

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2019

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: 000-22427**



**HESKA CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**3760 Rocky Mountain Avenue  
Loveland, Colorado**

(Address of principal executive offices)

**77-0192527**

(I.R.S. Employer  
Identification Number)

**80538**

(Zip Code)

Registrant's telephone number, including area code: **(970) 493-7272**

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

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common stock, \$0.01 par value	HSKA	The Nasdaq Stock Market LLC

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 o No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes o 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 o

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

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller Reporting Company

Emerging Growth Company

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

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

The aggregate market value of voting common stock held by non-affiliates of the Registrant was approximately \$591,307,230 as of June 28, 2019 based upon the closing price on the Nasdaq Capital Market reported for such date. This calculation does not reflect a determination that certain persons are affiliates of the Registrant for any other purpose.

7,838,402 shares of the Registrant's Public Common Stock, \$.01 par value, were outstanding at February 27, 2020.

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**DOCUMENTS INCORPORATED BY REFERENCE**

Items 10, 11, 12, 13 and 14 of Part III incorporate by reference information from the Registrant's definitive proxy statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for the Registrant's 2020 Annual Meeting of Stockholders to be held on or about April 8, 2020.

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HESKA, ALLERCEPT, HemaTrue, Solo Step, Element DC, Element HT5, Element POC, Element i, Element COAG, Element DC5X and Element RC are registered trademarks and SonoPod, DentiPod and Element i+ are trademarks of Heska Corporation. DRI-CHEM is a registered trademark of FUJIFILM Corporation. TRI-HEART is a registered trademark of Intervet Inc., d/b/a Merck Animal Health, formerly known as Schering-Plough Animal Health Corporation ("Merck Animal Health"), which is a unit of Merck & Co., Inc., in the United States and is a registered trademark of Heska Corporation in other countries. This annual report on Form 10-K also refers to trademarks and trade names of other organizations.

## Statement Regarding Forward Looking Statements

This Form 10-K 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"). For this purpose, any statements contained herein that are not statements of current or historical fact may be deemed to be forward-looking statements. Without limiting the foregoing, words such as "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," variations of such words and similar expressions are intended to identify such forward-looking statements. These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to predict. Therefore, actual results could differ materially from those expressed or forecasted in any such forward-looking statements as a result of certain factors. Such factors are set forth in "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and elsewhere in this Form 10-K and include, among others, risks and uncertainties related to:

- the success of third parties in marketing our products;
- outside business interests of our Chief Executive Officer;
- our reliance on third party suppliers and collaborative partners;
- our dependence on key personnel;
- our dependence upon a number of significant customers;
- competitive conditions in our industry;
- our ability to market and sell our products successfully;
- expansion of our international operations;
- the impact of regulation on our business;
- the success of our acquisitions and other strategic development opportunities;
- our ability to develop, commercialize and gain market acceptance of our products;
- cybersecurity incidents and related disruptions and our ability to protect our stakeholders' privacy;
- product returns or liabilities;
- volatility of our stock price;
- our ability to service our convertible notes and comply with their terms.

Readers are cautioned not to place undue reliance on these forward-looking statements.

Although we believe that expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect the passage of time, any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based, except as otherwise required by applicable securities laws. These forward-looking statements apply only as of the date of this Form 10-K or for statements incorporated by reference from our 2020 proxy statement on Schedule 14A, as of the date of the Schedule 14A.

## PART I

### Item 1. Business

*Unless we state otherwise or the context otherwise requires, the terms "Heska," "we," "our," "us" and the "Company" refer to Heska Corporation and its consolidated subsidiaries.*

*Our Certificate of Incorporation, as amended (the "Charter"), authorizes three classes of stock: Original Common Stock, Public Common Stock, and Preferred Stock. Pursuant to an NOL Protective Amendment to the Charter adopted in 2010, all shares of Original Common Stock then outstanding were automatically*

*reclassified into shares of Public Common Stock. Our Public Common Stock trades on the Nasdaq Stock Market LLC. In this Annual Report on Form 10-K, references to "Public Common Stock" and "common stock" are references to our Public Common Stock, unless the context otherwise requires.*

## **Overview**

We sell veterinary and animal health diagnostic and specialty products. Our offerings include Point of Care diagnostic laboratory instruments and consumables; digital diagnostic imaging instruments, software and services; vaccines; local and cloud-based data services; allergy testing and immunotherapy; and single-use offerings such as in-clinic diagnostic tests and heartworm preventive products. Our core focus is on supporting veterinarians in the canine and feline healthcare space.

On February 24, 2013, the Company acquired a 54.6% interest in Cuattro Veterinary USA, LLC (the "Acquisition"), which was subsequently renamed Heska Imaging US, LLC ("U.S. Imaging") and marked our entry into the veterinary imaging market in the United States ("U.S."). The remaining minority position (45.4%) in U.S. Imaging was subject to purchase by Heska under performance-based puts and calls following the audit of our financial statements for 2016 and 2017. With the required performance criteria met in fiscal year 2016, we considered notice given on March 3, 2017 that the put option was being exercised and on May 31, 2017, we delivered \$13.8 million in cash to obtain the remaining minority position in U.S. Imaging.

On May 31, 2016, the Company closed a transaction (the "Cuattro Merger") to acquire Cuattro Veterinary, LLC ("Cuattro International"), which was subsequently renamed Heska Imaging International, LLC ("International Imaging") and marked our entry into the international veterinary imaging market. Financial information broken out by geographic region is incorporated by reference to Note 17 to the financial statements included under Item 8 of this annual report on Form 10-K. As of the closing date of the Cuattro Merger, the Company's interest in both International Imaging and U.S. Imaging was transferred to the Company's wholly owned subsidiary, Heska Imaging Global, LLC ("Global Imaging").

On June 1, 2017, the Company consolidated its assets and liabilities in the U.S. Imaging and International Imaging companies into Global Imaging, which was re-named Heska Imaging, LLC ("Heska Imaging").

On June 13, 2017, the Company incorporated Heska Canada Limited in the province of British Columbia, in order to expand our footprint into more of the North American veterinary market.

On July 26, 2018, the Company incorporated Heska Australia Pty Ltd in the state of Victoria, in order to expand our footprint into the Australian veterinary market.

On February 22, 2019, the Company acquired Optomed. Optomed designs, develops, manufactures and distributes veterinary imaging solutions, with a primary focus and expertise in endoscopy technologies and has a direct sales presence in France.

On December 5, 2019, the Company acquired CVM Diagnostico Veterinario, S.L. and CVM Ecografia, jointly known as the CVM Companies ("CVM"). CVM is a Spanish company that primarily sells and performs marketing of medical equipment to veterinary clinics.

On January 14, 2020, the Company entered into an agreement among the Company, Heska GmbH, Covetrus Animal Health Holdings Limited and Covetrus, Inc. regarding the sale and purchase of the sole share in scil animal care company GmbH ("scil") whereby Heska is acquiring 100% of the capital stock of scil from Covetrus Animal Health Holdings Limited, a subsidiary of Covetrus, Inc. Heska will purchase scil (the "Acquisition") for \$125 million in cash, subject to working capital and other adjustments. The Acquisition is expected to close no later than by the end of the second quarter of 2020.

We were founded as Paravax, Inc. and incorporated in California in 1988. We changed our name to Heska Corporation in 1995, reincorporated in Delaware and completed our initial public offering in 1997.

## **Products and Services**

Our business is composed of two reportable segments, Core Companion Animal ("CCA") and Other Vaccines and Pharmaceuticals ("OVP"). The CCA segment includes, primarily for canine and feline use, Point of Care laboratory instruments and consumables; digital imaging diagnostic instruments, software and services; local and cloud-based data services; allergy testing and immunotherapy; and single use offerings such as in-clinic diagnostic tests and heartworm preventive products. The CCA segment represents approximately 87% of our revenue. The OVP segment includes private label vaccine and pharmaceutical production, primarily for cattle but also for other species including equine, porcine, avian, feline and canine. OVP products are sold by third parties under third party labels. OVP represents approximately 13% of our revenue.

### **Core Companion Animal Segment**

We presently sell a variety of companion animal health products and services, among the most significant of which are the following:

#### ***Point of Care Laboratory and Imaging Diagnostics***

We offer a line of veterinary Point of Care (stationary and portable) laboratory diagnostic instruments for testing blood and other biological materials, for use in diagnostic imaging and for other uses, some of which are described below. We also market and sell consumable supplies and services for these instruments. Our line of veterinary instruments includes the following:

*Blood Chemistry.* Element DC<sup>®</sup> Veterinary Chemistry Analyzer (the "Element DC") is an easy-to-use, robust system that uses dry slide technology for blood chemistry and electrolyte analysis and has the ability to run 22 tests at a time with a single blood sample. Test slides are available as both pre-packaged panels as well as individual slides. The Element DC5x<sup>®</sup> Veterinary Chemistry Analyzer (the "Element DC5x"), launched during 2018, delivers faster run times, higher throughput, and allows simultaneous staging of five patient samples. The Element DC and Element DC5x utilize the same test slides. We are supplied with the Element DC and Element DC5x, as well as the affiliated test slides and supplies, under a contractual agreement with FUJIFILM.

We also market and distribute the Element RC<sup>®</sup>, an easy-to-use, compact chemistry system that utilizes load-and-go rotors for blood chemistry and electrolyte analysis. A small volume of whole blood can be loaded on the rotor, eliminating the need for external centrifugation. Rotors of various test menus are available, providing results for up to 20 measured tests plus additional calculated values. Typical rotor run times are 12 minutes.

*Hematology.* The Element HT5<sup>®</sup> Hematology Analyzer (the "HT5") is a true 5-part hematology analyzer which measures key parameters such as white blood cell count, red blood cell count, platelet count and hemoglobin levels in animals. The HT5 can generate results in less than a minute with 15  $\mu$ L of sample. We are supplied with the HT5 and affiliated reagents and supplies under a contractual agreement with Shenzhen Mindray Bio-Medical Electronics Co., Ltd. ("Mindray"). The HemaTrue<sup>®</sup> Veterinary Hematology Analyzer (the "HemaTrue") is an easy-to-use and reliable 3-part hematology blood analyzer that we continue to offer to our customers. We are supplied with the HemaTrue reagents and supplies under a contractual agreement with Boule Medical AB ("Boule").

