are located that are allocated to a unit ("**Unit Common Elements**"; the General Common Elements and the Unit Common Elements are collectively referred to as the "**Common Elements**").

1.1 Permits; Landlord's Work; Tenant Improvement Allowance.

1.1.1 Landlord will perform the build-out of the Premises ("**Landlord's Work**") using Building Standard materials and substantially in accordance with the work letter attached hereto as Exhibit B. Landlord reserves the right to make certain changes to the Space Plan without Tenant's prior approval, provided such changes are required by applicable building codes and do not (i) materially reduce the square feet area of the Premises, or (ii) materially affect the design, appearance or quality of the Building, or the Premises. Tenant shall be responsible for all costs, including, but not limited to, any contractor fees, architect fees, permit fees and cost of materials, resulting from any change orders to the Space Plan implemented by Tenant. Landlord's Work shall be deemed approved by Tenant in all respects unless Tenant, within 30 days after the Commencement Date, notifies Landlord of specific items which are not completed or do not conform to Exhibit B and Exhibit B-1 ("**Tenant's Punchlist**"). Upon receipt of Tenant's Punchlist, Landlord will use reasonable efforts to prosecute to completion the items set forth on Tenant's Punchlist within thirty (30) days after receipt of Tenant's Punchlist, or if any such item is not reasonably able to be completed within thirty (30) days, then Landlord shall have commenced to complete the same within such thirty (30) day period and thereafter shall diligently and continuously prosecute the same to completion. Notwithstanding anything to the contrary contained herein, Landlord agrees to repair any latent defects resulting from Landlord's Work so long as such latent defects are discovered by Tenant within six (6) months following the Commencement Date. If such latent defects are discovered and notice specifically detailing the defect, the characteristics thereof and the reason same could not have been previously discovered is received by Landlord within six (6) months following the Commencement Date, Landlord shall commence repair of the same, at its sole expense, within thirty (30) days following Landlord's receipt of Tenant's notice and thereafter prosecute completion of the same.

1.1.2 Prior to the Commencement Date and promptly after building permits have been obtained, Landlord shall perform Landlord's Work. Landlord shall obtain any and all necessary certificates of occupancy, completion and compliance with respect to all Landlord's Work.

1.1.3 For the purpose hereof, the terms "**Substantially Complete" and "Substantial Completion**" shall mean the substantial completion of Landlord's Work in accordance with the Exhibit B notwithstanding the fact that minor or unsubstantial details of construction, fit, finish, and mechanical adjustment or decoration remain to be completed, the non-completion of which would not materially interfere with Tenant's use of the Premises for the Permitted Use. Landlord shall not be responsible for any delay in the completion of Landlord's Work arising from Tenant Delay (hereinafter defined) or Force Majeure Delay (hereinafter defined) or Tenant's Cabling Work (hereinafter defined).

1.1.4 At least fifteen (15) days prior to the Commencement Date, Landlord shall provide Tenant with access to the Premises to permit Tenant to install Tenant's high-speed data network and telecommunication/data cabling throughout the Premises and to perform tests on such installation ("**Tenant's Cabling Work**"), as well as installation of Tenant's equipment in the laboratory rooms within the Premises. Landlord shall not close the ceiling until Tenant has installed and tested Tenant's Cabling Work, provided that (i) the open ceiling does not cause a delay in Landlord completing any other part of Landlord's Work, or (ii) if the closing of the ceiling is the only remaining work for Landlord to substantially complete Landlord's Work, then the Commencement Date shall be deemed to have occurred on the date Landlord would have completed the closing of the ceiling in the Premises but for the suspension of such work due to Tenant's Cabling Work. Landlord and Tenant shall reasonably cooperate with each other in this regard. Tenant agrees that it shall not in any way interfere with the progress of Landlord's Work by such access to the Premises. Should such access prove an impediment to the progress of Landlord's Work, Landlord may demand that Tenant vacate the Premises or take other steps to minimize the interference until such time as Landlord's Work is complete, and Tenant shall promptly comply with this demand. During the course of any access pursuant to this Section 1.1.4, all terms and conditions of this Lease shall apply, except those regarding the start of the Commencement Date and the obligation to pay Annual Rent and Additional Rent (hereinafter defined). Such access will not affect the start of the Commencement Date or the Term (hereinafter defined) of this Lease except as expressly provided herein. Notwithstanding the foregoing, in the event Landlord shall be delayed in the commencement or performance of Landlord's Work by reason of Tenant's actions during Tenant's Cabling Work, the Commencement Date shall be retroactively adjusted by the number of days, if any, by which commencement or performance of Landlord's Work shall have been delayed by Tenant.

1.2 Failure to Deliver Possession. For purposes of this Agreement, "**Tenant Delay**" shall mean any act or omission of any nature by Tenant, or its contractors, agents, employees, architects or representatives (collectively "**Tenant Parties**") which delays any of Landlord's obligations under this Lease.

1.3 Delay in Landlord's Work. If Landlord's Work is delayed by reason of Force Majeure Delay or Tenant Delay, then the Lease and the validity thereof shall not be affected thereby and Tenant shall not be entitled to terminate the Lease, to claim actual or constructive eviction, partial or total, or to be compensated for loss or injury suffered as a result thereof, nor shall the same be construed in any way to extend the term of the Lease, except as expressly set forth herein.

1.4 Delivery of Premises. Notwithstanding any provision to the contrary contained herein, Landlord agrees that at the time that the Premises is delivered to Tenant, Landlord's Work shall be substantially completed in accordance with all applicable Laws, the Premises shall be in broom clean condition, structurally sound and free of leaks, and all Building Systems (as hereinafter defined) shall be in working order. Landlord represents that, as of the date hereof, Landlord has no knowledge of any roof leaks that affect the Premises.

1.5 Tenant Improvement Allowance. (a) Landlord shall provide a construction allowance ("**Tenant's Improvement Allowance**") to reimburse Tenant for Tenant's cost of Tenant's Work (herein defined) in an aggregate amount not to exceed Two Hundred Fifty Thousand Seven Hundred Ninety-Five ($250,795.00) and 00/100 Dollars, provided that Tennant's Improvement Allowance shall only be applied to Tennant's Work that is performed within the first three (3) Lease Years. Tenant's Improvement Allowance shall be payable to Tenant in installments, as Tenant's Work progresses, but in no event more frequently than monthly. Each installment of Tenant's Improvement Allowance shall be due within thirty (30) days after all of the following conditions shall have been satisfied:

(i) Tenant shall not be in default beyond any applicable notice and cure period of any of the terms, covenants or conditions to be performed or observed by Tenant under this Lease;

(ii) Tenant shall have obtained, and at all times during the construction period shall maintain, all necessary and appropriate permits, licenses, authorizations and approvals from all governmental authorities having or asserting jurisdiction in connection with such construction, and shall have delivered true copies thereof to Landlord; and

(iii) Tenant shall have delivered to Landlord: (x) a completed requisition for payment, certified and sworn to by an officer of Tenant and Tenant's architect stating or accompanied by: (1) the amount being requested, (2) invoices for all labor and materials performed as part of Tenant's Work to date, (3) intentionally omitted, (4) the value of labor and materials theretofore performed and incorporated in the Premises and the aggregate value of the entire Tenant's Work to be performed, and (5) a certification from Tenant and Tenant's AIA architect of the amount of Tenant's Work which has been completed to date and that such work completed to date has been performed in a good and workmanlike manner in compliance with all applicable Laws; and (y) partial waivers of lien for the benefit of Landlord and Tenant from all contractors, subcontractors and materialmen who shall have furnished materials or supplies or performed work or services in connection with that portion of Tenant's Work for which Tenant is seeking payment (other than subcontractors or materialmen performing work costing less than $5,000.00). Landlord shall not be required to make more than one (1) payment per any thirty (30) day period.

Notwithstanding the foregoing, in the event that Tenant shall have satisfied all of the foregoing conditions other than the delivery of a partial lien waiver required under Section 1.5(iii)(y) for such installment being requested, then, in such case, Landlord shall hold back the portion (the "**TI Retained Amount**") of such installment of Tenant's Improvement Allowance attributable to the work or materials furnished by Tenant's contractor or subcontractor that did not provide the partial lien waiver for such work or materials. Landlord shall disburse the TI Retained Amount within thirty (30) days of receipt of such partial lien waiver.

(b) Landlord's obligation to pay Tenant's Improvement Allowance shall only apply to that part of Tenant's Work in the Premises consisting of the installation of walls, partitions, columns, fixtures, improvements and appurtenances permanently attached to or built into the Premises, including the following: mechanical systems, flooring, ceilings, duct work, electrical wiring, plumbing, millwork, Tenant's Generator (hereinafter defined) and supplemental air conditioning systems (if any), affixed carpeting and other floor coverings, but shall not include business and trade fixtures, machinery, equipment or other articles of personal property, professional fees, and/or so-called "soft costs".

(c) For purposes of this Section, the term "**Tenant's Work**" shall mean all alterations performed by Tenant, in accordance with the provisions of this Lease, to the Premises, including, without limitation, any build-out of the Premises as a first-class laboratory facility and materially in accordance with the plans and specifications approved by Landlord.

(d) In the event Landlord defaults in its obligation to pay any installment of Tenant's Improvement Allowance and Landlord fails to either remedy such default or provide a written explanation to Tenant as to the reason for such default within thirty (30) days after Tenant gives Landlord notice thereof (which notice states in bold and capitalized letters "LANDLORD'S FAILURE TO MAKE PAYMENT MAY RESULT IN TENANT'S EXERCISING AN OFFSET RIGHT", then Tenant shall have the right, but shall not be obligated, to offset against the next installment(s) of Annual Rent payable under this Lease an amount equal to any installment of Tenant's Improvement Allowance which is in default, provided that no such offset shall be greater than fifty percent (50%) of the then monthly installment of Annual Rent.

1.6 Tenant may elect to install, in a located designated by Landlord, a small gas operated generator (the "**Tenant's Generator**") that will exclusively serve the Premises. Notwithstanding any provision to the contrary contained herein, Tenant hereby elects to install Tenant's Generator. Landlord shall, at Tenant's sole cost and expense, install Tenant's Generator, provided that Landlord's failure to complete such installation shall not affect the start of the Commencement Date or the Term, nor shall it affect Tenant's obligation to pay the Annual Rent on the Rent Commencement Date. Tenant shall be responsible for maintaining and repairing Tenant's Generator and for obtaining and maintaining all licenses, permits and approvals with respect to operation and removal of Tenant's Generator. The cost of Tenant's Generator may be paid from Tenant's Improvement Allowance. Landlord shall have no obligation to maintain, repair, operate or safeguard Tenant's Generator. Upon the expiration or earlier termination of the Term, Landlord shall have the option of:

i. requiring Tenant to remove Tenant's Generator, disconnect and/or "cap" any connections to the Building, or

ii. requiring Tenant to leave Tenant's Generator, reasonable wear and tear excepted.

2. Term.

2.1 This Lease shall be effective upon the date first above written (the "**Effective Date**"). The term of this Lease (the "**Term**") shall commence upon the date (the "**Commencement Date**") of Substantial Completion of Landlord's Work. Delivery of the Premises to Tenant is targeted to be thirty-five (35) days from the execution of the lease (the "**Target Delivery Date**") but, except as otherwise expressly provided herein, Landlord will not incur liability if not met. The Term shall expire on the date (the "**Lease Expiration Date**") which is ten (10) years after the Rent Commencement Date, unless sooner terminated in accordance with the terms hereof. If delay in possession is due to Tenant Delay, as defined in Section 1.2 hereof, there shall be no extension of the Commencement Date and the Rent (as hereinafter defined) shall commence on the date that the Commencement Date would reasonably be deemed to have occurred, but for the Tenant Delay. If by reason of such Tenant Delay Landlord shall incur additional costs and expenses, Tenant shall be obligated to pay such additional costs as Additional Rent (hereinafter defined). Notwithstanding any provision of this Lease to the contrary:

(i) if the Commencement Date shall be delayed beyond the Target Delivery Date (as such date shall be deemed extended on a day-for-day basis by reason of Force Majeure Delay or Tenant Delay), then the Rent Abatement Period (hereinafter defined) shall be modified to extend such period, on a day-for-day basis, for each day of such delay in the Commencement Date from and after Target Delivery Date;

(ii) if the Commencement Date shall be delayed more than thirty (30) days beyond the Target Delivery Date (as such date shall be deemed extended on a day-for-day basis by reason of Force Majeure Delay or Tenant Delay), then the Rent Abatement Period shall be modified to extend such period, on a two-day-for-each-day basis, for each day of such delay in the Commencement Date from and after the thirtieth (30^{th}) day after the Target Delivery Date; and

(iii) if the Commencement Date has not occurred on or before the one hundred twentieth (120^{th}) day after the Target Delivery Date (as such date shall be deemed extended on a day-for-day basis by reason of Force Majeure Delay or Tenant Delay), then at any time thereafter until the one hundred fiftieth (150^{th}) day following the Target Delivery Date, Tenant shall have the right to give Landlord a notice of termination of this Lease and if the Commencement Date shall not have occurred within ten (10) business days after Landlord's receipt of such notice of termination, then Landlord shall refund Tenant's security deposit and any payments of Rent theretofore made whereupon this Lease shall terminate and the parties shall have no further obligations hereunder. If Landlord is not in receipt of Tenant's notice of termination prior to the one hundred fiftieth (150^{th}) day following the Target Delivery Date, then Tenant shall thereafter have no further right to terminate the Lease pursuant to this Section 2.1(iii).

2.2 Renewal Rights. Provided that Tenant shall not then be in default beyond any applicable grace, notice and cure period, and that the original Tenant shall be in occupancy of the entire Premises, Tenant may extend the term of this Lease for one (1) additional option period of five (5) years (hereinafter defined as the "**Renewal Term**"). Notwithstanding anything to the contrary contained in this Section 2.2, if, on the commencement of the Renewal Term, there shall be an default by Tenant beyond any applicable grace or cure periods, Landlord, in Landlord's sole and absolute discretion, may elect, by written notice to Tenant, to void Tenant's exercise of the applicable renewal option, in which case Tenant's exercise of the applicable renewal option shall be of no force or effect, and the Term shall end of the Expiration Date of the initial Term of this Lease, unless sooner cancelled or terminated pursuant to the provisions of this Lease or by Law. Tenant shall notify Landlord in writing of its election to extend this Lease for the Renewal Term (an **"Option Notice")**, not less than nine (9) months prior to the Expiration Date of the initial Term, TIME BEING OF THE ESSENCE as to such Option Notice requirement. Tenant's failure to timely exercise the option hereunder shall cause such right to terminate and be of no further force or effect. The Annual Rent payable during the Renewal Term shall be at ninety-five percent (95%) of "Fair Market Rental Value" (as hereinafter defined). Tenant shall have no further right to extend the term of this Lease beyond the Renewal Term. If Tenant shall extend the term of this Lease pursuant to the provisions of this Section, such extension shall be automatically effected without the execution of any additional documents.