*Blood Gases and Electrolytes.* The Element POC® Blood Gas & Electrolyte Analyzer (the "EPOC") is a handheld, wireless analyzer which delivers rapid blood gas, electrolyte, metabolite and basic blood chemistry testing. The EPOC features test cards with room temperature storage which can offer results with less than 100 µL of sample as well as WiFi and Bluetooth connectivity. The EPOC and affiliated consumables and supplies are supplied to us under a contractual agreement with Siemens Healthcare Diagnostics, Inc., a unit of Siemens Healthineers AG.

*Immunodiagnosics.* The Element i® Immunodiagnostic Analyzer (the "Element i") utilizes fluorescence immunoassay technology to ensure sensitivity for accurate in-clinic detection of Total T4, TSH, Cortisol, Bile Acids, and Progesterone. The Element i is a benchtop technology with a test time of 10 minutes or less per analyte. Along with confidence in results, this measurement principle allows for simplified reagents and testing protocols. Element i units are supplied to us under a contractual agreement with FUJIFILM.

*Coagulation.* The Element COAG® Veterinary Analyzer (the "Element COAG") is a compact benchtop, cartridge-based system used for coagulation and specialty testing. There are five test cartridges offered: the PT/aPTT Coag Combo, Equine Fibrinogen, Canine Fibrinogen, Canine DEA 1 Blood Typing and Feline A and B Blood Typing. Each of these cartridges perform accurate, automated analysis using less than 100 µL of sample in just minutes. We are supplied with the Element COAG and affiliated cartridges and supplies under a contractual agreement with Zoetis US, LLC, a unit of Zoetis Inc.

*IV Pumps.* The VET/IV 2.2™ infusion pump is a compact, affordable IV pump that allows veterinarians to easily provide regulated infusion of fluids for their patients.

*Digital Radiography.* We sell hardware, including digital radiography detectors, acquisition workstation equipment, positioning aides, viewing computers, radiographic generators, anti-scatter grids and other accessories for use in digital radiography imaging diagnostics. With this hardware, we also provide licensed embedded software, support, data hosting, warranty and other services. CloudDR™ solutions combine flat panel digital radiography detectors, acquisition workstations and acquisition software to produce, review, archive and share radiographic image studies, primarily in fixed location companion animal veterinary settings.

We also sell mobile digital radiography products, primarily for equine use, such as the Uno 6™, a full powered, portable digital radiography generator integrated with an embedded touchscreen acquisition and review function, based upon a patented design of Cuattro, LLC ("Cuattro"). In addition to Uno 6™, we sell the Slate HUB™, a mobile digital radiography acquisition console that is capable of operating as a general full field wireless x-ray imager and as the control and display for DentiPod™, a large format equine intraoral dental sensor, and SonoPod™, a wireless ultrasound.

*Ultrasound Systems.* We sell ultrasound products, including affiliated probes and peripherals, with varying features and corresponding price points.

*Diagnostic Data and Support.* Cloudbank™ is an automatic, secure, web-based image storage solution designed to interface with the imaging products we sell. ViewCloud™ and HeskaView+™ are Picture Archival and Communications Systems (PACS) for Cloudbank™ for web or local viewing, reporting, planning and email sharing of studies on Internet devices, including personal computers, tablet devices and smartphones. SupportCloud™ is a support package including call center voice and remote diagnostics, recovery and other services, such as the provision of warranty-related loaner units, to support customers. Access and operation between our imaging devices, Cloudbank™ and SupportCloud™ is supported by the acquisition software used in the equipment we sell.

With the acquisition of U.S. Imaging, we entered into supply and license agreements with Cuattro to secure exclusive rights to, among other things, proprietary acquisition software, Cloudbank™, ViewCloud™, research and development and other benefits. Cuattro provided us with much of the hardware, software, data hosting and other services for our digital radiography solutions under these exclusive contractual arrangements. Cuattro is 100% owned by our President and Chief Executive Officer, Kevin S. Wilson, his spouse, Shawna M. Wilson ("Mrs. Wilson") and by trusts for the benefit of their children and family. On December 21, 2018, we closed on the purchase of the acquisition software previously provided by Cuattro in the amount of \$8.2 million and terminated the supply and license agreement. Related party and acquisition disclosures are incorporated by reference to Note 3 to the financial statements included under Item 8 of this annual report on Form 10-K.

### ***Point of Care Heartworm Diagnostic Tests***

Heartworm infections of dogs and cats are caused by the parasite *Dirofilaria immitis*. This parasitic worm is transmitted in larval form to dogs and cats through the bite of an infected mosquito. Larvae develop into adult worms that live in the pulmonary arteries and heart of the host, where they can cause serious cardiovascular, pulmonary, liver and kidney disease. Our canine and feline heartworm diagnostic tests use monoclonal antibodies or a recombinant heartworm antigen, respectively, to detect heartworm antigens or antibodies circulating in the blood of an infected animal.

We market and sell heartworm diagnostic tests for both canine and feline species. Solo Step® CH for dogs and Solo Step® FH for cats are available in point-of-care, single use formats that can be used by veterinarians on site. We obtain Solo Step® CH and Solo Step® FH from Quidel Corporation ("Quidel").

### ***Heartworm Preventive Products***

We have an agreement with Merck Animal Health, a unit of Merck & Co., Inc., granting Merck Animal Health the exclusive distribution and marketing rights for our canine heartworm prevention product, Tri-Heart® Plus Chewable Tablets, ultimately sold to or through veterinarians in the U.S. Tri-Heart Plus Chewable Tablets (ivermectin/pyrantel) are indicated for use as a monthly preventive treatment of canine heartworm infection and for treatment and control of ascarid and hookworm infections. We manufacture Tri-Heart Plus Chewable Tablets at our Des Moines, Iowa production facility.

### ***Allergy Products and Services***

Allergy is common in companion animals. Clinical symptoms of allergy are variable, but are often manifested as persistent and serious skin disease in dogs and cats. Clinical management of allergic disease is problematic, as there are a large number of allergens that may give rise to these conditions. Although skin testing is often regarded as the most accurate diagnostic procedure, such tests can be painful, subjective and inconvenient. The effectiveness of the immunotherapy that is prescribed to treat symptoms of allergic disease is inherently limited by inaccuracies in the diagnostic process.

We believe that our ALLERCEPT® Definitive Allergen Panels provide the most accurate determination of which we are aware of the specific allergens to which an animal, such as a dog, cat or horse, is reacting. The panels use a highly specific recombinant version of the natural IgE receptor to test the serum of potentially allergic animals for IgE directed against a panel of known allergens. A typical test panel consists primarily of various pollen, grass, mold, insect and mite allergens. The test results serve as the basis for prescription ALLERCEPT® Therapy Shots and ALLERCEPT® Therapy Drops. We operate veterinary laboratories in Loveland, Colorado and Fribourg, Switzerland which both offer blood testing using our ALLERCEPT® Definitive Allergen Panels.



We sell kits to conduct blood testing using our ALLERCEPT® Definitive Allergen Panels to third party veterinary diagnostic laboratories outside of the U.S. We also sell products to screen for the presence of allergen-specific IgE to these customers - we sell kits to conduct preliminary blood testing using products based on our ALLERCEPT® Definitive Allergen Panels. Animals testing positive for allergen-specific IgE using these screening tests are candidates for further evaluation using our ALLERCEPT® Definitive Allergen Panels.

Veterinarians who use our ALLERCEPT® Definitive Allergen Panels often purchase our ALLERCEPT® Therapy Shots or ALLERCEPT® Therapy Drops. These prescription immunotherapy treatment sets are formulated specifically for each allergic animal and contain only the allergens to which the animal has significant levels of IgE antibodies. The prescription formulations are administered in a series of subcutaneous injections (Shots) or by daily sublingual (under the tongue) administration (Drops), with doses increasing over several months, to ameliorate the allergic condition of the animal. Immunotherapy is generally continued for an extended time. We offer canine, feline and equine subcutaneous and sublingual immunotherapy treatment products. We believe our ALLERCEPT® Therapy Drops offer a convenient alternative to subcutaneous injection, thereby increasing the likelihood of pet owner compliance.

### **Other Vaccines and Pharmaceuticals Segment**

We developed a line of bovine vaccines that are licensed by the U.S. Department of Agriculture ("USDA"). Historically, the largest distributor of these vaccines was Agri Laboratories, Ltd. ("AgriLabs"), who sold these vaccines primarily under the Titanium® and MasterGuard® brands. In November 2013, AgriLabs assigned the long-term agreement with us related to these vaccines, and the agreement was assumed by Eli Lilly and Company ("Eli Lilly") operating through Elanco. In January 2015, we signed a long-term Master Supply Agreement related to these vaccines with Eli Lilly operating through Elanco, thereby terminating the AgriLabs agreement previously assumed by Eli Lilly in November 2013.

We manufacture biological and pharmaceutical products for a number of other animal health companies. We manufacture products for animals other than cattle including horses, pigs, chickens, cats and dogs. Our offerings range from providing complete turnkey services which include research, licensing, production, labeling and packaging of products to providing any one of these services as needed by our customers as well as validation support and distribution services.

### **Marketing, Sales and Customer Support**

We currently market our CCA products in the U.S. to veterinarians through an outside field organization, a telephone sales force and independent third-party distributors, as well as through trade shows, print advertising and through other distribution relationships, such as Merck Animal Health in the case of our heartworm preventive. As of December 31, 2019, our customer facing sales, installed base support and utilization organization consisted of 100 individuals in various parts of the U.S.

Veterinarians may obtain our products directly from us or indirectly through others. All of our CCA products ultimately are sold primarily to or through veterinarians. The acceptance of our products by veterinarians is critical to our success.

We have a staff dedicated to customer and product support in our CCA segment including veterinarians, technical support specialists and service technicians. Individuals from our product development group may also be used as a resource in responding to certain product inquiries.

Internationally, we market our CCA products to veterinarians primarily through third-party veterinary diagnostic laboratories and independent third party distributors but through our recent acquisitions of Optomed and CVM and organic effort in Australia, we have begun to market directly.

All OVP products are marketed and sold by third-parties under third-party labels.

We grant third parties rights to our intellectual property as well as our products, with our compensation often taking the form of royalties and/or milestone payments.

## **Manufacturing**

The majority of our revenue is from proprietary products manufactured by third parties. Third parties manufacture our veterinary instruments, including affiliated consumables and supplies, as well as other products including key components of our heartworm point-of-care diagnostic tests. We manufacture and supply Quidel with certain critical raw materials and perform the final packaging operations for these products.

Our facility in Des Moines, Iowa is a USDA, Food and Drug Administration ("FDA") and Drug Enforcement Agency ("DEA") licensed biological and pharmaceutical manufacturing facility. This facility currently has the capacity to manufacture more than 50 million doses of vaccine each year. We expect that we will, for the foreseeable future, manufacture most, or all of our pharmaceutical and biological products at this facility, as well as most, or all, of our recombinant proteins and other proprietary reagents for our diagnostic tests. We currently manufacture our canine heartworm prevention product, our allergy treatment products and all our OVP segment products at this facility. The OVP segment's customers purchase products in both finished and bulk format, and we perform all phases of manufacturing, including growth of the active bacterial and viral agents, sterile filling, lyophilization and packaging at this facility. We manufacture our various allergy products at our Des Moines facility, our Loveland facility and our Fribourg facility. We believe the raw materials for most of the products we manufacture are readily available from more than one source.

## **Product Development**

We are committed to providing innovative products to address the health needs of companion animals. We may obtain such products from external sources, external collaboration or internal research and development.

We are committed to identifying external product opportunities and creating business and technical collaborations that lead to high value veterinary products. We believe that our active participation in scientific networks and our reputation for investing in research enhances our ability to acquire external product opportunities. We have collaborated, and intend to continue to do so, with a number of companies and universities. Examples of such collaborations include:

- Quidel for the development of SOLO STEP CH Cassettes and SOLO STEP FH Cassettes;
- Mindray for the development of veterinary applications for the HT5 Veterinary Hematology Analyzer and associated reagents;
- FUJIFILM for the development of veterinary applications for the Element DC and Element DC5x Veterinary Chemistry Analyzers and associated slides and supplies;
- MBio Diagnostics for the development and manufacturing of the Immuno-assay Analyzer; and

- Collaborating with third-parties for the development and manufacturing of the Element UF urine and fecal analyzers.

Internal research and development is managed on a case-by-case basis. We employ individuals with expertise in various applicable areas and will form multidisciplinary product-associated teams as appropriate.

### **Intellectual Property**

We believe that patents, trademarks, copyrights and other proprietary rights represent opportunities to grow our business and maintain or enhance our competitive position. We also rely upon trade secrets, know-how, continuing technological innovations and licensing opportunities to develop and maintain our competitive position. The proprietary technologies of our OVP segment are primarily protected through trade secret protection of, for example, our manufacturing processes in this area.

We actively seek patent protection both in the U.S. and abroad. Our issued patent portfolios primarily relate to heartworm control, flea control, allergy, infectious disease vaccines, diagnostic and detection tests, immunomodulators, instrumentation, pain control and vaccine delivery technologies. As of December 31, 2019, we owned, co-owned or had rights to 18 issued U.S. patents expiring at various dates from January 2020 to April 2024 and had no pending U.S. patent applications. Our corresponding foreign patent portfolio as of December 31, 2019 included 16 issued patents in various foreign countries expiring at various dates from April 2020 to August 2024 and had no pending applications.

We also have obtained exclusive and non-exclusive licenses for numerous other patents held by academic institutions and for-profit companies.

### **Seasonality**

While we do not experience significant seasonal fluctuations in our sales throughout the year, we generally experience higher sales in the fourth quarter due to industry trade shows and other similar activity.

### **Government Regulation**

Although the majority of our revenue is from the sale of unregulated items, many of our products or products that we may develop are, or may be, subject to extensive regulation by governmental authorities in the U.S., including the USDA and the FDA and by similar agencies in other countries. These regulations govern, among other things, the development, testing, manufacturing, labeling, storage, pre-market approval, advertising, promotion, sale and distribution of our products. Satisfaction of these requirements can take several years to achieve and the time needed to satisfy them may vary substantially, based on the type, complexity and novelty of the product. Any product that we develop must receive all relevant regulatory approval or clearances, if required, before it may be marketed in a particular country. The following summarizes the major U.S. government agencies that regulate animal health products:

- *USDA*. Vaccines and certain single use, point-of-care diagnostics are considered veterinary biologics and are therefore regulated by the Center for Veterinary Biologics, or CVB, of the USDA. In contrast to vaccines, single use, point-of-care diagnostics can typically be licensed by the USDA in about two years, at considerably less cost. However, vaccines or diagnostics that use innovative materials, such as those resulting from recombinant DNA technology, usually require additional time to license. The USDA licensing process involves the submission of several data packages. These packages include information on how the product will be manufactured, information on the efficacy and safety of the product in laboratory and target animal studies and information on performance of the product in field conditions.

- *FDA.* Pharmaceutical products, which typically include synthetic compounds, are approved and monitored by the Center for Veterinary Medicine of the FDA. Under the Federal Food, Drug and Cosmetic Act, the same statutory standard for FDA approval applies to both human and animal drugs: demonstrated safety, efficacy and compliance with FDA manufacturing standards. However, unlike human drugs, neither preclinical studies nor a sequential phase system of studies are required. Rather, for animal drugs, studies for safety and efficacy may be conducted immediately in the species for which the drug is intended. Thus, there is no required phased evaluation of drug performance, and the Center for Veterinary Medicine will review data at appropriate times in the drug development process. The time and cost for developing companion animal drugs may be significantly less than for drugs for livestock animals, which generally have enhanced standards designed to ensure safety in the food chain.
- *EPA.* Products that are applied topically to animals or to premises to control external parasites are regulated by the Environmental Protection Agency, or EPA.

After we have received regulatory licensing or approval for our products, numerous regulatory requirements typically apply. Among the conditions for certain regulatory approvals is the requirement that our manufacturing facilities or those of our third-party manufacturers conform to current Good Manufacturing Practices or other manufacturing regulations, which include requirements relating to quality control and quality assurance as well as maintenance of records and documentation. The USDA, FDA and foreign regulatory authorities strictly enforce manufacturing regulatory requirements through periodic inspections and/or reports.

A number of our animal health products are not regulated. For example, certain products such as our ALLERCEPT panels are not regulated by either the USDA or FDA. Similarly, none of our veterinary instruments requires regulatory approval to be marketed and sold in the U.S.

We have pursued CE Marking for imaging equipment and regulatory approval outside the U.S. based on market demographics of foreign countries. For marketing outside the U.S., we are subject to foreign regulatory requirements governing regulatory licensing and approval for many of our products. Licensing and approval by comparable regulatory authorities of foreign countries must be obtained before we can market products in those countries. Product licensing approval processes and requirements vary from country to country and the time required for such approvals may differ substantially from that required in the U.S. We cannot be certain that approval of any of our products in one country will result in approvals in any other country.

To date, we or our distributors have sought regulatory approval for certain of our products from the Canadian Center for Veterinary Biologics, or CCVB (Canada); the Japanese Ministry of Agriculture, Forestry and Fisheries, or MAFF (Japan); the Australian Department of Agriculture, Fisheries and Forestry, or ADAFF (Australia); the Republic of South Africa Department of Agriculture, or RSADA (South Africa); the Agriculture, Fisheries and Conservation Department, or ADCD (Hong Kong); the Macau Animal Health Division of Animal Control and Inspection, or IACM (Macau); and from the relevant regulatory authorities in certain other countries requiring such approval.

CCA products previously discussed which have received regulatory approval in the U.S. and/or elsewhere are summarized below:

Products	Country	Regulated	Agency	Status
ALLERCEPT Allergy Treatment Sets	U.S.	Yes	USDA	Licensed
	Canada	Yes	CCVB	Licensed
SOLO STEP CH	U.S.	Yes	USDA	Licensed
	EU	No-in most countries	CCVB	
	Canada	Yes		Licensed
SOLO STEP FH	U.S.	Yes	USDA	Licensed
	Canada	Yes	CCVB	Licensed
TRI-HEART Plus Heartworm Preventive	U.S.	Yes	FDA	Licensed
	Hong Kong	Yes	AFCD	
	Macau	Yes	IACM	Licensed
				Licensed

### Customer Concentration

The information concerning our significant customers included in our Risk Factors section of this annual report under the caption “*The loss of significant customers who, for example, are historically large purchasers or who are considered leaders in their field could damage our business and financial results*” is incorporated herein by reference thereto.

### Competition

Our market is intensely competitive. Our competitors include independent animal health companies and major pharmaceutical companies that have animal health divisions. We also compete with independent, third party distributors, including distributors who sell products under their own private labels. In the Point of Care diagnostic testing market, our major competitors include IDEXX Laboratories, Inc. (“IDEXX”) and Zoetis Inc. (“Zoetis”). Idexx has a larger veterinary product and service offering than we do and a large sales infrastructure network and a well-established brand name. Zoetis also has a large sales infrastructure network.

The products manufactured by our OVP segment for sale by third parties compete with similar products offered by a number of other companies, some of which have substantially greater financial, technical, research and other resources than us and may have more established marketing, sales, distribution and service organizations than our OVP segment's customers. Companies with a significant presence in the animal health market such as Bayer AG, CEVA Santé Animale, Elanco, Merck, Sanofi, Vétoquinol S.A., Virbac S.A. and Zoetis may be marketing or developing products that compete with our products or would compete with them if successfully developed. These and other competitors and potential competitors may have substantially greater financial, technical, research and other resources and larger, more established marketing, sales, distribution and service organizations than we do. Our competitors may offer broader product lines and have greater name recognition than we do.