2.3 Fair Market Value.

2.3.1 The "Fair Market Rental Value" of the Premises means the rental rate to a landlord under no compulsion to lease the Premises and a tenant under no compulsion to lease the Premises would agree upon as the rent for the first year of the Renewal Term, taking into consideration the uses permitted under this Lease, the quality, size, design and location of the Building and the Premises (but not considering any above-Building standard improvements made by Tenant), the rent for comparable buildings and complexes located in the area, the creditworthiness of Tenant, and refurbishment allowance (consisting of building standard materials and paint) amount based on the market value at the time the option is exercised. For the purpose of establishing the fair market rental value adjustment, within fifteen (15) business days following Landlord's receipt of an Option Notice, Landlord shall notify Tenant of the opinion of Landlord as to the Fair Market Rental Value for the Premises, which shall be the Annual Rent applicable to the first year of the First Renewal Term or Second Renewal Term, as applicable. Tenant shall have fifteen (15) business days following receipt of such written notice within which to notify Landlord if Tenant disputes such Fair Market Rental Value, and upon failure of Tenant to so notify Landlord, the Fair Market Rental Value specified by Landlord shall be deemed accepted by Tenant as the Annual Rent at the commencement of the Renewal Term. If Tenant notifies Landlord within such fifteen (15) business day period that Tenant does not agree with the Fair Market Rental Value of the Premises specified by Landlord, and if Landlord and Tenant are unable to agree upon such Fair Market Rental Value within the next ensuing thirty (30) days, then such fair market rental value shall be determined by appraisal as described below. Landlord and Tenant will use good faith efforts to agree on the Fair Market Rental Value as soon as practicable after Landlord receives the Option Notice.

2.3.2 Within ten (10) business days after the expiration of the fifteen (15) business day period set forth in Section 2.3.1, Landlord and Tenant shall each appoint a real estate appraiser with at least five (5) years' full-time commercial appraisal experience in the area in which the Premises are located to appraise the then fair market rental value of the Premises. If either Landlord or Tenant does not appoint an appraiser within fifteen (15) business days after the other has given notice of the name of its appraiser, the single appraiser appointed will be the sole appraiser and will set the then fair market rental value of the Premises. If two (2) appraisers are appointed pursuant to this Section 2.3.2, they will meet promptly and attempt to set the then fair market rental value of the Premises. If they are unable to agree within thirty (30) days after the second appraiser has been appointed, they will attempt to select a third appraiser meeting the qualifications stated in this Section 2.3.2 within ten (10) business days after the last day the two (2) appraisers are specified. If they are unable to agree on the third appraiser. then either the Landlord or the Tenant, by giving ten (10) business days' prior notice to the other, can apply to a then presiding judge of the New York Supreme Court in the County of Nassau for the selection of a third appraiser who meets the qualifications stated in this Section 2.3.2. Landlord and Tenant each shall bear one-half (½) of the cost of appointing the third appraiser and of paying the third appraiser's fee (and shall each bear the cost of their own appraisers). Within thirty (30) days after the selection of the third appraiser, a majority of the appraisers who agree will set the then fair market rental value of the Premises. If a majority of the appraisers are unable to set the then fair market rental value of the Premises within thirty (30) days after selection of the third appraiser, then the two (2) closest appraisals shall be averaged, and this average shall establish the then fair market rental value of the Premises the Fair Market Rental Value shall include then customary increases in Annual Rent.

2.3.3 In the event such Fair Market Rental Value determination shall not have been completed prior to the commencement of the Renewal Term, Tenant shall pay as Annual Rent, effective as of and subsequent to the commencement of the applicable Renewal Term, the Fair Market Rental Value first communicated by Landlord to Tenant, and if such Annual Rent is thereafter fixed or readjusted to a different amount, such new Annual Rent shall take effect retroactively back to the commencement of the Renewal Term, and Tenant or Landlord, as the case may be, shall promptly pay to the other the sum which is accrued and underpaid or overpaid as a result of such retroactive application.

2.3.4 Wherever the word "Term" or "term" is used in this Lease, it shall be deemed to include the Renewal Term, in the sense of such use shall be appropriate. During the Renewal Term, wherever the word "Expiration Date" is used in the Lease, it shall be deemed to include the last day of the Renewal Term.

2.4 Early Termination. Provided that at the time Tenant gives its notice of termination hereunder Tenant is not then in default beyond any applicable notice and cure period of any of its obligations pursuant to this Lease, Tenant shall have the option to terminate this Lease which shall be effective on the sixth (6^{th}) anniversary of the Rent Commencement Date ("**Early Termination Date**"). The exercise of such option to terminate this Lease under this Section 2.4 must be accomplished by written notice of termination ("Tenant's Early Termination Notice") received by Landlord not less than nine (9) months and not more than twelve (12) from the Early Termination Date (**time being of the essence**) and the following amounts shall become due and payable to Landlord, as Additional Rent under this Lease, together with delivery of Tenant's Early Termination Notice: the then unamortized amount of the (i) Tenant's Improvement Allowance given pursuant to Section 1.5; and (ii) Landlord's Work (which shall be calculated based on Landlord's reasonable estimate of Landlord's out-of-pocket costs (including so-called "hard costs" and "soft costs") in connection with Landlord's Work); (iii) all Rent abated in accordance with Section 3.3 hereof; (iv) any fee, commission or other compensation paid by Landlord to any broker or finder, and (v) any legal fees, incurred in connection with this Lease. If Tenant's notice of termination under this Section 2.4 is not timely received by Landlord, then Tenant shall be deemed to have waived Tenant's option to terminate this Lease under this Section 2.4. In the event Tenant elects to terminate this Lease in accordance with this Section 2.4, Tenant shall vacate and surrender possession of the Premises on the Early Termination Date in accordance with the provisions of Section 8.1 hereof, and the Lease shall terminate as if that were the date otherwise herein fixed for termination of this Lease, and all Rent shall be adjusted as of such date and the parties shall thereafter be relieved of any further liability as respects the other arising from this Lease. This termination right shall be personal to Prophase Diagnostics, Inc., and shall not be transferrable by operation of law or otherwise.

3. Rent.

3.1 Annual and Monthly Rent. Tenant agrees to pay Landlord, as rent for the Premises, the annual rent (hereafter referred to as the **"Base Rent" or** "**Annual Rent**") as set forth below:

Lease Year	PSF	Annual Rent	Monthly Rent
1	$ 26.50	$ 683,567.50	$ 56,963.96
2	$ 27.23	$ 702,365.61	$ 58,530.47
3	$ 27.98	$ 721,680.66	$ 60,140.06
4	$ 28.75	$ 741,526.88	$ 61,793.91
5	$ 29.54	$ 761,918.87	$ 63,493.24
6	$ 30.35	$ 782,871.64	$ 65,239.30
7	$ 31.18	$ 804,400.61	$ 67,033.39
8	$ 32.04	$ 826,521.62	$ 68,876.81
9	$ 32.92	$ 849,250.97	$ 70,770.92
10	$ 33.83	$ 872,605.37	$ 72,717.12
11 (partial)	$ 34.76	$ 896,602.02	$ 74,716.84

The final determination of the rentable square footage of the Premises pursuant to Section 1(c) may impact the amounts of Annual Rent and Monthly Rent payable. The first "**Lease Year**" shall be the period commencing on the Commencement Date and ending on the last day of the month in which the first anniversary of the Commencement Date shall occur, except that the last year of the Term shall consist of a period of seven (7) months.

The Annual Rent shall be paid by Tenant in twelve (12) equal monthly installments of "**Monthly Rent**" in the amounts designated, without setoff or deduction on the first day of each and every calendar month commencing upon the Rent Commencement Date. Monthly Rent for any partial month shall be prorated in the proportion that the number of days this Lease is in effect during such month bears to the actual number of days in such month. The first installment of Monthly Rent shall be paid upon execution of this Lease, and shall be applied to the first installment of Monthly Rent due under this Lease.

3.2 Additional Rent. All amounts and charges payable by Tenant under this Lease, however denominated, in addition to the Annual Rent described in Section 3.1 above shall be considered additional rent for the purposes of this Lease ("**Additional Rent**"), and the word "**Rent**" in this Lease shall include the Annual Rent and such Additional Rent unless the context specifically or clearly implies that only the Annual Rent is referenced. The Annual Rent and Additional Rent shall be paid to Landlord without any prior demand therefore and without any deduction or offset except as specified elsewhere in the Lease, in lawful money of the United States of America.

3.3 Abatement of Rent. Monthly Rent and Additional Rent shall be waived and the "**Rent Commencement Date**" shall be seven (7) months after the Commencement Date (the "**Rent Abatement Period**"), irrespective of whether Tenant has obtained any necessary approvals or licenses to operate Tenant's business. The Monthly Rent and Additional Rent that is abated during the Rent Abatement Period shall be referred to herein as the "**Abated Rent**." Tenant shall be entitled to the abatement as set forth above in this Section 3.3, provided that if Tenant shall have defaulted beyond any applicable grace or cure periods, then, in such case, Tenant shall pay on a per diem basis the Abated Rent until such default has been cured. Furthermore, the Abated Rent shall be recoverable in any action by Landlord under the Lease, but only in the event Landlord has terminated this Lease due to an Event of Default by Tenant beyond any applicable notice and cure period. Notwithstanding the foregoing, during the Rent Abatement Period, Tenant shall pay for all utilities consumed or provided in or furnished to or attributable to the Premises from whatever source and all fees incurred by Landlord in connection with Landlord's reading of any meter or submeter that serves the Premises.

4. Taxes.

A. "**Landlord's Tax Statement"** shall mean an instrument containing a computation of any Additional Rent payable by Tenant to Landlord pursuant to this Article.

B. The term "**Taxes**" shall mean all such taxes, assessments, use and occupancy taxes in respect of this Lease and any subleases made hereunder, PILOT Payments, water and sewer charges, rates and rents, water and other meter charges and all such other charges, taxes, levies and sums of every kind or nature whatsoever, general and special, extraordinary as well as ordinary, whether or not now within the contemplation of the parties, as shall or may during or in respect of the Term (or any period prior to the Term for which Annual Rent is payable) be assessed, levied, charged or imposed upon or become a lien on the Building or parcel of land on which the Building is located (the "**Land**"), or any part thereof, or anything appurtenant thereto, or the sidewalks, streets or roadways in front of, adjacent to or appurtenant to the Building or Land (and which have a basis related in any way to the Land or Building, and/or the use or manner of use thereof), or which, if imposed on Tenant or in respect of the Land or Building and if not paid by Tenant, would be collectible from Landlord, or which have been so assessed, levied, charged or imposed prior to the Term (but, in the last-mentioned case, only with respect to a period falling within the Term); **provided, however**, that, except if and to the extent otherwise provided in the succeeding sentence, Taxes shall not mean federal, state or local income taxes, franchise, excise, gift, transfer, capital stock, estate, succession or inheritance taxes or penalties or interest for late payment of any tax in respect of which Tenant shall have duly made payment of Additional Rent as herein provided. If, at any time during the Term, the methods of taxation prevailing at the commencement of the Term shall be altered so that, in lieu of or as a substitution in whole or in part for the taxes, assessments, levies, impositions or charges now or hereafter levied, assessed or imposed on real estate and the improvements thereon, shall be levied, assessed or imposed any tax or other charge on or in respect of the Land or Building or the rents, income or gross receipts of Landlord therefrom (including any county, town, municipal, state or federal levy), then such tax or charge shall be deemed a Tax, but only to the extent that such Tax would be payable if the Land or Building, or the rent, income or gross receipts received therefrom, were the only property of Landlord subject to such Tax, and Tenant shall pay and discharge the same as herein provided in respect of the payment of Taxes.

C. Tenant's Proportionate Share ("**Tenant's Proportionate Share**") shall be 22.2%, subject to the provisions of Section 1(c) hereof.

D. Landlord and the Town of Hempstead Industrial Development Agency (the "**IDA**") entered into a Payment-in-Lieu-of-Tax Agreement dated as of March 27, 2013 (the "**PILOT Agreement**") whereby the payments in lieu of real estate taxes payable by Landlord are as set forth in the PILOT Payment Schedule on Exhibit D annexed hereto. To the extent and for so long as the PILOT Agreement between Landlord and the IDA shall be in effect, the real estate taxes payable by Tenant under Section 5(B) hereof shall mean Tenant's Proportionate Share of the increases in payments required under the PILOT Agreement over the 2021 base tax year as stated in the PILOT Payment Schedule (the "**PILOT Base Year**"), and shall be payable as Additional Rent.

E. If the PILOT Agreement is terminated or modified or expires at any time during the Term of the Lease, then Tenant shall pay, as Additional Rent, and in lieu of any payment under Section 4(D), an amount equal to Tenant's Proportionate Share of the increase in Taxes, if any, over the PILOT Base Year.

F. The payments required under this Article 4 shall continue during the Term of the Lease.

G. If, due to a change in the method of taxation, any franchise, income, profit, sales, rental, use and occupancy, or other tax shall be assessed or charged upon the Building and substituted for Taxes or levied against the Landlord or any owner of the Building, such tax shall be included in the calculation of real estate taxes.

H. Only Landlord shall be eligible to institute tax reduction or other proceedings to reduce the assessed valuation of the Building or the Project. Tenant agrees that no such contest or proceeding shall relieve Tenant of any obligation to pay real estate taxes. If Landlord shall obtain a tax refund as a result of a tax reduction proceeding, then Tenant shall, provided Tenant is not then in default under the Lease beyond the expiration of applicable notice and cure periods, and after the final conclusion of all appeals and all other remedies, be entitled to a refund of Tenant's Proportionate Share of the increases required to be paid under Section 5(D) or 5(E), as the case may be, after first deducting from the gross refund all reasonable and customary appraisal, engineering, expert testimony, attorney, printing and filing fees, and all other reasonable and customary costs and expenses of the proceeding provided, however, that Tenant shall not receive any refund in excess of the amount actually paid by Tenant for the applicable tax year.

5. Use.

5.1 General. Tenant shall use the Premises solely as a laboratory and general office use related thereto (the "**Permitted Use**"), and shall not use or permit the Premises to be used for any other use or purpose whatsoever. Under no circumstances shall Tenant or any of its assigns or subtenants use any portion of the Premises for the following purposes (each a **"Prohibited Use**"): (a) a restaurant, bar or for the sale of food or beverages (except that Tenant may use a portion of the Premises as a kitchen cafeteria or other similar food establishment for the use of Tenant and its employees and its invitees); (b) photographic reproductions and/or offset printing; (c) an employment or travel agency; (d) conduct of an auction; (e) gambling activities; (f) conduct of obscene, pornographic or other disreputable activities; (g) offices of any charitable, religious or union or other organization other than Tenant; (h) a "boiler room" operation as such term is understood in the securities business or a financial services business that is not a member of the New York Stock exchange; (i) a drug, alcohol, abortion or similar clinic; (j) any use reasonably inconsistent with the first class nature of the project; or (k) any use that would, in Landlord's reasonable determination tend to diminish the value of the Building or damage the reputation of Landlord or impair the appearance, character or reputation of the Building.