## Environmental Regulation

In connection with our product development activities and manufacturing of our biological, pharmaceutical, diagnostic and detection products, we are subject to federal, state and local laws, rules, regulations and policies governing the use, generation, manufacture, storage, handling and disposal of certain materials, biological specimens and wastes. Although we believe that we have complied with these laws, regulations and policies in all material respects and have not been required to take any significant action to correct any noncompliance, we may be required to incur significant costs to comply with environmental and health and safety regulations in the future. Although we believe that our safety procedures for handling and disposing of such materials comply with the standards prescribed by state and federal regulations, the risk of accidental contamination or injury from these materials cannot be eliminated. In the event of such an accident, we could be held liable for any damages that result and any such liability could exceed our resources.

## Employees

As of December 31, 2019, we and our subsidiaries employed 386 people.

## Where You Can Find Additional Information

Our principal executive offices are located at 3760 Rocky Mountain Avenue, Loveland, Colorado 80538. Our telephone number is 970-493-7272 and our Internet address is [www.heska.com](http://www.heska.com). References to our website in this Annual Report on Form 10-K are inactive textual references only and the content of our website should not be deemed incorporated by reference for any purpose.

Because we believe it provides useful information in a cost-effective manner to interested investors, we make available free of charge, via a link on our website, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practical after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (the "SEC").

In addition, you may also review and download a copy of this annual report on Form 10-K, including any exhibits and any schedules filed therewith, and our other periodic and current reports, proxy and information statements, and other information that we file with the SEC, without charge, by visiting the SEC's website (<http://www.sec.gov>).

## Information About Our Executive Officers

Our executive officers and their ages as of February 28, 2020 are as follows:

Name	Age	Position
Kevin S. Wilson	47	Chief Executive Officer and President
Catherine Grassman	44	Executive Vice President, Chief Financial Officer
Nancy Wisnewski, Ph.D.	57	Executive Vice President, Chief Operating Officer
Steven M. Eyl	54	Executive Vice President, Global Sales and Marketing
Jason D. Aroesty	45	Executive Vice President, International Diagnostics

*Kevin S. Wilson* was appointed President and Chief Executive Officer effective March 31, 2014. He previously served as our President and Chief Operating Officer from February 2013. Mr. Wilson became a member of our Board of Directors in May 2014. Mr. Wilson is a founder, member and officer of Cuattro,

LLC, an imaging diagnostic company. Since 2008, he has been involved in developing technologies for radiographic imaging with Cuattro, LLC and as a founder of Cuattro Software, LLC, Cuattro Medical, LLC and Cuattro Veterinary, LLC. Mr. Wilson served on the board of various private, non-profit and educational organizations from 2005 to 2011. He was a founder of Sound Technologies, Inc., a diagnostic imaging company, in 1996. After Sound Technologies, Inc. was sold to VCA Antech, Inc. in 2004, Mr. Wilson served as Chief Strategy Officer for VCA Antech, Inc. until 2006. Mr. Wilson attended Saddleback College.

*Catherine Grassman, CPA*, was appointed Executive Vice President, Chief Financial Officer on May 6, 2019. She previously served as Vice President and Chief Accounting Officer from December 2017 to May 2019 and as Corporate Controller from January 2017 to December 2017. Ms. Grassman has been a central figure in the Company's accounting and finance leadership. Prior to joining Heska, Ms. Grassman was Corporate Controller of KeyPoint Government Solutions, a mid-sized private-equity backed, background investigation services company. She also spent more than 15 years with PricewaterhouseCoopers, LLP as a senior manager in the audit practice. She is licensed in Colorado as a Certified Public Accountant and possesses a Master of Accountancy and a Bachelor of Business Administration from Stetson University.

*Nancy Wisniewski, Ph.D.* was appointed Executive Vice President, Chief Operating Officer in August 2019. She previously served as Executive Vice President, Diagnostic Operations and Product Development from September 2016 to August 2019, as Executive Vice President, Product Development and Customer Service from April 2011 to September 2016 and as Vice President, Product Development and Technical Customer Service from December 2006 to April 2011. From January 2006 to November 2006, Dr. Wisniewski was Vice President, Research and Development. Dr. Wisniewski held various positions in Heska's Research and Development organization between 1993 and 2005. She holds a Ph.D. in Parasitology/Biochemistry from the University of Notre Dame and a BS in Biology from Lafayette College.

*Steven M. Eyl* was appointed Executive Vice President, Global Sales and Marketing in September 2016. He previously served as our Executive Vice President, Commercial Operations from May 2013 to September 2016. Mr. Eyl was a principal of Eyl Business Services, a consulting firm, from January 2012 to May 2013. He was President of Sound Technologies, Inc. ("Sound") from 2000 to 2011, including after Sound's acquisition by VCA Antech, Inc. in 2004. Mr. Eyl has an extensive background in medical technology sales. He is a graduate of Indiana University.

*Jason D. Aroesty* was appointed Executive Vice President, International Diagnostics in April 2018. Mr. Aroesty worked more than 15 years in the In-Vitro Diagnostics industry, where he played key commercial leadership roles in the healthcare division at Siemens, a global imaging and laboratory diagnostics leader. Mr. Aroesty was based in Europe for more than 10 years, where he led multiple country organizations, eventually assuming European regional responsibilities. Prior to joining Heska, he was responsible for Global Sales, Marketing and Communications for Siemens Point of Care (2015-2018). Mr. Aroesty graduated with a BS degree from Syracuse University and an MBA degree from the University of Rochester's Simon School.

#### **Item 1A. Risk Factors**

Our future operating results may vary substantially from period to period due to a number of factors, many of which are beyond our control. The following discussion highlights some of these factors and the possible impact of these factors on future results of operations. The risks and uncertainties described below are not the only ones we face. Additional risks or uncertainties not presently known to us or that we deem to be currently immaterial also may impair our business operations. If any of the following factors actually occur, our business, financial condition or results of operations could be harmed. In that case, the price of our Public Common Stock could decline and investors in our Public Common Stock could experience losses on their investment.

## **Risks related to our business and industry**

***If the third parties that have substantial marketing rights for certain of our historical products, existing products or future products under development are not successful in marketing those products, then our sales and financial position may suffer.***

We are party to an agreement with Merck Animal Health, which grants Merck Animal Health exclusive distribution and marketing rights for our canine heartworm preventive product, TRI-HEART Plus Chewable Tablets, ultimately sold to or through veterinarians in the United States. In 2019, Merck failed to market, sell and support our heartworm preventive product, which resulted in depressed OVP segment annual revenue. Revenue from Merck & Co., Inc. ("Merck") entities, including Merck Animal Health, represented 1% of our 2019 revenue. Historically, a significant portion of our OVP segment's revenue has been generated from the sale of certain bovine vaccines, which have been sold primarily under the Titanium and MasterGuard brands. We have a supply agreement with Elanco for the production of these vaccines, which represented 8% of our 2019 revenue. Either of these marketing partners may not devote sufficient resources to marketing our products and our sales and financial position could suffer significantly as a result. Furthermore, there may be nothing to prevent these partners from pursuing alternative technologies, products or supply arrangements, including as part of mergers, acquisitions or divestitures. Third party marketing assistance may not be available in the future on reasonable terms, if at all. If the third parties with marketing rights for our products were to merge or go out of business, the sale and promotion of our products could be diminished.

***Our Chief Executive Officer has acknowledged outside business interests which may occupy a portion of his time.***

On November 26, 2018, Heska Imaging, LLC entered into a Purchase Agreement for Certain Assets with Cuattro, LLC, pursuant to which Heska Imaging, LLC purchased certain software and related assets and terminated its existing Amended and Restated Master License Agreement and Supply Agreement with Cuattro, LLC. Heska Imaging, LLC is required to make a good faith effort to transition to a new cloud provider in a timely way; however, Cuattro, LLC is required to provide services until that transition happens. As discussed below, Mr. Wilson has an interest in these agreements and any time and resources devoted to monitoring and overseeing this relationship may prevent us from deploying such time and resources on more productive matters.

Mr. Wilson's employment agreement with us acknowledges that Mr. Wilson has business interests in Cuattro, LLC, Cuattro Software, LLC and Cuattro Medical, LLC which may require a portion of his time, resources and attention during his working hours. If Mr. Wilson is distracted by these or other business interests, he may not contribute as much as he otherwise would have to enhancing our business, to the detriment of our shareholder value. Mr. Wilson is the spouse of Shawna M. Wilson ("Mrs. Wilson"). Mr. Wilson, Mrs. Wilson and trusts for their children and family own a majority interest in Cuattro Medical, LLC. In addition, including equity held by Mrs. Wilson and by trusts for the benefit of Mr. and Mrs. Wilson's children and family, Mr. Wilson also owns a 100% interest in Cuattro, LLC, the largest supplier to Heska Imaging, LLC, our wholly-owned subsidiary. Cuattro, LLC owns a 100% interest in Cuattro Software, LLC.

Cuattro, LLC charged Heska Imaging \$6.0 thousand, \$4.6 million, and \$17.7 million during 2019, 2018, and 2017, respectively, primarily related to digital imaging products, for which there was an underlying supply contract with minimum purchase obligations, software and services as well as other operating expenses. Heska Corporation charged Cuattro, LLC \$0, \$3.0 thousand, and \$0.1 million in the years ended December 31, 2019, 2018, and 2017, respectively, primarily related to facility usage and other services.



***We rely substantially on third party suppliers. The loss of products or delays in product availability from one or more third party suppliers could substantially harm our business.***

To be successful, we must contract for the supply of, or manufacture ourselves, current and future products of appropriate quantity, quality and cost. Such products must be available on a timely basis and be in compliance with any regulatory requirements. Similarly, we must provide ourselves, or contract for the supply of, certain services. Such services must be provided in a timely and appropriate manner. Failure to do any of the above could substantially harm our business.