In addition to the foregoing, Tenant shall not use or occupy the Premises in any manner or suffer or permit the Premises or any part thereof to be used in any manner, or do or suffer or permit anything to be done in the Premises, or bring anything into the Premises or suffer or permit anything to be brought into the Premises, which would in any way do any of the following: (a) violate any of the provisions of any mortgage or superior lease, if any; (b) violate any legal requirements, insurance requirements or Environmental Laws (as such term is hereinafter defined); (c) make void or voidable any insurance policy then in force with respect to the Premises, Building or Land; (d) make unobtainable from insurance companies authorized to do business in the State of New York at standard rates without any special premium or charge, any fire or other casualty insurance with extended coverage, or rental, liability or boiler insurance, or other insurance or otherwise may be required to be furnished by Landlord under the terms of the mortgage or superior lease with respect to the Premises; (e) cause physical damage to the Premises, Building or Land, or any part thereof; (f) cause Tenant to default in the observance and performance of any of its other obligations to be observed and performed under this Lease; (g) unreasonably interfere with the effectiveness or accessibility of the utility, mechanical, electrical and other systems installed or located anywhere at the Premises, or (h) violate any of the Building's Rules and Regulations annexed hereto as Exhibit B (as same may be amended from time to time) in a manner that adversely affects any other tenant in the Building.

5.2 Compliance with Laws. Tenant shall not use or allow the Premises to be used in violation of any rules or regulations of the New York Board of Fire Underwriters with respect to the Premises, or of any laws or of any certificate of occupancy issued for the Premises. Tenant shall, at its sole cost and expense, observe and comply with, and at all times cause the Premises to comply with, all requirements of any board of fire underwriters or similar body relating to the Premises, and all laws, now or hereafter applicable to the Premises and Tenant's use, occupancy, alteration and/or improvement thereof, including, without limitation, the provisions of the Americans with Disabilities Act ("**ADA**") (collectively, "**Laws**"). Such compliance obligations shall include any and all alterations, replacements, improvements and changes, whether structural or non-structural, unforeseen and/or extraordinary, and regardless of the period of time then remaining in the Lease Term; provided, however, that Tenant shall not be required to make any such alterations, replacements, improvements and/or changes unless (i) the same is due to Tenant's particular manner of use of the Premises, (ii) in connection with any Alterations made to the Premises by Tenant, or (iii) in connection with any repairs to damage to the Premises caused by Tenant or Tenant's agents, employees, contractors, licensees or invitees.

5.3 Signs & Directory Listings.

(A) Tenant shall not install any signs, awnings, canopies or advertisements in, on or about the Premises or Building unless Tenant complies with all Laws and obtains approval therefore from all governmental authorities having jurisdiction over the Premises and obtains from Landlord approval (such approval, unless otherwise expressly provided, not to be unreasonably withheld, conditioned or delayed) with respect to the size, location and method of installation. Subject to the preceding sentence, Tenant may, at Tenant's sole cost and expense, install (i) two (2) exterior signs on the façade of the Building, with one sign facing Stewart Avenue and the other sign facing the parking lot, (ii) one (1) identification signage on the monument signage on Stewart Avenue in front of the Building, and (iii) one (1) identification signage at the main entrance of the Building in a location and size approved by Landlord in its sole discretion. Tenant agrees to maintain any such sign, or advertising matter as may be approved by Landlord in good condition and repair at all times. At the expiration or earlier termination of this Lease, at Landlord's election, Tenant shall remove all signs, and advertising installed by or at the direction of Tenant and shall repair any damage to the Premises and Building resulting therefrom all at Tenant's sole cost and expense. If Tenant fails to maintain and/or remove any such approved sign, or advertising and/or fails to repair any such damage, Landlord may do so and Tenant shall reimburse Landlord for the actual costs incurred by Landlord in performing such work. If, without Landlord's prior written consent, Tenant installs any sign, awning, canopy or advertising, or fails to remove any such item(s) at the expiration or earlier termination of this Lease, Landlord may upon thirty (30) days' prior written notice to Tenant, have such item(s) removed and stored and may repair any damage to the Premises or Building at Tenant's expense. All removal, repair and/or storage costs incurred by Landlord pursuant to the foregoing provisions of this Section 6.3 shall bear interest at the rate (the "**Interest Rate**") equal to Citibank's prime rate plus five (5%) percent. Tenant's obligations under this Section 6.3 shall survive the expiration or earlier termination of this Lease. Tenant's obligations under this Section 6.3 shall survive the expiration or earlier termination of this Lease for up to one (1) year.

(B) Subject to the foregoing, Tenant's signage shall be of a size and prominence commensurate with the amount of Tenant's square footage in the Building as compared with other tenants, present and future, in the Building.

(C) Tenant acknowledges that it is Landlord's intention that signage at the Building will be uniform among its tenants. Tenant shall install and maintain signage in a manner which is in conformity with signage for other tenants in the Building to the extent that present and future leases of such tenants in the Building so provide. The installation of any new signage to comply with the foregoing sentence shall be at the expense of Tenant, and Tenant shall be responsible for the maintenance of any such signage. Tenant shall be responsible for any permitting from all governmental authorities having jurisdiction over the Premises in connection with the replacement of Tenant's signage in order to comply with this Section 5.3(C).

5.4 Common Areas. As used in this Lease, the term "Common Areas" shall mean the parts of the project in which Building is located (the "**Project**") designated by Landlord from time to time for the common use of all tenants of the Project and as otherwise may be set forth in the Condominium Documents. Landlord reserves the right to make changes to the location, dimensions, identify any type of any other building within the Project and to construct additional buildings or additional stories on existing buildings or other improvements in the Project, and to eliminate buildings from the Project, except for the Building in which the Premises is located, Tenant and its employees, patients, approved subtenants and licensees shall have the non-exclusive (or exclusive where provided herein or in the Condominium Documents) right and license to use the Common Areas as constituted from time to time, such use to be in common with Landlord, other tenants of the Project and other persons permitted by Landlord to use the same. Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to make repairs or alterations, provided, however, that Landlord shall not make any changes to the Common Areas, the Project or any building or improvement located therein which change would materially and negatively impact on Tenant's use and occupancy of the Premises or access thereto. Landlord shall use commercially reasonable efforts to minimize disruption to Tenant's business in the exercise of its rights pursuant to this Section 5.4. Landlord shall be responsible for the operation, management and maintenance of all Common Areas except as otherwise set forth in Section 30.

6.2 Refuse. Tenant agrees not to keep any trash, garbage, waste or other refuse on the Premises except in sanitary containers and agrees to regularly and frequently remove same from the Premises and store such trash, garbage, waste and other refuse in dumpsters designated by Landlord. Tenant shall pay to Landlord on demand the charges for Landlord's dumpster services based on Tenant's proportionate share of such charges for such dumpster services, which shall be such charges multiplied by a fraction the numerator of which shall be the gross square feet of the Premises and the denominator of which shall be the gross square feet of all tenants and occupants of the Building using such common dumpster services.

6. Notices.

Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery (including delivery by nationally recognized overnight courier or express mailing service, provided that in each case, a signed receipt in confirmation of delivery is provided), or by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant or to Landlord at each of the addresses designated below:

Landlord's Address: BRG OFFICE L.L.C. and
UNIT 2 ASSOCIATES L.L.C.,
as tenants in common
150 Great Neck Road, Suite 402
Great Neck, New York 11021
Attn: Scott Mittel

with a copy to: Ruskin Moscou Faltischek, P.C.
1425 RXR Plaza
East Tower, 15th Floor
Uniondale, New York 11556-1425
Attn: Eric C. Rubenstein, Esq.

Tenant's Address: Prophase Diagnostics, Inc.
711 Stewart Avenue
Garden City, New York 11530
Attn: Ted Karkus

with a copy to: Reed Smith LLP
599 Lexington Avenue
New York, New York 10022
Attn: Herbert F. Kozlov, Esq.

Either party may, by written notice to the other, specify a different address for notice purposes. Notices shall be deemed received (a) on the date of delivery, with respect to personal deliveries made prior to 5:00 p.m. EST, (b) the next business day, with respect to personal deliveries made after 5:00 p.m. EST and overnight courier or express mailing service deliveries or (c) three (3) business days after delivery, with respect to registered or certified mail. Notices may be given by such party's attorney, and such notice shall have the same force and effect as if given by such party.

7. Brokers.

Each party represents and warrants to the other that other than Jones Lang LaSalle Brokerage Inc. (**"Broker"**) no broker, agent or finder (a) negotiated or was instrumental in negotiating or consummating this Lease on its behalf, and (b) is or might be entitled to a commission or compensation in connection with this Lease. Landlord will pay Broker its commission pursuant to separate agreement. Each party shall indemnify, protect, defend and hold the other harmless from and against any and all claims resulting from any breach of the foregoing representation. The foregoing indemnities shall survive the expiration or earlier termination of this Lease.

8. Surrender; Holding Over.

8.1 Surrender of Premises. Upon the expiration or sooner termination of this Lease, Tenant shall surrender all keys for the Premises to Landlord, and Tenant shall deliver exclusive possession of the Premises to Landlord broom clean and in good condition and repair, reasonable wear and tear and minor conditions arising from Tenant's move-in and move-out excepted, with all of Tenant's personal property removed therefrom, and all damage caused by such removal repaired, as required pursuant to Sections 11.2 and 11.3 below. If, for any reason, Tenant fails to surrender the Premises on the expiration or earlier termination of this Lease, with such removal and repair obligations completed, then, in addition to the provisions of Section 8.3 below and Landlord's rights and remedies under Section 11.4 and the other provisions of this Lease, Tenant shall, beginning on the thirtieth (30th) day following the expiration or earlier termination of this Lease, indemnify, protect, defend (by counsel reasonably approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs, but excluding indirect or consequential damages) (collectively, "**Claims**") which arise or result from such failure to surrender, including, without limitation, any Claims made by any succeeding tenant based thereon. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

8.2 Holding Over. If Tenant holds over after the expiration or earlier termination of the Lease Term, then, without waiver of any right on the part of Landlord as a result of Tenant's failure to timely surrender possession of the Premises to Landlord, Tenant shall become a tenant at sufferance only, upon the terms and conditions set forth in this Lease so far as applicable (including Tenant's obligation to pay all costs, expenses and any other Additional Rent under this Lease), but at a Monthly Rent equal to the following: (i) beginning as of the 1st day of holdover, one hundred twenty five percent (125%) of the Monthly Rent applicable to the Premises immediately prior to the date of such expiration or earlier termination; and (ii) beginning as of the 60th day of holdover, one hundred fifty percent (150%) of the Monthly Rent applicable to the Premises immediately prior to the date of such expiration or earlier termination; and (iii) beginning as of the 90th day of holdover and continuing for any period thereafter, two hundred percent (200%) of the Monthly Rent applicable to the Premises immediately prior to the date of such expiration or earlier termination. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a consent to a hold over hereunder or result in an extension of this Lease. Tenant shall pay an entire month's Monthly Rent calculated in accordance with this Section 8.2 for any portion of a month it holds over and remains in possession of the Premises pursuant to this Section 8.2.

8.3 No Effect on Landlord's Rights. The foregoing provisions of this Section 8 are in addition to, and do not affect, Landlord's right of re-entry or any other rights of Landlord hereunder or otherwise provided at law or in equity.

9. Personal Property Taxes.

Tenant shall be liable for, and shall pay before delinquency, all personal taxes and assessments levied against (a) any personal property or trade fixtures placed by Tenant in or about the Premises and (b) any tenant improvements or alterations (including Tenant Changes) in or about the Premises and/or the Building made by Tenant.

10. Repairs.

10.1 Tenant's Repair Obligations as to Premises. Tenant shall at all times take good care of the Premises, and the "**Building Systems**," and all fixtures and appurtenances therein other than (i) structural items, (ii) the facade, (iii) the roof, (iv) the foundation, (v) Common Areas, and (vi) those portions of the fire alarm, fire sprinkler, plumbing, sanitary and electrical distribution systems up to the point where such systems enter the Premises. All damage or injury to the Premises and to such fixtures and appurtenances, including structural items and Common Areas and Exterior Areas (as defined in Section 11.1), caused by Tenant's moving property in and out of the Premises, or by Tenant's installation or removal of fixtures, furniture or other property or from any other action or omission by Tenant, shall be repaired and restored or replaced promptly by Tenant, at its sole cost and expense. All repairs, restorations and replacements shall be in quality and class at least equal to the original work or installations. Tenant shall pay for any security guards and systems and card access systems, which it desires to install on the Premises. The term "**Building Systems**" shall be defined to mean all mechanical, plumbing, ventilating, heating, air conditioning sprinkler systems, sanitary systems, electrical systems, fire alarm and sprinkler systems, and any supplemental HVAC systems and conduits, which service the Premises. Replacement of all bulbs and ballasts is the sole responsibility of Tenant. Landlord shall have the option of performing the replacements at Tenant's expense. Landlord shall provide Tenant with key card(s) for Landlord's existing card access system for the main entrance to the Building.

10.2 Landlord's Cure Option. If Tenant fails to make repairs, restorations or replacements as required under Section 10.1, after thirty (30) days' written notice to Tenant, then the same may be made by Landlord after five (5) days' notice to Tenant if not cured (except in the case of an emergency), at Tenant's expense, and the amounts spent by Landlord (together with interest thereon at the Interest Rate, from the date of Landlord's expenditure through the date of Tenant's payment in full) shall be collectible as Additional Rent, to be paid by Tenant on demand by Landlord. Notwithstanding the foregoing, if, in Landlord's reasonable opinion, any such repairs are immediately necessary to address an emergency, or to the extent that the condition in need of repair poses a bona fide threat to the structural integrity of the Building or an adjacent space or to any Building System or to the safety of any other tenant and invitees therein, then, on notice to Tenant's on-site manager, Landlord may forthwith make said repairs on behalf of the Tenant, at Tenant's expense, to be calculated and paid by Tenant in accordance with the preceding sentence.

10.3 No Diminution of Rental. There shall be no allowance to Tenant for a diminution of rental value, and no liability on Landlord's part, by reason of inconvenience, annoyance or injury to Tenant's business arising from the making of repairs, alteration, additions or improvements in or to the Premises or the Building, or to the fixtures, appurtenances or equipment thereof, by Landlord (or those of its employees, agents or contractors), Tenant or others. Landlord will use commercially reasonable good faith efforts not to materially interrupt Tenant's use and enjoyment of the Premises when making such repairs, alterations, additions or improvements but, the obligation to use good faith efforts shall not require Landlord to employ overtime labor or pay any premium or surcharge for labor or materials.

10.4 As-Is. Tenant acknowledges and agrees that, except to the extent specifically set forth in this Lease or any exhibit annexed hereto or document referenced herein and except for Landlord's Work to be performed pursuant to the terms hereof, Landlord has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guarantees, express or implied, of any kind or character whatsoever concerning or with respect to (i) the value, nature, quality or condition (including, without limitation, the environmental condition) of the Premises, and the Building; (ii) the suitability of the Premises, and the Building for any and all activities and uses which Tenant may conduct thereon except as otherwise expressly set forth herein; (iii) the compliance of the Premises, and the Building with any Laws; (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Premises, and the Building; (v) the manner or quality of the construction or materials incorporated into the Premises and the Building; (vi) the manner, quality, state of repair or lack of repair of the Premises and the Building; (vii) the lawfulness of the use of the Premises for the Permitted Use; or (viii) any other matter with respect to the Premises and the Building, it being agreed that all risks incident to all of these matters are to be borne by Tenant, except as provided to the contrary herein. Tenant further acknowledges and agrees that any information provided or to be provided by or on behalf of Landlord with respect to the Premises and the Building was obtained from a variety of sources and that Landlord has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information, except as provided to the contrary herein. Tenant further acknowledges and agrees that, except to the extent specifically set forth in this Lease, the leasing of the Premises as provided for herein is made on an "AS-IS" condition and basis with all faults. Tenant recognizes that the Premises contains built-in furniture installed by the prior occupant. Tenant represents that it has inspected such built-in furniture and is not relying on any representation of Landlord or the prior occupant, and that Landlord does not represent or warrant the condition of the built-in furniture, and Tenant accepts the same in their "as is" condition as they exist on the date of this Lease.

11. Alterations.

11.1 Tenant Changes; Conditions. Tenant shall not make any alterations, additions, improvements to the Premises other than minor non-structural alterations or alterations costing less than One Hundred Fifty Thousand ($150,000.00) Dollars and other decorating or renovations of a minor nature to the Premises (collectively, "**Tenant Changes**," and individually, a "**Tenant Change**") unless Tenant first obtains Landlord's prior written approval thereof, which approval Landlord shall not unreasonably withhold or delay. Notwithstanding the foregoing, Landlord may withhold its consent, in its sole and absolute discretion, with respect to any such alterations, additions, improvements to or affecting (i) the Building's structure, roof and systems (the **"Base Building Components"**) or any other structural components and/or systems serving the Premises or any portion thereof, or (ii) the exterior portions of the Building (the **"Exterior Areas"**). Tenant may not make any alterations to the Common Areas.

11.2 Removal of Tenant Changes. All Tenant Changes (and specifically excluding Tenant's furniture fixtures and equipment) which have become permanently affixed to the Premises shall become the property of Landlord and shall remain upon and be surrendered with the Premises at the end of the Term of this Lease; provided, however, that if, contemporaneously with Tenant's request for Landlord's consent to any Tenant Change, Tenant requests the right to remove said Tenant Change at the end of the Term of this Lease, Landlord will respond in writing to such requests simultaneously with its approval of such Tenant Change. In no event shall Tenant be required to remove any of the improvements existing in the Building as of the date possession thereof is delivered to Tenant, except as otherwise provided in Section 11.4. If Landlord requires Tenant to remove any such items as described above, Tenant shall, at its sole cost, remove the identified items on or before the expiration or sooner termination of this Lease and repair any damage to the Premises caused by such removal. The removal of any supplemental HVAC units installed by Tenant pursuant to Section 15.2.1 shall be at Landlord's sole option.

11.3 Removal of Personal Property. All articles of personal property owned by Tenant or installed by Tenant at its expense on the Premises (including business and trade fixtures, furniture non-permanent fixtures and movable partitions and those Tenant Changes for which Landlord has consented to Tenant's removal thereof) shall be, and remain, the property of Tenant, and shall be removed by Tenant from the Premises, at Tenant's sole cost and expense, on or before the expiration or sooner termination of this Lease. Tenant shall repair any damage caused by such removal.

11.4 Tenant's Failure to Remove. If Tenant fails to remove by the expiration or sooner termination of this Lease all of its personal property, or any items of Tenant Changes identified by Landlord for removal pursuant to Section 11.2 above, Landlord may (without liability to Tenant for loss thereof) at Tenant's sole cost and in addition to Landlord's other rights and remedies under this Lease, at law or in equity: (a) remove and store such items in accordance with applicable law upon fifteen (15) days prior written notice to Tenant; and/or (b) upon additional fifteen (15) days' prior written notice to Tenant sell all or any such items at private or public sale for such price as Landlord may obtain as permitted under applicable law.

12. Liens.

Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against all or any part of the Land nor against Tenant's leasehold interest in the Premises, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Tenant or any other act or omission of Tenant or Tenant's agents, employees, contractors, licensees or invitees. If any such liens are filed, Tenant shall, at its sole cost, within twenty (20) days after filing thereof, cause such lien to be released of record or bonded so that it no longer affects title to the Premises or the Building. If Tenant fails to cause such lien to be so released or bonded within such twenty (20) day period, Landlord may, without waiving its rights and remedies based on such breach, and without releasing Tenant from any of its obligations, cause such lien to be released by any means it shall reasonably deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord within ten (10) days after receipt of invoice from Landlord, any sum paid by Landlord to remove such liens, together with interest at the Interest Rate from the date of such payment by Landlord. Landlord at its sole cost and expense shall obtain the release of any lien relating to any of the Landlord's Work, except for any lien arising from Tenant's non-payment of Tenant's Excess Cost.

13. Assignment and Subletting.

13.1 Restriction on Transfer. Except as hereinafter set forth Tenant shall not assign or encumber this Lease in whole or in part, nor sublet all or any part of the Premises, without the prior written consent of Landlord, which consent Landlord will not unreasonably delay, condition or withhold, except as provided in this Section 13. The consent by Landlord to any assignment, encumbrance or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. Without limiting in any way Landlord's right to withhold its consent on any reasonable grounds, it is agreed that Landlord will not be acting unreasonably in refusing to consent to an assignment or sublease if, in Landlord's reasonable opinion, (a) the proposed assignee or subtenant does not have the financial capability to fulfill the obligations imposed by the assignment or sublease, as applicable, (b) the proposed assignment or sublease involves a use of the Premises that is prohibited by the terms hereof, (c) the proposed assignee or subtenant is not, in Landlord's reasonable opinion, of reputable or good character, or (d) Landlord's mortgagee(s) or superior Landlord(s) does(do) not approve such assignment or sublease. If Tenant is a corporation, or is an unincorporated association or partnership, the transfer, assignment or hypothecation of any stock or interest in such corporation, association or partnership in the aggregate in excess of forty-nine percent (49%) shall be deemed an assignment within the meaning and provisions of this Section 13.1.

13.2 Additional Conditions. A condition to Landlord's consent to any assignment, sublease or other transfer of this Lease will be the delivery to Landlord of a true copy of the fully executed instrument of assignment, sublease or transfer, in form and substance reasonably satisfactory to Landlord, which instrument shall, in the case of an assignment, include an express assumption by the assignee of all of Tenant's obligations under this Lease. No assignment, sublease or other transfer will release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. No collection or receipt of Rent by Landlord shall be deemed a waiver on the part of Landlord, or the acceptance of the assignee, subtenant or occupant as Tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. Consent by Landlord to one assignment, sublease or other transfer will not be deemed consent to any subsequent transfer. In the event of default by any transferee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such transferee or successor. If Tenant effects a transfer or requests the consent of Landlord to any transfer (whether or not such transfer is consummated), then, upon demand, and as a condition precedent to Landlord's consideration of the proposed assignment or sublease, Tenant agrees to pay Landlord Landlord's reasonable attorneys' fees and costs and other reasonable costs incurred by Landlord in reviewing such proposed assignment or sublease. Notwithstanding any contrary provision of this Lease, if Tenant or any proposed transferee claims that Landlord has unreasonably withheld or delayed its consent to a proposed transfer or otherwise has breached its obligations under this Section 14, Tenant's and such transferee's only remedy shall be for Tenant to seek a declaratory judgment and/or injunctive relief requiring Landlord to issue such consent, and Tenant, on behalf of itself and, to the extent permitted by law, and any such proposed transferee, waives all other remedies against Landlord, including without limitation, the right to seek monetary damages or to terminate this Lease.

13.3 Within ten (10) days after payment as to an assignment, or ten (10) days after the due date of any payment under a sublease, Tenant shall pay to Landlord 100% of any consideration received for any assignment or subletting, in excess of the rent required to be paid by Tenant for the Premises (in the case of an assignment) or the area sublet, as the case may be, computed on a per square foot rent basis for the gross square footage Tenant has sublet.

13.4 The provisions of Section 13.1 hereof shall not apply to transactions with a corporation or other legal entity into or with which Tenant (or any permitted subtenant of Tenant) is merged or consolidated or to transactions with a corporation or other legal entity to which all or substantially all of Tenant's assets or all or substantially all of Tenant's equity interests (and all of the assets or equity interests, as applicable, of Tenant's Affiliate which owns or controls all of the facilities operated thereby) are transferred, whether or not pursuant to a sale, (collectively, a "**Tenant's Successor**") or to any corporation which controls or is controlled by Tenant or is under common control with Tenant (herein called a "**Tenant's Affiliate**"), provided that in any of such events (a) the Tenant's Successor (x) is a reputable entity of good character (y) has a Net Worth (as such term is hereinafter defined) at least equal to the greater of Tenant's Net Worth as of the date hereof or on the date such transfer occurs and (z) be a qualified operator of laboratory facilities, (b) proof reasonably satisfactory to Landlord of such net worth shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction, (c) a duplicate original instrument of assignment in form and substance reasonably satisfactory to Landlord, duly executed and acknowledged by Tenant, shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction, (d) an instrument in form and substance reasonably satisfactory to Landlord, duly executed and acknowledged by the assignee, in which such assignee assumes (as of the Commencement Date) observance and performance of, and agrees to be personally bound by, all of the terms, covenants and conditions of this Lease on Tenant's part to be performed and observed shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction, (e) such merger, consolidation, sale or transfer shall be for a good business purpose and not principally for the purpose of transferring this Lease, (f) the Tenant Successor or Tenant's Affiliate, as the case may be, is an experienced owner and operator of a business of the same type and quality as that to be operated in the Demised Premises pursuant to the provisions of this Lease, (g) the Tenant Successor or Tenant's Affiliate, as the case may be, has a good business and personal reputation and shall continue to operate the business at the Demised Premises for the express uses permitted hereunder, (h) neither the Tenant Successor or Tenant's Affiliate nor any of its principals has been bankrupt or the holder of fifty (50%) percent or more of the issued shares of any class of shares of a corporation or of a fifty (50%) percent or more interest in a partnership or other similar entity, either of which has been bankrupt in the five (5) years preceding the date of the proposed assignment, and (i) the Tenant Successor or Tenant's Affiliate, as the case may be, will carry on business in the Premises in a manner comparable to that of the named Tenant and in accordance with the Permitted Use. For purposes hereof, the term "**Net Worth**" shall mean the excess of total assets over total liabilities; total assets and total liabilities each being determined in accordance with generally accepted accounting principles consistently applied, excluding, however, from the determination of total assets all assets which would be classified as intangible assets under generally accepted accounting principles, including, without limitation, goodwill, trade names, licenses, patents, trademarks, copyrights and franchises

13.5 As an additional condition for any assignment or sublet under this Section 13, ProPhase Labs, Inc. ("**Guarantor**") shall reaffirm the guaranty pursuant to a document acceptable to Landlord. Notwithstanding the foregoing, if this Lease is assigned in accordance with the terms of this Section 13, excluding an assignment of this Lease to a person or entity which controls or is controlled by Tenant or is under common control with Tenant, then Tenant may substitute a guarantor as guarantor (the **"Substitute Guarantor**") under the guaranty; provided (i) the Substitute Guarantor, if an individual, is a reputable person who is a principal of the then assignee/Tenant, (ii) the Substitute Guarantor then has a Net Worth, after giving effect to such assignment, at least equal to the greater of the Guarantor's Net Worth on the day immediately preceding the effective date of any such assignment or on the date of this Lease, and financial information establishing such Net Worth reasonably acceptable to Landlord has been provided to Landlord, (iii) the Substitute Guarantor has executed a guaranty in the same form as the guaranty and delivered such executed and notarized guaranty to Landlord, and (iv) Tenant is not then in default under any of the terms, covenants and conditions contained in this Lease. Upon satisfaction of all of the foregoing conditions, Landlord shall execute a release of Guarantor's obligations under the guaranty and Guarantor shall not be liable for any obligations under the guaranty which accrue from and after the effective date of such release.

14. Entry by Landlord.

Landlord and its employees and agents shall at reasonable times at reasonable frequencies and with reasonable advance written notice of not less than one (1) business day (except in the case of performance of alterations, improvements or repairs in which event Landlord will provide two (2) days notice, or in the case of an emergency in which event Landlord will provide any notice as is reasonable under the circumstances) have the right to enter the Premises to inspect the same, to exhibit the Premises to prospective lenders or purchasers (or during the last nine (9) months of the Term, to prospective tenants, provided that Landlord shall not show the Premises to prospective tenants more often that one (1) time per week during the last three (3) months of the Term), to post notices of non-responsibility, and/or to alter, improve or repair the Premises as contemplated by Section 10, all without being deemed guilty of or liable for any breach of Landlord's covenant of quiet enjoyment or any eviction of Tenant, and without abatement of rent, except as otherwise provided herein. In exercising such entry rights, Landlord shall endeavor to minimize, as reasonably practicable, the interference with Tenant's business and shall exercise (and cause to be exercised) reasonable care not to cause any damage to persons or property, and shall provide Tenant with reasonable advance notice of such entry as provided above (except in emergency situations).

15. Utilities and Services.

15.1. Utilities. Landlord shall provide, up to the interior of the walls of the Premises, all mains and conduits to provide adequate water and electric service to the Premises and Landlord shall be responsible for the maintenance, repair and replacement of all of the foregoing during the Lease Term. Tenant shall pay as Additional Rent, all utilities consumed or provided in or furnished to or attributable to the Premises from whatever source. Without limiting the generality of the foregoing. Tenant shall be solely responsible for prompt payment or reimbursement to the applicable utility or Landlord, as the case may be, for all charges for electricity and water, including without limitation, electric charges incurred in the operation of the HVAC system or any supplemental HVAC systems or conduits servicing the Premises. In no event shall Rent abate or shall Landlord be liable for any interruption or failure in the supply of any utility services to the Premises.

15.2. HVAC; Electricity.

15.2.1 During the Term hereof, Landlord shall furnish to Tenant (i) heat to the Premises; (ii) water for ordinary lavatory and kitchen purposes for the Premises; (iii) air conditioning and/or cooling for the Premises through the Building's air conditioning and/or cooling system (the "**Building's AC System**"); (iv) ventilation for the Premises; (v) electricity for Building lighting and normal Building equipment and other incidental equipment (hereinafter collectively referred to as the "**Utility Service**"). The items noted in (i), (iii) and (iv) above shall be provided through the HVAC units exclusively serving the Premises. Landlord shall be responsible for all repairs to the HVAC units (excluding any supplemental HVAC system installed by or on behalf of Tenant) and/or the replacement of the HVAC Units except to the extent caused by the negligence or willful acts of Tenant, its employees, agents, representatives, invitees, contractors and any other party acting through or on behalf of Tenant, or any such party in connection with installation of any HVAC units, or other work any such party may perform on the roof, either of which event Tenant shall be responsible for the replacement of such HVAC units. Except as otherwise set forth above, Landlord will be responsible to replace the HVAC units. Landlord's reasonable determination of the need for replacement or repair shall govern the provisions of this Section 15.2.1. Subject to the provisions of Sections 8.1 and 11.3, Tenant may install, at its sole cost and expense, supplemental HVAC systems, in which case Tenant shall be responsible for all repairs and/or replacements of such supplemental HVAC systems, except to the extent caused by the negligence or willful acts of Landlord, its employees, agents, representatives, invitees, contractors The costs for electrical service regarding any supplemental HVAC system shall be payable by Tenant to Landlord pursuant to separate meter or submeter.