We rely on third party suppliers to manufacture those products we do not manufacture ourselves and to provide services we do not provide ourselves. Proprietary products provided by these suppliers represent a majority of our revenue. We currently rely on these suppliers for our point of care laboratory instruments and consumable supplies for these instruments, for our imaging products and related software and services, for key components of our point-of-care diagnostic tests as well as for the manufacture of other products.

The loss of access to products from one or more suppliers could have a significant, negative impact on our business. Major suppliers that sell us proprietary products are FUJIFILM Corporation and Shenzhen Mindray Bio-Medical Electronics Co., Ltd. We often purchase products from our suppliers under agreements that are of limited duration or potentially can be terminated on an annual basis. In the case of our point of care laboratory instruments and our digital radiography solutions, post-termination, we are typically entitled to non-exclusive access to consumable supplies, or ongoing non-exclusive access to products and services to meet the needs of an existing customer base, respectively, for a defined period upon expiration of exclusive rights, which could subject us to competitive pressures in the period of non-exclusive access. There can be no assurance that our suppliers will meet their obligations under any agreements we may have in place with them or that we will be able to compel them to do so. Risks of relying on suppliers include:

- *Inability to meet minimum obligations.* Current agreements, or agreements we may negotiate in the future, may commit us to certain minimum purchase or other spending obligations. It is possible we will not be able to create the market demand to meet such obligations, which could create a drain on our financial resources and liquidity. Some agreements may require minimum purchases and/or sales to maintain product rights and we may be significantly harmed if we are unable to meet such requirements and lose product rights.
- *Loss of exclusivity.* In the case of our point of care laboratory instruments, if we are entitled to non-exclusive access to consumable supplies for a defined period upon expiration of exclusive rights, we may face increased competition from a third party with similar non-exclusive access or our former supplier, which could cause us to lose customers and/or significantly decrease our margins and could significantly affect our financial results. In addition, current agreements, or agreements we may negotiate in the future, with suppliers may require us to meet minimum annual sales levels to maintain our position as the exclusive distributor of these products. We may not meet these minimum sales levels and maintain exclusivity over the distribution and sale of these products. If we are not the exclusive distributor of these products, competition may increase significantly, reducing our revenues and/or decreasing our margins.
- *Changes in economics.* An underlying change in the economics with a supplier, such as a large price increase or new requirement of large minimum purchase amounts, could have a significant, adverse effect on our business, particularly if we are unable to identify and implement an alternative source of supply in a timely manner.
- *The loss of product rights upon expiration or termination of an existing agreement.* Unless we are able to find an alternate supply of a similar product, we would not be able to continue to offer our customers the same breadth of products and our sales and operating results would likely suffer. In the case of an instrument supplier, we could also potentially suffer the loss of sales of consumable supplies, which would

be significant in cases where we have built a significant installed base, further harming our sales prospects and opportunities. Even if we were able to find an alternate supply for a product to which we lost rights, we would likely face increased competition from the product whose rights we lost being marketed by a third party or the former supplier and it may take us additional time and expense to gain the necessary approvals and launch an alternative product.

- *High switching costs.* In our point of care laboratory instrument products, we could face significant competition and lose all or some of the consumable revenues from the installed base of those instruments if we were to switch to a competitive instrument. If we need to change to other commercial manufacturing contractors for certain of our regulated products, additional regulatory licenses or approvals generally must be obtained for these contractors prior to our use. This would require new testing and compliance inspections prior to sale, thus resulting in potential delays. Any new manufacturer would have to be educated in, or develop, substantially equivalent processes necessary for the production of our products. We likely would have to train our sales force, distribution network employees and customer support organization on the new product and spend significant funds marketing the new product to our customer base.
- *The involuntary or voluntary discontinuation of a product line.* Unless we are able to find an alternate supply of a similar product in this or similar circumstances with any product, we would not be able to continue to offer our customers the same breadth of products and our sales would likely suffer. Even if we are able to identify an alternate supply, it may take us additional time and expense to gain the necessary approvals and launch an alternative product, especially if the product is discontinued unexpectedly.
- *Inconsistent or inadequate quality control.* We may not be able to control or adequately monitor the quality of products we receive from our suppliers. Poor quality items could damage our reputation with our customers.
- *Limited capacity or ability to scale capacity.* If market demand for our products increases suddenly, our current suppliers might not be able to fulfill our commercial needs, which would require us to seek new manufacturing arrangements and may result in substantial delays in meeting market demand. If we consistently generate more demand for a product than a given supplier is capable of handling, it could lead to large backorders and potentially lost sales to competitive products that are readily available. This could require us to seek or fund new sources of supply, which may be difficult to find or may require terms that are less advantageous if available at all.
- *Regulatory risk.* Our manufacturing facility and those of some of our third party suppliers are subject to ongoing periodic unannounced inspection by regulatory authorities, including the FDA, USDA and other federal, state and foreign agencies for compliance with strictly enforced Good Manufacturing Practices, regulations and similar foreign standards. We do not have control over our suppliers' compliance with these regulations and standards. Regulatory violations could potentially lead to interruptions in supply that could cause us to lose sales to readily available competitive products. If one of our suppliers is unable to provide a raw material or finished product due to regulatory issues, it could have a material adverse financial impact on our business and could expose us to legal action if we are unable to perform on contracts to our customers involving related products.
- *Developmental delays.* We may experience delays in the scale-up quantities needed for product development that could delay regulatory submissions and commercialization of our products in development, causing us to miss key opportunities.
- *Limited geographic rights.* We typically do not have global geographic rights to products supplied by third parties. If we were to determine a market opportunity in a geography where we did not have distribution rights and were unable to obtain such rights from the supplier, it might hamper our ability to succeed in such geography and our sales and profits would be lower than they otherwise would have been.

- *Limited intellectual property rights.* We typically do not have intellectual property rights, or may have to share intellectual property rights, to the products supplied by third parties and any improvements to the manufacturing processes or new manufacturing processes for these products.
- *Changes to United States tariff and import/export regulations.* Changes to United States trade policies, treaties and tariffs could have a material adverse effect on global trade. These changes could result in increased costs of goods imported into the United States for the Company and our third party suppliers. Our third party suppliers may limit their trade with companies in the United States, including us.
- *Global human and animal health risk.* Several of our suppliers have operations in areas that may be susceptible to public health emergencies that could restrict global trade generally, and our access to consumables and product, specifically. The risk of infectious disease in humans and animals may limit trade and product access with third party suppliers with companies inside and outside the United States, including us. In particular, the use of animal bi-product may affect our consumable supply as a result of global animal health risks.

Potential problems with suppliers such as those discussed above could substantially decrease sales, lead to higher costs and/or damage our reputation with our customers due to factors such as poor quality goods or delays in order fulfillment, resulting in our being unable to sell our products effectively and substantially harming our business.

***We depend on key personnel for our future success. If we lose our key personnel or are unable to attract and retain additional personnel, we may be unable to achieve our goals.***

Our future success is substantially dependent on the efforts of our senior management and other key personnel, including our Chief Executive Officer (“CEO”) and President, Kevin Wilson. The loss of the services of members of our senior management or other key personnel may significantly delay or prevent the achievement of our business objectives. Although we have employment agreements with many of these individuals, all are at-will employees, which means that either the employee or Heska may terminate employment at any time without prior notice. If we lose the services of, or fail to recruit, key personnel, the growth of our business could be substantially impaired. We do not maintain key person life insurance for any of our senior management or key personnel.

***The loss of significant customers who, for example, are historically large purchasers or who are considered leaders in their field could damage our business and financial results.***

We are dependent upon a number of significant customers. In our CCA segment, revenue from Covetrus, Inc., formerly known as Henry Schein Animal Health (“Covetrus”), represented approximately 14%, 15% and 13% of our consolidated revenue for the years ended December 31, 2019, 2018 and 2017, respectively. Revenue from Merck entities, including Merck Animal Health, represented approximately 1%, 12% and 12% of our consolidated revenue for the years ended December 31, 2019, 2018 and 2017, respectively. In our OVP segment, revenue from Elanco represented approximately 8%, 9% and 11% of our consolidated revenue for the years ended December 31, 2019, 2018 and 2017, respectively. No other customer accounted for more than 10% of our consolidated revenue for the years ended December 31, 2019, 2018 or 2017.

Covetrus represented 19% and 12% of our consolidated accounts receivable at December 31, 2019 and 2018, respectively. Merck entities, including Merck Animal Health, represented approximately 1% and 10% of our consolidated accounts receivable at December 31, 2019 and 2018, respectively. Elanco represented approximately 4% and 32% of our consolidated accounts receivable at December 31, 2019 and 2018, respectively. No other customer accounted for more than 10% of our consolidated accounts receivable at December 31, 2019 or 2018. The loss of, or material reduction in business from, any of our significant customers could adversely affect our business and financial results.

***We operate in a highly competitive industry, which could render our products obsolete or substantially limit the volume of products that we sell. This would limit our ability to compete and maintain sustained profitability.***

The market in which we compete is intensely competitive. Our competitors include independent animal health companies and major pharmaceutical companies that have animal health divisions. We also compete with independent, third party distributors, including distributors that sell products under their own private labels. In the point-of-care diagnostic testing market, our major competitors include IDEXX Laboratories, Inc. and Zoetis Inc.. The products manufactured by our OVP segment for sale by third parties compete with similar products offered by a number of other companies, some of which have substantially greater financial, technical, research and other resources than us and may have more established marketing, sales, distribution and service organizations than those of our OVP segment customers. Competitors may have facilities with similar capabilities to our OVP segment, which they may operate and sell at a lower unit price to customers than our OVP segment does, which could cause us to lose customers. Companies with a significant presence in the companion animal health market, such as Bayer AG, CEVA Sante´ Animale, Elanco, Merck, Sanofi, V´etoquinol S.A. and Virbac S.A. may be marketing or developing products that compete with our products or would compete with them if developed. These and other competitors and potential competitors may have substantially greater financial, technical, research and other resources and larger, more established marketing, sales and service organizations than we do. For example, if Zoetis devotes its significant commercial and financial resources to growing its market share in the veterinary allergy market, our allergy-related sales could suffer significantly. Our competitors may offer broader product lines and have greater name recognition than we do. Our competitors may also develop or market technologies or products that are more effective or commercially attractive than our current or future products or that would render our technologies and products obsolete. Further, additional competition could come from new entrants to the animal health care market. Moreover, we may not have the financial resources, technical expertise or marketing, sales or support capabilities to compete successfully. Zoetis has recently launched allergy products which may diminish the competitiveness and sales prospects for our own allergy immunotherapy products. IDEXX has recently launched an SDMA test in its point of care laboratory chemistry line, which may cause veterinary customers to prefer IDEXX products to ours.