15.2.2 If due to use of the Premises in a manner exceeding commercially reasonable occupancy and electrical load criteria, or due to rearrangement of partitioning after the initial preparation of the Premises, or excessive use, interference with normal operation of the air conditioning in the Premises results, necessitating changes in the air conditioning system servicing the Premises, such changes shall be made by Landlord upon written notice to Tenant and Tenant's sole cost and expense. Tenant agrees to keep all windows closed, and to lower and close window coverings when necessary because of the sun's position whenever the said air conditioning system is in operation, and Tenant agrees at all times to cooperate fully with Landlord and to abide by all the regulations and requirements which Landlord may prescribe for the proper functioning and protection of the said air conditioning system. Landlord, throughout the Term, shall have free and unrestricted access to any and all air conditioning facilities in the Premises.

15.2.3 Landlord, at its sole cost and expense, shall install one (1) or more direct meters or submeters to measure Tenant's electrical usage in the Premises and (1) direct meter for gas usage in the Premises. If water is being used in the Premises for purposes other ordinary lavatory and kitchen purposes, then Tenant shall, at its sole cost and expense, install a submeter to measure Tenant's water consumption. If any Utility Service is not separately metered or assessed or are only partially separately metered or assessed and are used in common with other tenants or occupants of the Building, Tenant shall pay to Landlord on demand the charges for such services based on Tenant's proportionate share of such charges for such Utility Service, which shall be such charges multiplied by a fraction the numerator of which shall be the gross square feet of the Premises and the denominator of which shall be the gross square feet of all tenants and occupants of the Building using such common Utility Service. Tenant shall be responsible to maintain all direct meters and submeters at Tenant's sole cost and expense. Tenant shall pay to the subject utility directly all amounts due and payable pursuant to the gas meter, and shall pay Landlord all amounts due and payable pursuant to the electric sub-meter(s) and water submeter, if any. Tenant shall pay all fees incurred by Landlord in connection with Landlord's reading of any meter or submeter that serves the Premises. Tenant shall make no alterations or additions to the initial lighting, electrical appliances or office equipment if the demand electrical load, when combined with the load of all lighting fixtures and all occupancy factors exceeds the referenced watts per square foot of installed ceiling area, without first obtaining written consent from Landlord in each instance. Tenant agrees that at all times its use of electric service shall not exceed the capacity or overload any of the central and appurtenant installations for electric service including, but not limited to all wires, feeders, risers, electrical boxes, switches, outlets, connections, and cables located in the Building, or Premises or any other mechanical equipment spaces located therein. Tenant's use of electric service shall not interfere with the use thereof by other occupants of the Building and shall be of such a nature, as determined by Landlord in its sole judgment and discretion, so as not cause permanent damage or injury to the Premises or the Building or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense, or interfere with or disturb other tenants or occupants. Tenant may install, at its sole cost and expense, additional outlets in the Premises so long as Tenant shall use a contractor approved by Landlord and provided the installation and/or use of such additional outlets shall otherwise be in accordance with the terms of this Lease.

15.2.4 Landlord reserves the right to stop, interrupt and/or suspend utility service and/or electric service when necessary by reason of accident or for repairs, alterations, replacements or improvements necessary or desirable in the judgment of Landlord for as long as may be reasonably required by reason thereof provided, however, if such utilities or services are interrupted or terminated due to the acts or omissions of Landlord and not restored within five (5) business days from the time of such interruption or termination, and if the Premises become untenantable as a result of such interruption or termination such that the Premises is not able to be open for business, then Tenant shall have the right to abate the payment of Rent from the expiration of such five (5) day period until the earlier of such date that the utilities or services are restored. The repairs, alterations, replacements or improvements shall be done with a minimum of inconvenience to Tenant and upon reasonable notice to Tenant (except that no notice shall be required in the event of an emergency) and Landlord shall pursue same with due diligence. Landlord shall make commercially reasonable efforts to provide Tenant with reasonable advance notice (except that no notice shall be required in the event of an emergency) of any scheduled interruption of electric service so as to enable Tenant to test Tenant's Generator prior to such electric service interruption.

15.2.5 Landlord shall in no way be liable for any loss, damage, or expense which Tenant may incur as a result of the change, at any time, of the character or quality of electric service or utility service or any failure of or defect in electric service or utility service by reason of any public or private utility company then supplying such service to the Building or the Premises and Tenant agrees to hold the Landlord harmless and to indemnify it from and against any loss, liability or damage in connection therewith resulting from Tenant's negligent or willful acts or omissions causing such failure or defect in such electric service. This indemnity shall survive the expiration or other termination of this Lease.

15.3. Access

15.3.1 Except as otherwise specifically provided for in this Lease, Landlord represents and warrants that Tenant shall have access to the Premises Twenty-Four (24) hours a day, Seven (7) days a week. Notwithstanding the foregoing, if Landlord is required to install a remote access and control system (including, without limitation, a closed circuit cameras) in order to enable Tenant entry to the Building Twenty-Four (24) hours a day, Seven (7) days a week, then Tenant shall be responsible for Landlord's actual out-of-pocket expenses incurred in connection with the installation of such access and control system.

15.3.2 Tenant's employees, agents and invitees shall not use the Building's main lobby entrance or the Common Area lavatory.

15.4 Cleaning

15.4.1 Landlord shall provide cleaning services to the Common Areas, except for Saturdays, Sundays or holidays, consistent with cleaning services performed by owners of similarly situated office buildings in Nassau County, New York.

15.4.2 Tenant, at Tenant's cost and expense, shall cause to be cleaned the Premises, including the bathrooms and the interior and exterior surfaces of the windows located therein and throughout the Premises pursuant to minimum cleaning specifications reasonably imposed by Landlord to be employed by tenants of the Building. All such cleaning services shall be performed by Landlord's designated cleaning contractor or Tenant's cleaning contractor reasonably acceptable to Landlord.

16. Indemnification and Exculpation.

16.1 Tenant's Assumption of Risk and Waiver. Landlord shall not be liable to Tenant, Tenant's employees, agents or invitees for: (a) any loss (including loss by theft) or damage to property of Tenant, or of others, located in, on or about the Premises or the Building which property shall be the sole risk of Tenant, (b) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Premises, or (c) any such damage caused by other persons in, on or about the Premises, occupants of adjacent property, or the public, or caused by operations in construction of any private (unless undertaken by or on behalf of Landlord), public or quasi-public work. Landlord shall in no event be liable for any consequential damages or loss of business or profits and Tenant hereby waives any and all claims for any such damages.

16.2 Tenant's Indemnification. Except to the extent caused by the gross negligence or intentional misconduct of the Landlord, Tenant shall be liable for, and shall indemnify, defend, protect and hold Landlord and the Landlord Indemnified Parties harmless from and against, any and all Claims arising or resulting from (i) any injury to, or death of, any person, or any loss of, or damage to, any property in or on the Premises or connected with the use, condition or occupancy thereof; (ii) any act, omission or negligence of Tenant or any of the Tenant Parties; (iii) the use of the Premises or the Building and conduct of Tenant's business by Tenant or any Tenant Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any Tenant Parties, in, on or about the Premises or the Building.

16.3 Landlord's Indemnification. Landlord shall be liable for, and shall indemnify, defend, protect and hold Tenant and Tenant Parties harmless from and against, any and all Claims arising or resulting from (i) any injury to, or death of, any person, or any loss of, or damage to, any property in or on the Common Areas; or (ii) any gross negligence or willful misconduct of Landlord or any of the Landlord Indemnified Parties; provided, however, Landlord shall not be required to indemnify or hold Tenant or the Tenant Parties harmless from any Claims to the extent they result or arise from the negligence or willful misconduct of Tenant or the Tenant Parties. In case any action or proceeding is brought against Tenant or any Tenant Parties by reason of any such indemnified Claims, Landlord, upon written notice from Tenant, shall defend the same at Landlord's expense by counsel selected by Landlord.

16.4 Survival; No Release of Insurers. The indemnification obligation under Sections 16.2 and 16.3 shall survive the expiration or earlier termination of this Lease. The covenants, agreements and indemnification in Sections 16.1, 16.2 and 16.3 above, are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant or Landlord, pursuant to the provisions of this Lease or otherwise.

17. Services/Rules and Regulations.

17.1 Rules and Regulations. Tenant and Tenant's servants, employees and agents shall observe faithfully and comply strictly with the Rules and Regulations, and such other and further reasonable rules and regulations as Landlord or Landlord's agents may from time to time adopt. Nothing in this Lease contained shall be construed to impose on Landlord any duty or obligation to enforce the rules and regulations, or the terms, covenants or conditions in any other lease, against any other tenant of the Building, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. Landlord agrees not to discriminate against Tenant in the application of the Rules and Regulations.

18. Eminent Domain.

18.1 Total Taking. If all, or substantially all, of the Premises shall be lawfully condemned or taken in any manner for any public or quasi-public use, except by Tenant or its affiliates, this Lease shall cease and terminate as of the date of vesting of title.

18.2 Partial Taking. If a substantial portion of the Building shall be so condemned or taken, and if such taking shall substantially affect the Premises and Tenant's use and enjoyment thereof, Tenant shall have the right, by delivery of notice in writing to Landlord within sixty (60) days of Tenant's receipt of a notice of such taking, to terminate this Lease and the term and estate hereby granted, as of the date of the vesting of title in the condemnor. If Tenant shall not so elect, this Lease shall be and remain unaffected by such condemnation or taking, except that, effective as of the date of actual taking, the Annual Rent payable by Tenant shall be diminished by an amount which shall bear the same ratio to the Annual Rent as the rentable square foot floor area of the portion of the Premises taken bears to the rentable square foot floor area of the Premises.

18.3 Termination of Lease. In the event of the termination of this Lease in accordance with the provisions of Sections 18.1 or 18.2 hereof, the Annual Rent and the Additional Rent shall be apportioned and prorated accordingly. In the event of any taking, partial or otherwise, Tenant shall not be entitled to claim or receive any part of any award or compensation which may be awarded in any such condemnation proceeding, or as a result of such condemnation or taking, whether the same be for the value of the unexpired term of this Lease or otherwise, or to any damages against Landlord and/or the condemning authority. Nothing herein contained, however, shall be deemed to preclude Tenant from making any separate claim against the condemnor for the value of any fixtures or other installations made by Tenant in the Premises and which do not, upon installation or the expiration or earlier termination of this Lease, become the property of Landlord, or for Tenant's moving expenses, provided the award for such claim or claims, except as herein provided, is not in diminution of the award made to Landlord.

19. Fire and Other Casualty and Required Insurance.

19.1 Casualty. (a) If the Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Landlord and this Lease shall continue in full force and effect except as hereinafter set forth. If all or any part of the Premises shall be damaged or destroyed by fire or other casualty, the Condominium Documents shall govern any obligations to effect such repairs and rebuilding.

(b) If the Premises are partially damaged or rendered partially unusable (**"Partial Casualty"**) by fire or other casualty other than a "**Substantial Casualty**" as defined below, the damages thereto shall be repaired by and at the expense of Landlord with due diligence and using commercially reasonable efforts to complete such repairs in a timely manner and the Rent and Additional Rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the Premises which is usable. "**Substantial Casualty**" shall be defined as any damage by fire or other casualty which either: (i) destroys thirty (30%) percent or more of the Premises; (ii) renders the Premises unavailable for Tenant's use for a period of more than sixty (60) days; or (iii) cannot be reasonably expected to be repaired and restored to its original condition (or better) by Landlord within a period of one hundred fifty (150) days from the date of such Substantial Casualty. If the estimated date by which reparation and restoration is expected to occur (the "**Estimated Date**") shall be a date later than one hundred and fifty (150) days after the date of the Substantial Casualty, or if the Substantial Casualty occurs within the last two (2) years of the Term, then Tenant may, at its option, terminate this Lease by giving written notice to Landlord within thirty (30) days after Tenant's receipt of the Estimated Date. In any case where Tenant's termination right as aforesaid (as well as any case where Tenant does not elect to exercise its termination right as aforesaid) arises, Tenant shall have the right to terminate this Lease on sixty (60) days' prior written notice to Landlord, if Landlord's restoration work is not completed by the Estimated Date, subject to Tenant Delay and Force Majeure Delay. Tenant may exercise the termination right described in the preceding sentence by delivering written notice thereof to Landlord at any time following the Estimated Date and prior to the date Landlord completes Landlord's restoration work, subject to Landlord's right to complete Landlord's restoration work during said sixty (60) day period. If Tenant terminates this Lease as provided herein, then such termination shall be effective on the date specified in Tenant's notice of termination as if said date were the date fixed for the expiration of the Term. Any rent paid by Tenant for a period beyond the date of termination of this Lease or for any period of abatement shall be refunded by Landlord to Tenant.

(c) In the event of a "**Substantial Casualty**", Landlord may elect to terminate this Lease by written notice to Tenant within sixty (60) days after such fire or casualty specifying a date for the expiration of this Lease, which date shall not be more than forty five (45) days after the giving of such notice, and upon the date specified in such notice, the term of this Lease shall expire as fully and completely as if such date were the date set forth above for the expiration of this Lease and Tenant shall forthwith quit, surrender and vacate the Premises without prejudice, subject, however, to Landlord's rights and remedies against Tenant under the Lease provisions in effect prior to such termination, and any Rent owing shall be paid up to such date and any payments of Rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless a termination notice as provided for is timely transmitted, subject to Landlord's receipt of insurance proceeds, Landlord shall promptly and with due diligence undertake the repair and restoration of the Premises, using reasonable commercial efforts to complete such repair and restoration in a timely manner subject to Tenant Delay and Force Majeure Delay.

19.2 Tenant's Personal Property. Tenant acknowledges that Landlord will not carry insurance on Tenant's personal property, contents, furniture and/or furnishings or any fixtures or equipment, specialty alterations, improvements, or appurtenances removable by Tenant and agrees that Landlord will not be obligated to repair any damage thereto or replace the same, for any reason whatsoever.