If we fail to compete successfully, our ability to achieve sustained profitability will be limited and sustained profitability, or profitability at all, may not be possible.

We benefit from relationships or collaboration with third parties, including but not limited to, companies, buying groups, veterinary hospital groups and reference laboratory entities that operate in our markets. Beneficial third party, semi-competitive, directly competitive and cooperative relationships that affect how we go to market, develop products, generate leads and other commercial efforts of Heska may be negatively affected as a result of consolidation, acquisition, merger, exclusive arrangement or other agreements or activities between and amongst those third parties and others.

***We often depend on third parties for products we intend to introduce in the future. If our current relationships and collaborations are not successful, we may not be able to introduce the products we intend to introduce in the future.***

We are often dependent on third parties and collaborative partners to successfully and timely perform research and development activities to successfully develop new products. We routinely discuss Heska marketing in the veterinary market instruments being developed by third parties for use in the human health care market. In the future, one or more of these third parties or collaborative partners may not complete research and development activities in a timely fashion, or at all. Even if these third parties are successful in

their research and development activities, we may not be able to come to an economic agreement with them. If these third parties or collaborative partners fail to complete research and development activities or fail to complete them in a timely fashion, or if we are unable to negotiate economic agreements with such third parties or collaborative partners, our ability to introduce new products will be impacted negatively and our revenues may decline.

***We may be unable to market and sell our products successfully.***

We may not develop and maintain marketing and/or sales capabilities successfully, and we may not be able to make arrangements with third parties to perform these activities on satisfactory terms, or at all. If our marketing and sales strategy is unsuccessful, our ability to sell our products will be negatively impacted and our revenues will decrease. This could result in the loss of distribution rights for products or failure to gain access to new products and could cause damage to our reputation and adversely affect our business and future prospects. The market for companion animal healthcare products is highly fragmented. Because our CCA proprietary products are generally available only to veterinarians or by prescription and our medical instruments require technical training to operate, we ultimately sell all our CCA products primarily to or through veterinarians. The acceptance of our products by veterinarians is critical to our success. Changes in our ability to obtain or maintain such acceptance or changes in veterinary medical practice could significantly decrease our anticipated sales. As the vast majority of cash flow to veterinarians ultimately is funded by pet owners without private insurance or government support, our business may be more susceptible to severe economic downturns than other health care businesses that rely less on individual consumers.

For our point of care laboratory blood diagnostics products, we primarily rely on contracts with our veterinary customers for their use of our owned equipment and our consumable supplies over a multiple year period. If veterinarians under these contracts experience a significant downturn in their business, they may not fulfill their use and financial obligations under these contracts. If veterinarians breach our contracts, and we are unable to collect on default payment provisions or otherwise enforce the terms of our contracts, our business will be adversely affected. If we have to litigate against customer(s) to enforce our contracts, our expenses may increase, our sales may decrease to those customers, and our reputation may suffer. If significant numbers of our customers under contracts for use of our equipment and consumable supplies do not renew their contracts, our business will be adversely affected.

We have entered into agreements with independent third party distributors, including Covetrus, who we anticipate will market and sell our products to a greater degree than in the recent past. Independent third party distributors may be effective in increasing sales of our products to veterinarians, although we would expect a corresponding lower gross margin as such distributors typically buy products from us at a discount to end user prices. It is possible new or existing independent third party distributors could cannibalize our direct sales efforts and lower our total gross margin. For us to be effective when working with an independent third party distributor, the distributor must agree to market and/or sell our products and we must provide proper economic incentives to the distributor as well as contend effectively for the time, energy and focus of the employees of such distributor given other products the distributor may be carrying, potentially including those of our competitors. If we fail to be effective with new or existing independent third party distributors, our financial performance may suffer.

A core component of our future growth strategy is international expansion. As we continue to expand our international footprint, we will be increasingly susceptible to the risks associated with international operations including, but not limited to, the following:

- uncertain political and economic climates, fluctuations in exchange rates that may increase the volatility of foreign-based revenue and expenses.

- burdens of complying with and unexpected changes in foreign laws, accounting and legal standards, regulatory requirements, taxes, tariffs and other barriers or trade restrictions.
- lack of experience in connection with the customs, cultures, languages and sales cycle.
- reduced or altered protection for intellectual property rights and data privacy laws in foreign countries, which require that data storage and processing be subject to laws different than the United States.

As a result of these and other factors, international expansion may be more difficult and not generate the results we anticipate, which could negatively impact our business.

***We may face costly legal disputes, including disputes related to our intellectual property or technology or that of our suppliers or collaborators.***

We may face legal disputes related to our business. Even if meritless, these disputes may require significant expenditures on our part and could entail a significant distraction to members of our management team or other key employees. For example, it took us until October 10, 2018, to reach an agreement in principle to settle the complaint that was filed against the Company by Shaun Fauley on March 12, 2015 in the United States District Court for the Northern District of Illinois alleging our transmittal of unauthorized faxes in violation of the federal Telephone Consumer Protection Act of 1991, as amended by the Junk Fax Prevention Act of 2005, as a class action (the “Fauley class action”). The settlement, which was approved by the court on February 28, 2019, required us, among other things, to pay \$6.75 million to class members, as well as to pay attorneys’ fees and expenses to legal counsel to the class, which we paid in full on April 3, 2019. Insurance coverage may not cover any costs required to litigate a legal dispute or an unfavorable ruling or settlement. We did not have insurance coverage for the settlement arrangement regarding the Fauley class action and had to borrow under our Credit Facility to fund the settlement. A legal dispute leading to an unfavorable ruling or settlement, whether or not insurance coverage may be available for any portion thereof, could have material adverse consequences on our business. Moreover, we may have to use legal means and incur affiliated costs to secure the benefits to which we are entitled under third party agreements, such as to collect payment for goods shipped to third parties, which would reduce our income as compared to what it otherwise would have been.

We may become subject to patent infringement claims and litigation in the United States or other countries or interference proceedings conducted in the United States Patent and Trademark Office, or USPTO, to determine the priority of inventions. The defense and prosecution of intellectual property suits, USPTO interference proceedings and related legal and administrative proceedings are likely to be costly, time-consuming and distracting. As is typical in our industry, from time to time we and our collaborators and suppliers have received, and may in the future receive, notices from third parties claiming infringement and invitations to take licenses under third-party patents. Any legal action against us or our collaborators or suppliers may require us or our collaborators or suppliers to obtain one or more licenses in order to market or manufacture affected products or services. We or our collaborators or suppliers may not, however, be able to obtain licenses for technology patented by others on commercially reasonable terms, or at all, or to develop alternative approaches to access or replace such technology if we or they are unable to obtain such licenses or if current and future licenses prove inadequate, any of which could substantially harm our business.

We may also need to pursue litigation to enforce any patents issued to us or our collaborative partners, to protect trade secrets or know-how owned by us or our collaborative partners, or to determine the enforceability, scope and validity of the proprietary rights of others. Any litigation or interference proceedings will likely result in substantial expense to us and significant diversion of the efforts of our technical and management personnel. Any adverse determination in litigation or interference proceedings could subject us to significant liabilities to third parties. Further, as a result of litigation or other proceedings,

we may be required to seek licenses from third parties which may not be available on commercially reasonable terms, or at all.

***Interpretation of existing legislation, regulations and rules, including financial accounting standards, or implementation of future legislation, regulations and rules could cause our costs to increase or could harm us in other ways.***

We prepare our financial statements in conformance with GAAP. These accounting principles are established by and are subject to interpretation by the SEC, the FASB and others which interpret and create accounting policies. A change in those policies or how those policies are interpreted can have a significant effect on our reported results and may affect our reporting of transactions completed before a change is made effective. Such changes may adversely affect our reported financial results and the way we conduct our business or have a negative impact on us if we fail to track such changes.

If our regulators and/or auditors adopt or interpret more stringent standards than we anticipate, we could experience unanticipated changes in our reported financial statements, including but not limited to restatements, which could adversely affect our business due to litigation and investor confidence in our financial statements. In addition, changes in the underlying circumstances to which we apply given accounting standards and principles may affect our results of operations and have a negative impact on us. For example, we review goodwill recognized on our consolidated balance sheets at least annually and if we were to conclude there was an impairment of goodwill, we would reduce the corresponding goodwill to its estimated fair value and recognize a corresponding expense in our statement of operations. This impairment and corresponding expense could be as large as the total amount of goodwill recognized on our consolidated balance sheets, which was \$36.2 million at December 31, 2019 and \$26.7 million at December 31, 2018. There can be no assurance that future goodwill impairments will not occur if projected financial results are not met, or otherwise.

The Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”) has increased our required administrative actions and expenses as a public company since its enactment. The general and administrative costs of complying with Sarbanes-Oxley will depend on how it is interpreted over time. Of particular concern are the level of standards for internal control evaluation and reporting adopted under Section 404 of Sarbanes-Oxley. If our regulators and/or auditors adopt or interpret more stringent standards than we anticipate, we and/or our auditors may be unable to conclude that our internal controls over financial reporting are designed and operating effectively, which could adversely affect investor confidence in our financial statements and cause our stock price to decline. Even if we and our auditors are able to conclude that our internal control over financial reporting is designed and operating effectively in such a circumstance, our general and administrative costs are likely to increase.

Similarly, we are required to comply with the SEC’s mandate to provide interactive data using the eXtensible Business Reporting Language as an exhibit to certain SEC filings. Compliance with this mandate has required a significant time investment, which has and may in the future preclude some of our employees from spending time on more productive matters. In addition, future legislative, regulatory or rule-making action or more stringent interpretations of existing legislation, regulations and rules may increase our general and administrative costs or have other adverse effects on us.

***We are currently evaluating, and we intend to pursue, acquisitions and other strategic development opportunities, which may not have desired results and could be detrimental to our financial position.***

We are in the process of completing our acquisition of scil. While we expect this acquisition to close by the end of the second quarter of 2020, certain issues may arise that prevent its completion. The scil acquisition is

subject to risks and uncertainties, including, but not limited to, uncertainties related to the closing of the acquisition, the ability to achieve the anticipated benefits of the acquisition, uncertainties related to supplier availability, competing suppliers, any product's ability to perform and be recognized as anticipated, in particular when such product is under development, uncertainties related to our ability to sell and market its products in an economically sustainable fashion, including related to varying customs, cultures, languages and sales cycles and uncertainties with foreign political and economic climates, and our ability to integrate the acquired scil business within our existing operations, and new product development and release schedules. We continue to evaluate, and we intend to pursue, acquisitions and other strategic development opportunities, including minority investments where strategic. The ultimate business and financial performance of these opportunities may not create, and may end up adversely affecting materially, the value we hope to enhance by pursuing them. Any acquisition may significantly underperform relative to our financial expectations and may serve to diminish rather than enhance shareholder value. We may also diminish our cash resources or dilute stockholders in order to finance any such acquisition or other strategic transaction.

The success of any acquisition will depend on, among other things, our ability to integrate assets and personnel acquired in these transactions and to apply our internal controls process to these acquired businesses. The integration of acquisitions is likely to require significant attention from our management, and the diversion of management's attention and resources could have a material adverse effect on our ability to manage our business. Furthermore, we may not realize the degree or timing of benefits we anticipated when we first entered into the acquisition transaction. If actual integration costs are higher than amounts originally anticipated, if we are unable to integrate the assets and personnel acquired in an acquisition as anticipated, or if we are unable to fully benefit from anticipated synergies, our business, financial condition, results of operations and cash flows could be materially adversely affected. Furthermore, it is possible we will use management time and resources to pursue opportunities we ultimately are unable or decide not to consummate, in which case, we may not be able to utilize such management time and resources on what may have proved to be more productive matters in other areas of our business.

***Obtaining and maintaining regulatory approvals in order to market our products may be costly and could delay the marketing and sales of our products. Failure to meet all regulatory requirements could cause significant losses from affected inventory and the loss of market share.***

Many of the products we develop, market or manufacture may subject us to extensive regulation by one or more of the USDA, the FDA, the EPA and foreign and other regulatory authorities. These regulations govern, among other things, the development, testing, manufacturing, labeling, storage, pre-market approval, advertising, promotion and sale of some of our products. Satisfaction of these requirements can take several years and time needed to satisfy them may vary substantially, based on the type, complexity and novelty of the product. The decision by a regulatory authority to regulate a currently non-regulated product or product area could significantly impact our revenue and have a corresponding adverse impact on our financial performance and position while we attempt to comply with the new regulation, if such compliance is possible at all.



The effect of government regulation may be to delay or to prevent marketing of our products for a considerable period of time and to impose costly procedures upon our activities. We may not be able to estimate the time to obtain required regulatory approvals accurately and such approvals may require significantly more time than we anticipate. We have experienced in the past, and may experience in the future, difficulties that could delay or prevent us from obtaining the regulatory approval or license necessary to introduce or market our products. Such delays in approval may cause us to forego a significant portion of a new product's sales in its first year due to seasonality and advanced booking periods associated with certain products. Regulatory approval of our products may also impose limitations on the indicated or intended uses for which our products may be marketed.

Difficulties in making established products to all regulatory specifications may lead to significant losses related to affected inventory as well as market share. Among the conditions for certain regulatory approvals is the requirement that our facilities and/or the facilities of our third party manufacturers conform to current Good Manufacturing Practices and other analogous or additional requirements. If any regulatory authority determines that our manufacturing facilities or those of our third party manufacturers do not conform to appropriate manufacturing requirements, we or the manufacturers of our products may be subject to sanctions, including, but not limited to, warning letters, manufacturing suspensions, product recalls or seizures, injunctions, refusal to permit products to be imported into or exported out of the United States, refusals of regulatory authorities to grant approval or to allow us to enter into government supply contracts, withdrawals of previously approved marketing applications, civil fines and criminal prosecutions. Furthermore, third parties may perceive procedures required to obtain regulatory approval objectionable and may attempt to disrupt or otherwise damage our business as a result. In addition, certain of our agreements may require us to pay penalties if we are unable to supply products, including for failure to maintain regulatory approvals.

Any of these events, alone or in combination with others, could significantly damage our business or results of operations.

***Our future revenues depend on successful product development, commercialization and/or market acceptance, any of which can be slower than we expect or may not occur.***

The product development and regulatory approval process for many of our potential products is extensive and may take substantially longer than we anticipate. Research projects may fail. New products that we may be developing for the veterinary marketplace may not perform consistently within our expectations. Because we have limited resources to devote to product development and commercialization, any delay in the development of one product or reallocation of resources to product development efforts that prove unsuccessful may delay or jeopardize the development of other product candidates. If we fail to successfully develop new products and bring them to market in a timely manner, our ability to generate additional revenue will decrease.

Even if we are successful in the development of a product or obtain rights to a product from a third party supplier, we may experience delays or shortfalls in commercialization and/or market acceptance of the product. For example, veterinarians may be slow to adopt a product, a product may not achieve the anticipated technical performance in field use or there may be delays in producing large volumes of a product. The former is particularly likely where there is no comparable product available or historical precedent for such a product. The ultimate adoption of a new product by veterinarians, the rate of such adoption and the extent veterinarians choose to integrate such a product into their practice are all important factors in the economic success of any new products and are factors that we do not control to a large extent. If our products do not achieve a significant level of market acceptance, demand for our products will not develop as expected and our revenues will be lower than we anticipate.

***Many of our expenses are fixed and if factors beyond our control cause our revenue to fluctuate, this fluctuation could cause greater than expected losses, cash flow and liquidity shortfalls.***

We believe that our future operating results will fluctuate on a quarterly basis due to a variety of factors which are generally beyond our control, including:

- supply of products, including minimum purchase agreements, from third party suppliers or termination, cancellation or expiration of such relationships;
- competition and pricing pressures from competitive products;
- the introduction of new products or services by our competitors or by us;
- large customers failing to purchase at historical levels;
- fundamental shifts in market demand;
- manufacturing delays;
- shipment problems;
- information technology problems, which may prevent us from conducting our business effectively, or at all, and may also raise our costs;
- regulatory and other delays in product development;
- product recalls or other issues which may raise our costs;
- changes in our reputation and/or market acceptance of our current or new products; and
- changes in the mix of products sold.

We have high operating expenses, including those related to personnel. Many of these expenses are fixed in the short term and may increase over time. If any of the factors listed above cause our revenues to decline, our operating results could be substantially harmed.

***Cyberattack related breaches of our information technology systems could have an adverse effect on our business.***

Cyberattacks are increasing in their frequency, sophistication and intensity, and have become increasingly difficult to detect and defend against, notwithstanding our ongoing evaluation of and improvements to the preventive measures we take on to reduce the risks associated with these threats based on our own experience and those observed in the broader market. Cyberattacks, ranging from the use of malware, computer viruses, dedicated denial of services attacks, credential harvesting, social engineering and other means for obtaining unauthorized access to our Company's confidential information or assets or disrupting our Company's ability to operate normally, could have a material adverse effect on our business. Cyberattacks may cause equipment failures, loss of information or assets, including sensitive personal information of third-party vendors, customers or employees, or valuable technical and marketing information, as well as disruptions to our or our vendor or customers' operations. These attacks may be committed by company employees or external actors operating in any geography, including jurisdictions where law enforcement measures to address such attacks are unavailable or ineffective. Cyberattacks may occur alone or in conjunction with physical attacks, especially where disruption of service is an objective of the attacker. The preventive actions we take on an ongoing basis to reduce the risks and mitigate the potential damages associated with cyberattacks, including protection of our systems, networks and assets and the retention of cybersecurity insurance policies, may be insufficient to repel or mitigate entirely the effects of a cyberattack.

We devote significant resources to network security, data encryption and other security measures to protect our systems and data, but these security measures cannot provide absolute security. To the extent we were to experience a breach of our systems and were unable to protect sensitive data in the wake of the breach, such a breach could materially damage business partner and customer relationships and reduce or otherwise

negatively impact access to online services. Moreover, if a computer security breach affects our systems or results in the unauthorized release of Personally Identifiable Information (“PII”), our reputation and brand could be materially damaged; use of our products and services could decrease, we could suffer from reputational harm impacting sales revenue, and we could be faced with unforeseen regulatory investigation, remediation and litigation costs. Our cybersecurity insurance policies may not cover the full extent, or any, of the potential financial harm that could be caused by a breach of our systems, including in respect of theft or possible damages claims that may be brought against us by our business partners and customers in respect of any such breach.

The frequently changing attack techniques, along with the increased volume and sophistication of the attacks, create additional potential for us to be adversely impacted by this activity. This impact could result in reputational, competitive, operational or other business harm as well as management distraction, financial losses and costs, and regulatory action.