19.3 Tenant's Insurance. Tenant acknowledges that Landlord will not carry insurance on Tenant's personal property, contents, furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Landlord will not be obligated to repair any damage thereto or replace the same, for any reason whatsoever. Tenant shall, throughout the term of this Lease, maintain at its own cost and expense, (a) insurance against loss or damage by fire and such other risks and hazards as are insurable under present and future standard forms of fire and extended coverage insurance policies (including, without limitation, protection against vandalism, malicious mischief and sprinkler, equipment, boiler and machinery insurance against leakage or explosion), to the personal property, furniture, furnishings and fixtures belonging to Tenant located in the Premises, in an amount adequate to cover actual replacement cost, which insurance policies may include a provision for the deduction from any recovery thereof of a sum in such amount as is then standard in insurance policies insuring property similar to Tenant's property, (b) comprehensive general liability insurance in the amounts set forth in Section 19.5, (c) worker's compensation and employer's liability insurance in the amounts set forth in Section 19.5, and (d) umbrella liability insurance in the amounts set forth in Section 19.5; All insurance required to be maintained by Tenant under this Lease shall be approved by Landlord and shall be provided by insurance companies with an A.M. Best Rating of "AX" or better and who are licensed by the State of New York. Prior to Tenant's taking occupancy of, or undertaking work in, any portion of the Premises, and thereafter not less than thirty (30) days prior to the expiration of any policy or policies, evidence of the issuance, or renewal, of such policy or policies, or a new certificate for the initial or renewal period, as the case may be, shall be delivered to Landlord. Such evidence or certificate shall clearly state that the insurance coverage applies in New York. Tenant's General Liability insurance (including all umbrella/excess liability) shall designate Landlord as additional insureds on a primary basis and shall provide contain an agreement on the part of the insurance company (A) not to cancel such policy or coverage, or change the terms of such coverage, without thirty (30) days prior written notice to Landlord and (B) that no act or omission of any named insureds will invalidate the policy as to the other named insureds. Except with respect to those obligations that Tenant and Landlord is responsible to indemnify the other pursuant to Section 16.2 and 16.3, respectively, each party agrees to look solely to its insurance company for payment for any loss or damage to its property, and not to make any claim against, or seek to recover from, the other party, its officers, directors, members, servants, agents or employees for such loss or damage, whether or not the loss or damage was due to the acts or omissions of the other party or its officers, directors, members, servants, agents or employees. Upon the occurrence of any casualty insured against, each shall have full authority to, and shall, take all necessary measures to negotiate, compromise or adjust any loss under such party's policy. Each party hereby waives any and all right of recovery, which it might otherwise have against the other party, its employees and servants and agents for loss or damage to the Premises or Tenant's furniture, furnishings, fixtures and personal property. Each party, at its cost and expense, will cause its insurance carrier to include, in each policy of insurance that said party is, by the terms and provisions of this Lease, required to obtain or which is obtained by said party, an endorsement (i) waiving the right of subrogation against the other party and its agents, officers, directors, members, servants and mortgagees with respect to losses payable under such policies or (ii) agreeing that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies.

19.4 Waiver. Subject to the foregoing provisions of this Article 19, Tenant hereby expressly waives the provisions of Section 227 of the Real Property Law, or any other law or statute hereafter enacted of similar import, and agrees that the foregoing provisions of this Article shall govern and control in lieu thereof.

19.5 Tenant's Insurance. Tenant shall maintain at its own cost and expense:

(a) Comprehensive General Liability Insurance covering the Premises on an occurrence basis with a deductible not exceeding $5,000.00, with minimum limits of liability in an amount equal to One Million ($1,000,000.00) Dollars for bodily injury, personal injury or death to any one person and Two Million ($2,000,000.00) Dollars for bodily injury, personal injury or death to more than one (1) person, or a single limit of Two Million ($2,000,000.00) Dollars for bodily injury, personal injury or death per occurrence, and with a separate limit of Two Million ($2,000,000.00) Dollars for Products/Completed Operations per occurrence, and Two Hundred Fifty Thousand ($250,000.00) Dollars with respect to damage to property by water or otherwise, such policy shall name Landlord, the holder of any mortgage and/or over, ground or master lease on all or any portion of Landlord's interest in the Land and/or Building, as additional named insureds to the extent of Tenant's acts or omissions or the acts or omissions of Tenants' contractors, agents, its and their employees and its guests, customers or invitees and shall provide that the same may not be cancelled or terminated without at least thirty (30) days written notice to Landlord and the additional named insureds by the insurance company issuing such policy, and that no act or omission to act of Tenant shall invalidate such insurance as to Landlord and the other additional named insureds;

(b) Worker's Compensation and Employer's Liability Insurance in accordance with the laws of the State of New York;

(c) Umbrella liability insurance with maximum limits of liability in an amount equal to Five Million ($5,000,000.00) Dollars per occurrence with a Five Million ($5,000,000.00) Dollar minimum aggregate; and

(d) When required by Landlord, such other insurance against other insurable hazards and in such amounts as may from time to time be commonly and customarily insured against and are generally available for tenants in first-class office buildings in Nassau County, New York.

20. Default.

20.1 Events of Default

(a) If any one or more of the following events shall happen and shall not have been cured within any applicable grace period herein provided:

(1) if default shall be made in the due and punctual payment of Rent or payable by Tenant under this Lease when and as the same shall become due and payable, and such default shall continue for a period of ten (10) business days after written notice thereof from Landlord to Tenant; or

(2) if default shall be made by Tenant in performance of, or compliance with, any of the covenants, agreements or conditions contained in this Lease and either (i) in the case of a default or a contingency which can with due diligence be cured within thirty (30) days, such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant, or (ii) in the case of a default or a contingency which cannot with due diligence be cured within thirty (30) days, Tenant shall fail, after written notice thereof from Landlord, to proceed promptly and with all due diligence to commence to cure the same within thirty (30) days and thereafter to diligently and in good faith continue to prosecute the curing of such default; or

(3) if Tenant shall file a voluntary petition seeking an order or relief under Title 11 of the United States Code or similar law of any jurisdiction applicable to Tenant, or Tenant shall be adjudicated a debtor, bankrupt or insolvent, or shall file any petition or answer seeking, consenting to or acquiescing in any order for relief, reorganization, arrangement, composition, adjustment, winding-up, liquidation, dissolution or similar relief with respect to Tenant or its debts under the present or any future bankruptcy act or any other present or future applicable federal, state or other statute or law, or shall file an answer admitting or failing to deny the material allegations of a petition against it for any such relief or shall generally not, or shall be unable to, pay its debts as they become due or shall admit in writing in any filing with any court or Legal Authority its insolvency or its inability to pay its debts as they become due, or shall make a general assignment for the benefit of creditors or shall seek or consent or acquiesce in the appointment of any trustee, receiver, examiner, assignee, sequestrator, custodian or liquidator or similar official of Tenant or of all or any part of Tenant's property or if Tenant shall take any action in furtherance of or authorizing any of the foregoing; or if Tenant shall call a meeting of, or propose any form of arrangement, composition, extension or adjustment with, its creditors holding a majority in amount of Tenant's outstanding indebtedness; or

(4) if any case, proceeding or other action shall be commenced or instituted against Tenant, seeking to adjudicate Tenant a bankrupt or insolvent, or seeking an order for relief against Tenant as debtor, or reorganization, arrangement, composition, adjustment, winding-up, liquidation, dissolution or similar relief with respect to Tenant or its debts under the present or any future bankruptcy act or any other present or future applicable federal, state or other statute or law, or seeking appointment of any trustee, receiver, examiner, assignee, sequestrator, custodian or liquidator or similar official of Tenant or of all or part of Tenant's property, which either (i) results in the entry of an order for relief, adjudication of bankruptcy or insolvency or such an appointment or the issuance or entry of any other order having similar effect or (ii) remains undismissed for a period of ninety (90) days; or if any case, proceeding or other action shall be commenced or instituted against Tenant seeking issuance of a warrant of execution, attachment restraint or similar process against Tenant or any of Tenant's property which results in the taking or occupancy of the Premises or an attempt to take or occupy the Premises which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days after the entry thereof; or

(5) if any event shall occur or any contingency shall arise whereby this Lease or the estate hereby granted to the unexpired balance of the Term would, by operation of law or otherwise, devolve upon or pass to any person other than Tenant, or

(6) if Tenant's obligations under this Lease shall have been guaranteed by any person other than Tenant and such person shall default in observance or performance of any term, covenant or condition to be observed or performed by such person under the instrument or agreement containing such guarantee; or

(7) if any financial statement or other information furnished to Landlord by Tenant in connection with this Lease is materially false or misleading; or

(8) if Tenant is the subject of a Chapter 11 reorganization under the Bankruptcy Reform Act of 1978 as amended and such reorganization is not confirmed within eighteen (18) months from the time of filing of a voluntary or involuntary petition thereunder (it being understood that in such event Tenant consents to the termination of the automatic stay provisions of Section 362 of such Act);

then and in any such event (hereinafter sometimes called an "**Event of Default**") Landlord may give written notice ("**Termination Notice**") to Tenant specifying such Event of Default or Events of Default and stating that this Lease and the Term shall expire and terminate on the date specified in the Termination Notice, which shall be at least five (5) days after the giving of the Termination Notice, and on the date specified therein this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate, it being the intention of the Landlord and Tenant hereby to create conditional limitations, and Tenant shall remain liable as provided in Article 21 and in accordance with those provisions of this Lease which are specifically stated herein to survive the expiration or other termination of this Lease.

20.2. **Recovery of Rent**. Notwithstanding the provisions of Section 20.1(A), if there shall be an Event of Default at any time or from time to time under the provisions of subdivision (A) (1) of Section 20.1A, Landlord may, in lieu of giving a Termination Notice, at any time after the occurrence of any such Event of Default and during the continuance thereof, institute an action for the recovery of the Rent in respect of which an Event of Default shall have occurred and be continuing. Neither the commencement of any such action for the recovery of Rent nor the prosecution thereof shall be deemed a waiver of Landlord's right to give a Termination Notice in respect of any such Event of Default during the continuance thereof and Landlord may, notwithstanding the commencement and prosecution of any such action, give a Termination Notice and terminate this Lease pursuant to Section 20.1.A (1) at any time during the continuance of such Event of Default.

20.3 Interest on Late Payments. If Tenant fails to pay any item of Rent on or prior to the fifth (5th) day after the date when such payment is due, then Tenant shall pay to Landlord, in addition to such item of Rent, as a late charge and as Additional Rent, an amount equal to interest at the Interest Rate the amount unpaid, computed from the date such payment was due to and including the date of payment. In addition, Tenant shall pay Landlord an administrative fee, as Additional Rent, of $500.00 for each such nonpayment or late payment. Nothing contained in this Section 20.3 limits Landlord's available rights or remedies after the occurrence of an Event of Default.

20.4 Re-Entry. In the event that this Lease shall be terminated as provided in this Article, Landlord or Landlord's agents may, immediately, or at any time thereafter, without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by summary proceedings, ejectment or otherwise, and have, hold and enjoy the Premises and the right to receive all income of and from the same. No re-entry by Landlord pursuant to this Article shall be deemed an acceptance of a surrender of this Lease nor shall it absolve or discharge Tenant from any liability under this Lease.

20.5 Reletting. In the event that this Lease shall be terminated as provided in this Article, Landlord may, at any time or from time to time thereafter, relet the Premises or any part thereof, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent, as Landlord may determine, to any tenant which it may deem suitable and satisfactory and for any use and purpose it may deem appropriate and may collect and receive the rents therefor. Landlord, at its option, may make such repairs, alterations, additions, improvements, decorations and other physical changes in and to the Premises, as Landlord considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability. Landlord shall in no way be responsible or liable for any failure to relet the Premises, or any part thereof, or for any failure to collect any rent due upon such reletting. Landlord shall not in any event be required to pay Tenant any sums received by Landlord on a reletting of the Premises, or any part thereof, whether or not in excess of the rent reserved in this Lease.

20.6 Tenant Waivers. Tenant, on its own behalf and on behalf of all persons claiming through or under Tenant including all creditors, does hereby waive any and all rights and privileges, so far as is permitted by law, which Tenant and all such persons might otherwise have under any present or future law, to (i) the service of any notice of intention to re-enter or institute legal proceedings to that end, excluding service of process, (ii) redeem the Premises, (iii) re-enter or repossess the Premises, or (iv) restore the operation of this Lease, after Tenant shall have been dispossessed by a judgment or by warrant of any court or judge, or after any re-entry by Landlord or after any expiration or termination of this Lease and the Term, whether such dispossess, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings.

20.7 Disputed Rent. In the event the Tenant shall dispute the validity or amount, or the time or manner of payment of, any rent claimed by Landlord to be due from Tenant under this Lease, Tenant shall nevertheless pay the same and such payment may be without prejudice to Tenant's position if Tenant so requests at the time of payment. If the dispute shall be finally determined in Tenant's favor by a court of competent jurisdiction, Landlord shall within a reasonable period of time not to exceed sixty (60) days' pay Tenant the amount of Tenant's overpayment of such rent. Tenant's failure to observe and perform the provisions of this Section shall be deemed a default under subdivision (1) of Section 2.1.

21. Measure of Damages in Event of Default

21.1. **Damages**. In the event that this Lease be terminated pursuant to Article 20 as a result of an Event of Default on the part of the Tenant and whether or not the Premises be relet, Landlord shall be entitled to retain all monies, if any, paid by Tenant to Landlord, whether as advance rent or otherwise, but such monies shall be credited by Landlord against any rent due at the time of such termination, or at Landlord's option, against any damages payable by Tenant, and Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord the following:

(a) All Rent to the date upon which this Lease and the Term shall have terminated, and

(b) All expenses reasonably incurred by Landlord in recovering possession of the Premises (including summary proceedings), restoring the Premises to good order and condition, maintaining the Premises in good order and condition while vacant, altering or otherwise preparing the same for reletting, and in reletting the Premises (including brokerage commissions and legal expenses), plus all costs and expenses incurred by Landlord in applying for Landlord's Permits, the same to be paid by Tenant to Landlord on demand, and

(c) The amount by which the Rent which, but for the termination of this Lease, would have been payable under this Lease from the date of termination to the Expiration Date exceeds the rental and other income, if any, collected by Landlord in respect of the Premises, or any part thereof, subject nevertheless to the provisions of Section 20.5, said amount to be due and payable by Tenant to Landlord on the several days on which the rent reserved in this Lease would have become due and payable for the period which otherwise would have constituted the unexpired portion of the Term (that is to say, upon each of such days Tenant shall pay to Landlord the amount of deficiency then existing).

21.2 Whether or not Landlord shall have collected any monthly deficiencies aforesaid, Landlord shall be entitled to recover from Tenant on demand, as and for liquidated damages, a lump sum payment equal to the amount by which the Rent payable hereunder for the period which otherwise would have constituted the unexpired portion of the Term, and conclusively presuming the Additional Rent to be the same as was payable for the year immediately preceding such termination or re-entry and thereafter increasing by five (5%) percent per annum) exceeds the then rental value of the Premises for the same period both discounted at a rate equal to then applicable Treasury Rate to present value. If the Premises or any part thereof be relet by Landlord for the unexpired portion of the Term, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed *prima facie* to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting. Nothing herein contained shall limit or prejudice the right of the Landlord to prove for and obtain as damages by reason of such termination an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater or less than the amount of liquidated damages referred to above (due account to be taken, however, of the amounts, if any, collected under this Article 21).

21.3 Excess Rent. In no event shall Tenant be entitled to receive any excess of the rental and other income collected by Landlord in respect of the Premises over the sums payable by Tenant to Landlord hereunder. In no event shall Tenant be entitled in any suit for the collection of damages pursuant to this Article to a credit in respect of any such rental and other income, except to the extent that such rental and other income is allocable to the portion of the Term in respect of which such suit is brought and is actually received by Landlord prior to the entry of judgment in such suit.

21.4 Separate Actions. Separate actions may be maintained by Landlord against Tenant from time to time to recover any damages, which, at the commencement of any such action, have then or theretofore become due and payable to Landlord under Article 20, without waiting until the end of the Term and without prejudice to Landlord's right to collect damages thereafter.

21.5 Rights and Remedies Cumulative. All rights, options and remedies of Landlord contained in this Section 21 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Section 21 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

22. Subordination.

This Lease shall be subject and subordinate at all times to the Decalaration and any ground or master lease (and such extensions and modifications thereof), and to the lien of any mortgage now or hereafter encumbering all or any portion of the Premises (as well as to any advances made thereunder and to all renewals, replacements, modifications and extensions thereof). Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated the Declaration or any ground or master leases or the lien of any or all mortgages to this Lease. In the event that any mortgage is foreclosed or a conveyance in lieu of foreclosure is made for any reason, at the election of Landlord's successor in interest, Tenant shall attorn to and become the tenant of such successor. Tenant hereby waives its rights under any current or future law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Subject to the foregoing, Tenant covenants and agrees to execute and deliver to Landlord within fifteen (15) days after receipt of written demand by Landlord and in the form reasonably required by Landlord, any additional documents evidencing the priority or subordination of this Lease with respect to the Declaration or any ground lease or master lease or the lien of any such mortgage or Tenant's agreement to attorn. If, in connection with Landlord's obtaining or entering into any financing or ground lease for any portion of the Premises, the lender or ground Landlord shall request modifications to this Lease, Tenant shall, within ten (10) days after request therefor, execute an amendment to this Lease including such modifications, provided such modifications are reasonable, do not increase the obligations of Tenant hereunder, or adversely affect the leasehold estate created hereby or Tenant's rights hereunder and Landlord shall reimburse Tenant for its reasonable costs (including reasonable attorneys' fees) in connection with the foregoing. Without limiting the generality of the foregoing, Landlord shall use best efforts to obtain a non-disturbance agreement from the holder of the mortgage currently encumbering the Project (**"Lender"**) substantially in the form annexed hereto as Exhibit F. Tenant may negotiate said form with the Lender provided that Tenant will pay any fee or cost imposed by Lender, the IDA and its counsel as a result thereof, and Tenant's obligations under this Lease shall not be waived or delayed, and Landlord's rights and remedies shall not be materially affected in the event a non-disturbance agreement is not executed. Furthermore, in the event this Lease is to be subject to any mortgage hereafter in effect, then Landlord shall use best efforts to deliver to Tenant a non-disturbance agreement, reasonably satisfactory to Tenant and the then mortgagee.

23. Estoppel Certificate.

Within ten (10) business days following Landlord's written request, Tenant shall execute and deliver to Landlord an estoppel certificate certifying: (a) the Commencement Date; (b) that this Lease is unmodified and in full force and effect (or, if modified, that this Lease is in full force and effect as modified, and stating the date and nature of such modifications); (c) the date to which the Rent and other sums payable under this Lease have been paid; (d) that there are not, to the best of Tenant's knowledge, any defaults under this Lease by either Landlord or Tenant, except as specified in such certificate; (e) all work to be completed by Landlord shall have been completed and performed; (f) the amount of any security deposit; and (g) such other matters as are reasonably requested by Landlord. Any such estoppel certificate delivered pursuant to this Section 23 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of any portion of the Premises, as well as their assignees.

24. Quiet Enjoyment.

Landlord covenants and agrees with Tenant that, upon Tenant performing all of the covenants and provisions on Tenant's part to be observed and performed under this Lease (including payment of Rent hereunder), Tenant shall and may peaceably and quietly have, hold and enjoy the Premises in accordance with and subject to the terms and conditions of this Lease as against all persons claiming by, through or under Landlord.

25. Transfer of Landlord's Interest.

The term "**Landlord**" as used in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the landlord or landlords, at the time in question, of the fee title to, or a Tenant's interest in a ground lease of, the Premises. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall be automatically relieved of all covenants and obligations on the part of Landlord contained in this Lease accruing after the date of such transfer or conveyance.

26. Limitation on Parties' Liability.

26.1 Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual partners, members, managers, directors, officers or shareholders of Landlord or Landlord's partners or affiliates, and Tenant shall not seek recourse against the individual partners, members, managers, directors, officers or shareholders of Landlord or Landlord's partners or affiliates, or any of their personal assets for satisfaction of any liability with respect to this Lease. In addition, in consideration of the benefits accruing hereunder to Tenant and notwithstanding anything contained in this Lease to the contrary, Tenant hereby covenants and agrees for itself and all of its successors and assigns that the liability of Landlord for its obligations under this Lease (including any liability as a result of any actual or alleged failure, breach or default hereunder by Landlord), shall be limited solely to, and Tenant's and its successors' and assigns' sole and exclusive remedy shall be against, Landlord's interest in the Premises, and no other assets of Landlord.

26.2 Except in connection with the enforcement of any guaranty, notwithstanding anything contained in this Lease to the contrary, the obligations of Tenant under this Lease (including any actual or alleged breach or default by Tenant) do not constitute personal obligations of the individual partners, members, managers, directors, officers or shareholders of Tenant or Tenant's partners or affiliates, and Landlord shall not seek recourse against the individual partners, members, managers, directors, officers or shareholders of Tenant or Tenant's partners or affiliates, or any of their personal assets for satisfaction of any liability with respect to this Lease.

27. Miscellaneous.

27.1 Governing Law. This Lease shall be governed by, and construed pursuant to, the laws of the State of New York.

27.2 Successors and Assigns. Subject to the provisions of Section 13 above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and permitted successors and assigns.

27.3 No Merger. The voluntary or other surrender of this Lease by Tenant or a mutual termination thereof shall not work as a merger and shall, at the option of Landlord, either (a) terminate all or any existing subleases, or (b) operate as an assignment to Landlord of Tenant's interest under any or all such subleases.

27.4 Professional Fees. If either Landlord or Tenant should bring suit against the other with respect to this Lease, including for unlawful detainer or any other relief against the other hereunder, then all costs and expenses incurred by the prevailing party therein (including, without limitation, its actual appraisers', accountants', attorneys' and other professional fees, expenses and court costs), shall be paid by the other party.

27.5 Waiver. The waiver by either party of any breach by the other party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant and condition herein contained, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of any party to insist upon the performance by the other in strict accordance with said terms. No waiver of any default of either party hereunder shall be implied from any acceptance by Landlord or delivery by Tenant (as the case may be) of any rent or other payments due hereunder or any omission by the non-defaulting party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

27.6 Prior Agreements; Amendments. This Lease, including the Summary and all Exhibits and Riders attached hereto contains all of the covenants, provisions, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and any other matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to the Premises or any such other matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not expressly incorporated herein.

27.7 Separability. The invalidity or unenforceability of any provision of this Lease (except for Tenant's obligation to pay Rent) shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by law.

27.8 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a Landlord amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any statute or at common law.

27.9 Force Majeure Delay. In the event that either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of preemption, strikes, lock-outs, labor troubles, labor disputes, shortages of labor and material, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations), government restrictions (including restrictions issued as a response to the COVID-19 pandemic or any other public health emergency so declared by governmental authority), injunction or court order, riots, insurrection, war, enemy action, civil commotion, riot, insurrection, fire, earthquake, flood or other natural disaster or other reason of a like nature, not the fault of said party and other acts of God (herein collectively, "**Force Majeure Delay**"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided that Force Majeure Delay shall not apply to Tenant's obligations to pay Rent or any other charges, fees or costs pursuant to this Lease.

27.10 Parking. Tenant shall have the use of six (6) reserved parking spaces, which parking spaces shall be designated by Landlord. Subject to the Municipal Code and all other applicable laws and regulations, Tenant shall have the non-exclusive right to (four) 4 parking spaces for every 1,000 square feet of rentable area in the parking lot around the Building for Tenant's non-exclusive use as depicted on the parking diagram (the **"Parking Diagram"**) annexed hereto as Exhibit G. Common parking areas shall be provided at no additional cost for use by Tenant, its personnel and visitors in common with such other parties as Landlord shall permit to use the same on a "first come, first served" basis, subject to the preceding sentence. Landlord reserves the right, at all times during the term hereof, to promulgate and enforce reasonable rules and regulations with respect to the same in accordance with the terms of Section 17.1 hereof. Tenant, its permitted assignees and subtenants, personnel and visitors shall not, at any time, park trucks or delivery vehicles in any of the areas designated for automobile parking. Landlord shall have no responsibility to police or otherwise insure Tenant's use thereof. All parking spaces and parking areas shall be unattended and shall be utilized at the vehicle owner's own risk. Landlord shall not be liable for any injury to persons or property or loss by theft, or otherwise, of any vehicle or its contents.

27.11 Counterparts. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement.

28. Confidentiality.

28.1 Each party expressly agrees to protect and hold in the strictest confidence the transaction contemplated by this Lease, and any documents and information provided to either party (except for that which is readily available to the public). Notwithstanding the foregoing, the parties shall be permitted to disclose such matters, as appropriate, to its respective officers, directors, employees and to its lenders, attorney(s), title insurer, broker, accountants, consultants and other professionals in furtherance of this Agreement. The provisions of this Section shall survive any termination of this Lease.

29. Security Deposit

29.1 Tenant has deposited with Landlord the sum of $240,000.00 ("**Security Deposit**") as security for the faithful performance by Tenant of the terms, provisions and conditions of this Lease. It is agreed that in the event Tenant defaults in any of the terms, provisions or conditions of this Lease, including but not limited to the payment of Rent, or failure to restore under Article 11, Landlord may use, apply or retain (as it elects) the whole or any part of the Security Deposit to the extent required for the payment of any Rent or any other sum as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default, including but not limited to any damages or deficiency in the re-letting of the Premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord. In any such event, Tenant shall be obligated to restore the security within fifteen (15) days after demand by Landlord to the full amount called for hereunder. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, including but not limited to payment of all Rent due hereunder, the Security Deposit shall be returned to Tenant after the expiration of the term of this Lease and after delivery of entire possession of the Premises to Landlord and an inspection and accounting by Landlord indicating Tenant's full compliance.

29.2 Letter of Credit. As an alternative to the cash Security Deposit required under Section 29.1, Tenant may, within the first twelve (12) months following the Commencement Date, deliver to Landlord a letter of credit ("**Letter of Credit**") to serve as security for the full and faithful performance and observance by Tenant of all of the terms, conditions, covenants and agreements of this Lease. The Letter of Credit must be in a form acceptable to Landlord and must conform to the requirements of Section 29.3 below, and the rights and obligations of the parties with respect to the Letter of Credit shall be governed by the provisions of Sections 29.4 and 29.5, below.

29.3 Requirements for Letter of Credit. The Letter of Credit must conform to each the following requirements:

29.3.1 Such Letter of Credit shall be a clean, irrevocable and unconditional letter of credit transferable in whole or in part by Landlord. The Letter of Credit and any renewal, amendment and replacement thereof shall be issued by a commercial bank (the "**Issuing Bank**") which is a member of The Clearing House LLC, reasonably acceptable to Landlord, which Letter of Credit shall have a term of one year, with automatic renewals and with thirty (30) days' notice to Landlord for non-renewal, be for the account of Landlord, provide for partial drawdowns and be in the amount set forth below, as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease, including, without limitation, the surrender of possession of the Premises to Landlord as herein provided. Tenant agrees to cause the Issuing Bank to renew the Letter of Credit, in the same form, or to obtain a Letter of Credit from another Issuing Bank conforming to the provisions of this Section annually during the term of this Lease. The Letter of Credit or any remaining portion of any sum collected by Landlord thereunder from the Issuing Bank, together with any other portion of any other sums then held by Landlord as security and which sums Landlord is not entitled to apply or retain with respect to any default by Tenant hereunder, shall be returned to Tenant within Thirty (30) days after the Fixed Expiration Date.

29.3.2 The Letter of Credit must expressly state that all fees and expenses are for the account of Tenant, that neither the beneficiary nor any successor beneficiary shall have any obligation to pay any such fees or expenses, and that the failure of Tenant to pay any such fees or expenses shall not affect the rights of the beneficiary thereunder; and

29.3.3 The original Letter of Credit to be delivered by Tenant upon execution of this lease shall be in the face amount of $240,000.00.

Tenant acknowledges and agrees that Landlord shall have no responsibility or liability on account of any error by the Issuing Bank.

29.4 Sale or Lease of the Building or Property. In the event of the sale or lease of the Building, Landlord shall have the right, at no cost to Landlord, to transfer the Security Deposit or Letter of Credit, as the case may be, without charge for such transfer, to the purchaser or lessee, and Landlord shall thereupon be released by Tenant from all liability for the return of such Security Deposit or Letter of Credit (excluding liability, if any, relating to draws made by Landlord or Landlord's designated beneficiary prior to the date of transfer, if any), as the case may be. In such event, Tenant agrees to look solely to the new landlord for the return of said Security Deposit or Letter of Credit (excluding liability, if any, relating to draws made by Landlord or Landlord's designated beneficiary prior to the date of transfer, if any), as the case may be. It is agreed that the provisions hereof shall apply to every transfer or assignment made of such rights to a new landlord. In the event of the posting of a Letter of Credit in lieu of the cash Security Deposit, Tenant shall execute such documents as may be necessary to accomplish such transfer or assignment of the Letter of Credit.

29.5 No Assignment. Tenant covenants that it will not assign or encumber, or attempt to assign or encumber, the Security Deposit or Letter of Credit held hereunder, and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment, or attempted encumbrance. In the event that any bankruptcy, insolvency, reorganization or other debtor-creditor proceedings shall be instituted by or against Tenant, its successors or assigns, or any guarantor of Tenant hereunder, the security shall be deemed to be applied to the payment or the Base Rent and Additional Rent due Landlord for periods prior to the institution of such proceedings and the balance, if any, may be retained by Landlord in partial satisfaction of Landlord's damages.

30. OFAC Compliance

30.1 Landlord and Tenant each represents and warrants to the other that (a) it and each person or entity owning an interest in it, is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "**List**"), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (b) none of its funds or other assets constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), (c) no Embargoed Person has any interest of any nature whatsoever in it (whether directly or indirectly), (d) none of its funds have been derived from any unlawful activity with the result that the investment in it is prohibited by law or that the Lease is in violation of law, and (e) it has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term, "**Embargoed Person**" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law.

30.2 Tenant covenants and agrees (a) to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargoes and economic sanctions, now or hereafter in effect, (b) to immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached, or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached, (c) not to use funds from any "Prohibited Persons"(as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Landlord under the Lease, and (d) at the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant's compliance with the terms hereof.

30.3. Landlord and Tenant hereby acknowledge and agree that inclusion on the List at any time during the Lease Term of this shall be a material default of the Lease. Notwithstanding anything herein to the contrary, Tenant shall not permit the Leased Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Leased Premises by any such person or entity shall be a material default of the Lease.

31. Condominium Provisions.

31.1 Wherever in this Lease there is an obligation or duty imposed upon Landlord and there is a corresponding obligation imposed upon the Condominium or Condominium Association pursuant to the Condominium Documents, then, in each such instance, this Lease shall be read as though the obligation or duty of the Landlord was in fact the obligation or duty of the Condominium or the Condominium Association, as the case may be, and subject to Tenant's right to exercise any remedy provided hereunder for Landlord's failure to perform as required, Landlord shall otherwise have no duty to Tenant with respect thereto except to use commercially reasonable efforts to cause the Condominium Association to so perform such obligation or duty or as herein otherwise specified. Notwithstanding anything to the contrary contained elsewhere in this Lease, any provision of this Lease that requires Landlord to "cause the Condominium Association" to provide services or perform any other act shall be deemed to require Landlord to use commercially reasonable efforts to cause the Condominium Association to do the same, and Landlord shall not be liable to Tenant for any failure in performance resulting from the failure in performance by the Condominium Association, and Landlord's obligations hereunder are accordingly conditional where such obligations require such parallel performance by the Condominium Association, provided that Landlord shall, at Landlord's cost and expense, use commercially reasonable efforts to enforce such rights as Landlord may have against the Condominium Association under the Condominium Documents for the benefit of Tenant upon Tenant's written request therefor (and to forward to the Condominium Association any notices or requests for consent as Tenant may reasonably request).

31.2 To the extent that the obligations set forth in this Lease on the part of Landlord to be performed, including, without limitation, any obligations with respect to services and the maintenance, repair and restoration of the Building and Building systems, are, in accordance with the provisions of the Condominium Documents, the obligations of the Condominium Association, Landlord shall not be responsible for the performance of any such obligations and Tenant agrees to look solely to the Condominium Association for the performance of such obligations. Landlord shall, however, use commercially reasonable efforts to require the Condominium Association to comply with the terms of the Condominium Documents. Landlord shall in no event be liable to Tenant, nor shall the obligations of Tenant hereunder be impaired or the performance thereof excused, because of any failure or delay on the Condominium Association's part in performing such obligations.

31.3 The use of the Premises and the Common Elements, or any part thereof, by Tenant or any of Tenant's employees and invitees shall be subject at all times during the Term to the Condominium Documents and the additional Condominium rules and regulations adopted from time-to-time by the Landlord or the Condominium Association governing, without limitation, the use of the passageways, signs, exterior of the Building, lighting and other matters affecting other tenants in, and the general management and appearance of, the Building and Project, provided such future rules and regulations do not diminish Tenant's rights hereunder.

32. IDA Lease.

Tenant acknowledges and agrees that notwithstanding anything to the contrary in this Lease: (i) the fee title Landlord of the Project is the Town of Hempstead Industrial Development Agency (**"IDA"**), and that Landlord's interest therein is its interest under that certain Lease Agreement, dated as of March 27, 2013 between the IDA, as Landlord, and Landlord, as Tenant (the "**IDA Master Lease**"), (ii) Tenant's use and occupancy of the Premises will be subject and subordinate to the terms and conditions of the IDA Master Lease, (iii) this Lease, Tenant's rights hereunder, and Tenant's ability to assign or sublease are subject to the approval of the IDA, (iv) contemporaneously herewith, Tenant shall execute and deliver to Landlord the IDA Tenant Agency Compliance Agreement attached hereto collectively as Exhibit E.

33. Right of First Refusal to Lease.

33.1. Provided (i) no Event of Default has occurred and is continuing and (ii) this Lease has not been otherwise terminated or cancelled, Tenant shall have the right of first refusal (the "**ROFR**") to lease either or both of the spaces located on the ground floor of the Building containing 4,500 square feet (the "**4500 SF Space**") and 4,600 square feet (the "**4600 SF Space**;" together with the 4500 SF Space herein referred to as the "**ROFR Space**"). If at any time during the Term after the date hereof, Landlord receives from a third party an acceptable, bona fide, arms-length offer to lease ("**Offer to Lease**") the ROFR Space, then Landlord shall give to Tenant notice (the "**Lease Notice**") in writing of any such proposed Offer to Lease, setting forth the material terms and conditions, including, but not limited to, the following (the "**Offer Terms**"): (a) the commencement date of the proposed lease and the expiration date of the proposed lease, (b) the base annual rental payable, (c) any material additional rent payable with respect to the ROFR Space, including any additional rent related to increases in real estate taxes or other charges, (d) the dollar amount of any work which Landlord is willing to perform or pay for in the ROFR Space, (e) any concession or free rent period applicable to the proposed letting, and (f) any other material term and condition. During the ten (10) day period following the date Landlord gives the Lease Notice to Tenant, Tenant shall have the option (the "**ROFR Space Option**") to lease the ROFR Space from Landlord on the Offer Terms. Tenant shall exercise the ROFR Space Option by giving Landlord notice thereof (the "**Exercise Notice**") on or before the last day of such ten (10) day period (the "**Exercise Notice Date**"), time being of the essence. Notwithstanding any provision to the contrary contained herein, Tenant's ROFR rights with respect to the 4500 SF Space is subject and subordinate to the rights of Northwell Health Inc. (or any successor that is a permitted assignment under the terms of its lease), and to lease the ROFR Space in accordance with the terms of their lease.

33.2. Landlord and Tenant shall execute an amendment to this Lease, effective as of the date such ROFR Space is to be included in the Premises, on the same terms contained in the Offer Notice except that (i) Tenant's Proportionate Share shall proportionately increase, (ii) if the term of the lease for the ROFR Space is less than the initial Term of this Lease, then the lease for the ROFR Space shall be coterminous with the initial Term of this Lease, (iii) if the term of the lease for the ROFR Space is greater than the initial Term of this Lease (excluding the renewal option), then the initial Term of this Lease shall be extended so that it shall be coterminous with the term of the lease of the ROFR Space, in which case the Annual Rent for the Premises shall increase each additional Lease Year by 2.75%; (iv) Landlord shall not be obligated to perform any work to prepare the ROFR Space for Tenant's occupancy and (v) if the ROFR is exercised by Tenant any time after the third (3rd) anniversary of the Commencement Date, then the initial Term of this Lease shall be increased so that the initial Term shall expire on the date that is the later of (x) ten (10) years from the effective date of the lease for the ROFR Space or (y) the expiration date of the term of the lease of the ROFR Space. If Landlord and Tenant cannot agree on the terms of the amendment within ten (10) days after Tenant has timely elected to lease the ROFR Space, Tenant, at any time after such ten (10) day period and prior to the execution of the amendment, shall have a right to withdraw its election to lease the ROFR Space. If Tenant fails to timely exercise its right hereunder, then such right shall lapse as to the ROFR Space covered by the applicable Lease Notice, time being of the essence with respect to the exercise thereof, Landlord may lease the ROFR Space to the third party submitting the applicable offer substantially on the terms set forth in the applicable Lease Notice. If Landlord and Tenant do not execute an amendment within thirty (30) days after Tenant has timely elected to lease the ROFR Space, Landlord may, at any time after such thirty (30) day period and prior to the execution of the amendment, lease the ROFR Space to the third party submitting the applicable offer substantially on the terms set forth in the applicable Lease Notice. The ROFR Space Option shall apply only to, and may not be exercised by any person or entity other than the Tenant expressly named in this Lease.

34. Right of First Offer.

34.1. Provided that no Event of Default has occurred and is then continuing, and subject to the terms and conditions hereinafter set forth, Tenant shall have a right of first offer with respect to the sale of the Office Building Unit during the Term (the "**ROFO**"). If Landlord determines, in Landlord's sole discretion, to offer the Office Building Unit for sale during the Term, Landlord shall first give written notice to Tenant setting forth the "Material Terms" upon which Landlord is willing to sell the Office Building Unit to Tenant (the "**Offer Notice**"). For the purposes hereof, "**Material Terms**" shall mean (i) the purchase price, (ii) the required contract deposit/down payment, (iii) the proposed closing date, and (iv) such other terms as Landlord may determine. Within twenty (20) days after receipt of such Offer Notice (the "**ROFO Exercise Period**"), Tenant may elect, by written notice to Landlord ("**Tenant Election Notice**"), to accept the offer contained in the Offer Notice and to purchase the Office Building Unit in accordance with a Purchase Agreement (hereinafter defined). The failure of Tenant to give a Tenant Election Notice within the ROFO Exercise Period, time being of the essence, shall constitute an irrevocable waiver of the ROFO, and Landlord shall thereafter have the unrestricted right to offer the Office Building Unit for sale and to sell the Office Building Unit to any other person or entity on any terms and conditions selected by Landlord in Landlord's sole and absolute discretion provided the sales price is not less than ninety (90%) percent of the sales price that was set forth in the Offer Notice to Tenant. If Landlord does not execute and deliver a contract for the sale of the Office Building Unit to a third party purchaser within one (1) year following the end of the ROFO Exercise Period, or if the proposed sales price is less than ninety (90%) percent of the sales price that was set forth in the Offer Notice to Tenant, the Tenant's ROFO hereunder shall reinstate (a "**ROFO Reinstatement**").

34.2. If Tenant gives a Tenant Election Notice within the ROFO Exercise Period, then within ten (10) days thereafter, Landlord shall prepare and deliver to Tenant a purchase agreement (the "**Purchase Agreement**") containing the Material Terms that were contained in the Offer Notice and any other usual and customary terms as are contained in commercial real estate sales contracts in Nassau County, New York including, without limitation, (i) usual and customary adjustments, including rents, security deposit, common charges and real estate taxes; (ii) payment by seller of the NYS Real Property Transfer Tax, (iii) the delivery by seller at closing of a bargain and sale deed without covenants against grantor's acts, containing the covenant required by Section 13 of the Lien Law; and (iv) acceptance of the Office Building Unit by purchaser at closing in its then "as is" condition. Within ten (10) business days after receipt of the Purchase Agreement from Landlord, the Tenant shall execute and deliver the Purchase Agreement to Landlord, together with a bank check payable to Landlord's attorneys in the amount of the required deposit/down payment. Landlord shall execute the Purchase Agreement and deliver one fully executed counterpart thereof to Tenant within five (5) business days after receipt. If Tenant fails to execute and deliver the Purchase Agreement and pay the deposit/down payment within said ten (10) business day period, or if Tenant fails to close title in accordance with the terms of the Purchase Agreement for any reason, Tenant shall be deemed to have irrevocably waived the ROFO, this Section 34 shall be deemed null and void, and Landlord shall thereafter have the unrestricted right to offer the Office Building Unit for sale and to sell the Office Building Unit to any other person or entity on any terms and conditions selected by Landlord in Landlord's sole and absolute discretion, subject to Tenant's right to a ROFO Reinstatement pursuant to Section 34.1 above, if applicable.

34.3. The ROFO set forth herein shall be deemed null and void *ab initio* upon the termination of this Lease for any reason, or assignment of this Lease to any assignee.

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IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

LANDLORD:
BRG OFFICE L.L.C.

By: _____
Name: _____
Title: _____

UNIT 2 ASSOCIATES L.L.C.

By: _____
Name: _____
Title: _____

TENANT:

PROPHASE DIAGNOSTICS, INC.

By: _____
Name: _____
Title: _____

EXHIBIT 21.1

SUBSIDIARIES OF PROPHASE LABS, INC.

Subsidiaries	State or other Jurisdiction of Incorporation	Ownership Percentage
Pharmaloz Manufacturing Inc.	Delaware	100%
Phusion Labs Manufacturing, Inc.	Delaware	100%
ProPhase Digital Media, Inc.	Delaware	100%
ProPhase Diagnostics, Inc.	Delaware	100%
ProPhase Diagnostics NJ, Inc.	New York	100%
ProPhase Diagnostics NY, Inc.	Delaware	100%
Quigley Pharma Inc.	Delaware	100%
TK Supplements, Inc.	Delaware	100%

The above subsidiaries are included in the consolidated financial statements for the year ended December 31, 2020.

EXHIBIT 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements of ProPhase Labs, Inc. and Subsidiaries on Form S-8 (No. 333-169697, No. 333-189875, No. 333-217484, No. 333-224369 and No. 333-225496), and Form S-3 (No. 333-225875) of our report dated March 31, 2021, with respect to our audit of the consolidated financial statements as of December 31, 2020 and for the year then ended, which report is included in this Annual Report on Form 10-K.

/s/ Friedman LLP

East Hanover, New Jersey
March 31, 2021

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements of ProPhase Labs, Inc. and Subsidiaries on Form S-8 (No. 333-169697, No. 333-189875, No. 333-217484, No. 333-224369 and No. 333-225496) and Form S-3 (333-225875) of our report dated March 26, 2020, on our audit of the consolidated financial statements as of December 31, 2019 and for the year then ended, which report is included in this Annual Report on Form 10-K to be filed on or about March 31, 2021.

/s/ EisnerAmper LLP

EISNERAMPER LLP
Iselin, New Jersey
March 31, 2021

EXHIBIT 31.1

OFFICER'S CERTIFICATION PURSUANT TO
RULE 13a-14(a)/15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934

I, Ted Karkus, certify that:

1. I have reviewed this Annual Report on Form 10-K of ProPhase Labs, Inc.;

2. Based on my knowledge, this Annual 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 Annual Report;

3. Based on my knowledge, the financial statements, and other financial information included in this Annual 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 Annual 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 Rule 131-15(f) and 15d015(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 Annual 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 Annual Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2021

By: */s/ Ted Karkus*
Ted Karkus
Chairman of the Board and Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

OFFICER'S CERTIFICATION PURSUANT TO
RULE 13a-14(a)/15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934

I, Monica Brady, certify that:

1. I have reviewed this Annual Report on Form 10-K of ProPhase Labs, Inc.;

2. Based on my knowledge, this Annual 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 Annual Report;

3. Based on my knowledge, the financial statements, and other financial information included in this Annual 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 Annual 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 Rule 131-15(f) and 15d015(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 Annual 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 Annual Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2021

By: */s/ Monica Brady*
Monica Brady
Chief Financial Officer
(Principal Financial Officer)

EXHIBIT 32.1

PROPHASE LABS, INC.
CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO RULE 13a-14(b) OF THE SECURITIES EXCHANGE ACT OF 1934
AND 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Ted Karkus, Chief Executive Officer of ProPhase Labs, Inc., a Delaware corporation (the "Registrant"), in connection with the Registrant's Annual Report on Form 10-K for the period ended December 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), do hereby represent, warrant and certify, in compliance with Rule 13a-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

/s/ Ted Karkus
Ted Karkus
Chairman of the Board and
Chief Executive Officer
(Principal Executive Officer)

March 31, 2021

EXHIBIT 32.2

PROPHASE LABS, INC.
CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO RULE 13a-14(b) OF THE SECURITIES EXCHANGE ACT OF 1934
AND 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Monica Brady, Chief Financial Officer of ProPhase Labs, Inc., a Delaware corporation (the "Registrant"), in connection with the Registrant's Annual Report on Form 10-K for the period ended December 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), do hereby represent, warrant and certify, in compliance with Rule 13a-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

/s/ Monica Brady
Monica Brady
Chief Financial Officer
(Principal Financial Officer)

March 31, 2021