***We may be unable to protect our stakeholders’ privacy or we may fail to comply with privacy laws.***

The protection of customer, employee, supplier and company data is critical and the regulatory environment surrounding information security, storage, use, processing, disclosure and privacy is demanding, with the frequent imposition of new and changing requirements. In addition, our customers, employees and suppliers expect that we will protect their personal information. Any actual or perceived significant breakdown, intrusion, interruption, cyberattack or corruption of customer, employee or supplier data or our failure to comply with federal, state, local and foreign privacy laws, including the European Union’s General Data Protection Regulation (“GDPR”) and the Health Insurance Portability and Accountability Act, could result in lost sales, remediation costs, and legal liability including severe penalties, regulatory action and reputational harm. GDPR became effective in 2018, for example, and requires companies to meet new and enhanced requirements regarding the handling of personal data, including its use, protection and the rights of data subjects to request correction or deletion of their personal data. Failure to meet GDPR requirements could result in penalties of up to 4% of worldwide revenue. Despite our efforts and investments in technology to secure our computer network, security could be compromised, confidential information could be misappropriated or system disruptions could occur. Failure to comply with the security requirements or rectify a security issue may result in fines and the imposition of restrictions on our ability to accept payment by credit or debit cards. In addition, the payment card industry (“PCI”) is controlled by a limited number of vendors that have the ability to impose changes in PCI’s fee structure and operational requirements on us without negotiation. Such changes in fees and operational requirements may result in our failure to comply with PCI security standards, as well as significant unanticipated expenses. Such failures could materially adversely affect our operating results and financial condition. Furthermore, we maintain cybersecurity insurance coverage at levels that we believe are appropriate for our business. The costs related to significant security breaches or disruptions, however, could be material and exceed the limits of the cybersecurity insurance we maintain against such risks. If the amounts of our insurance coverage are inadequate to satisfy any damages and losses in the event of a cybersecurity incident, we may have to expend significant resources to mitigate the impact of such an incident, and to develop and implement protections to prevent future incidents of this nature from occurring. Such financial exposure could have a material adverse effect on our business.

***We may not be able to continue to achieve sustained profitability or increase profitability on a quarterly or annual basis.***

Prior to 2005, we incurred net losses on an annual basis since our inception in 1988 and, as of December 31, 2019, we had an accumulated deficit of \$136.4 million. Relatively small differences in our performance metrics may cause us to generate an operating or net loss in future periods. Our ability to continue to be

profitable in future periods will depend, in part, on our ability to increase sales in our CCA segment, including maintaining and growing our installed base of instruments and related consumables, to maintain or increase gross margins and to limit the increase in our operating expenses to a reasonable level as well as avoid or effectively manage any unanticipated issues. We may not be able to generate, sustain or increase profitability on a quarterly or annual basis. If we cannot achieve or sustain profitability for an extended period, we may not be able to fund our expected cash needs, including the repayment of debt as it comes due, or continue our operations.

***We may face product returns and product liability litigation in excess of, or not covered by, our insurance coverage or indemnities and/or warranties from our suppliers. If we become subject to product liability claims resulting from defects in our products, we may fail to achieve market acceptance of our products and our sales could substantially decline.***

The testing, manufacturing and marketing of our current products as well as those currently under development entail an inherent risk of product liability claims and associated adverse publicity. Following the introduction of a product, adverse side effects may be discovered. Adverse publicity regarding such effects could affect sales of our other products for an indeterminate time period. To date, we have not experienced any material product liability claims, but any claim arising in the future could substantially harm our business. Potential product liability claims may exceed the amount of our insurance coverage or may be excluded from coverage under the terms of the policy. We may not be able to continue to obtain adequate insurance at a reasonable cost, if at all. In the event that we are held liable for a claim against which we are not indemnified or for damages exceeding the \$10 million limit of our insurance coverage or which results in significant adverse publicity against us, we may lose revenue, be required to make substantial payments which could exceed our financial capacity and/or lose or fail to achieve market acceptance.

***We may be held liable for the release of hazardous materials, which could result in extensive remediation costs or otherwise harm our business.***

Certain of our products and development programs produced at our Des Moines, Iowa facility involve the controlled use of hazardous and biohazardous materials, including chemicals and infectious disease agents. We cannot eliminate the risk of accidental contamination or injury from these materials. In the event of such an accident, we could be held liable for any fines, penalties, remediation costs or other damages that result. Our liability for the release of hazardous materials could exceed our resources, which could lead to a shutdown of our operations, significant remediation costs and potential legal liability. In addition, we may incur substantial costs to comply with environmental regulations if we choose to expand our manufacturing capacity.

#### **Risks related to our common stock**

***Our stock price has historically experienced high volatility, and could do so in the future, including experiencing a material price decline resulting from a large sale in a short period of time. This volatility could affect the value of our common stock.***

Should a relatively large stockholder decide to sell a large number of shares in a short period of time, it could lead to an excess supply of our shares available for sale and correspondingly result in a significant decline in our stock price.

The securities markets have experienced significant price and volume fluctuations and the market prices of securities of many small cap companies have in the past been, and can in the future be expected to be, especially volatile. During the twelve months ended December 31, 2019, the closing stock price of our common stock has ranged from a low of \$64.17 to a high of \$99.34, and the closing sale price of our common

stock on February 27, 2020 was \$97.54 per share. Fluctuations in the trading price or liquidity of our common stock may adversely affect our ability to raise capital through future equity financings. Factors that may have a significant impact on the market price and marketability of our common stock include:

- stock sales by large stockholders or by insiders;
- changes in the outlook for our business;
- our quarterly operating results, including as compared to expected revenue or earnings and in comparison to historical results;
- termination, cancellation or expiration of our third-party supplier relationships;
- announcements of technological innovations or new products by our competitors or by us;
- litigation;
- regulatory developments, including delays in product introductions;
- developments or disputes concerning patents or proprietary rights;
- availability of our revolving line of credit and compliance with debt covenants;
- releases of reports by securities analysts;
- economic and other external factors;
- issuances of equity or equity-linked securities by us; and
- general market conditions

In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted. If a securities class action suit is filed against us, it is likely we would incur substantial legal fees and our management's attention and resources would be diverted from operating our business in order to respond to the litigation.

On May 4, 2010, our stockholders approved an amendment (the "NOL Protective Amendment") to our Certificate of Incorporation. The NOL Protective Amendment places restrictions on the transfer of our common stock that could adversely affect our ability to use our domestic Federal Net Operating Loss carryforward ("NOL"). In particular, the NOL Protective Amendment prevents the transfer of shares without the approval of our board of directors if, as a consequence, an individual, entity or groups of individuals or entities would become a 5-percent holder under Section 382 of the Internal Revenue Code of 1986, as amended, and the related Treasury regulations, and also prevents any existing 5-percent holder from increasing his or her ownership position in the Company without the approval of our board of directors. Any transfer of shares in violation of the NOL Protective Amendment (a "Transfer Violation") shall be void ab initio under the our Certificate of Incorporation and our board of directors has procedures under our Certificate of Incorporation to remedy a Transfer Violation including requiring the shares causing such Transfer Violation to be sold and any profit resulting from such sale to be transferred to a charitable entity chosen by the Company's board of directors in specified circumstances. The NOL Protective Amendment could have an adverse impact on the value and trading liquidity of our stock if certain buyers who would otherwise have bid on or purchased our stock, including buyers who may not be comfortable owning stock with transfer restrictions, do not bid on or purchase our stock as a result of the NOL Protective Amendment. In addition, because some corporate takeovers occur through the acquirer's purchase, in the public market or otherwise, of sufficient shares to give it control of a company, any provision that restricts the transfer of shares can have the effect of preventing a takeover. The NOL Protective Amendment could discourage or otherwise prevent accumulations of substantial blocks of shares in which our stockholders might receive a substantial premium above market value and might tend to insulate management and the board of directors against the possibility of removal to a greater degree than had the NOL Protective Amendment not passed.

In February 2018, our board of directors granted a waiver to a non-affiliated stockholder to allow the purchase, subject to certain limitations, of up to 730,000 shares of our common stock without causing a Transfer Violation. This waiver can be withdrawn by our board of directors at any time, in which case the

non-affiliated stockholder is to only sell our stock until the non-affiliated stockholder ceases to be a Five Percent Shareholder (as defined in our Certificate of Incorporation). On August 7, 2019, our board of directors determined to waive the application of any NOL transfer restrictions contained in our Certificate of Incorporation with respect to the issuance and transfer of our 3.75% Convertible Senior Notes due 2026 (the "Notes"), any issuance of shares of the Company's common stock upon conversion of any of the Notes, and any subsequent and further transfer of any such common stock, to the extent such restrictions would otherwise have been applicable thereto. These waivers, and any similar waivers that our board of directors may grant in the future, may make it more likely that we have a "change of ownership" as defined under the provisions of Section 382 of the Internal Revenue Code of 1986, as amended, which could place a significant restriction on our ability to utilize our domestic Federal NOL in the future and materially adversely affect our results of operations. State net operating loss carryforwards may be similarly or more stringently limited. Any limitations on our ability to use our pre-change of ownership net operating losses to offset taxable income could potentially result in increased future tax liability to us.

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

The trading market for our common stock will likely be influenced by research and reports that securities or industry analysts publish about us or our business. In the event securities or industry analysts cover our company and one or more of these analysts downgrades our stock, lowers their price target, or publishes unfavorable or inaccurate research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

***We have not declared or paid any dividends on our common stock since 2012 and we do not anticipate paying any cash dividends in the foreseeable future.***

We have not declared or paid any dividends on our common stock since October 2012. We intend to retain any earnings to finance the operation and expansion of our business, and we do not anticipate paying any cash dividends in the future. As a result, investors in our common stock may only receive a return on their investment in our common stock if the market price of our common stock increases.

***We have fewer than 300 holders of record, which could allow us to terminate voluntarily the registration of our common stock with the SEC and after which we would no longer be eligible to maintain the listing of our common stock on The Nasdaq Capital Market. We may also be unable to otherwise maintain our listing on The Nasdaq Capital Market.***

We have fewer than 300 holders of record as of our latest information, a fact which could make us eligible to terminate voluntarily the registration of our common stock with the SEC and therefore suspend our reporting obligations with the SEC under the Exchange Act and become a non-reporting company. If we were to cease reporting with the SEC, we would no longer be eligible to maintain the listing of our common stock on The Nasdaq Capital Market, which we would expect to materially adversely affect the liquidity and market price for our common stock. The Nasdaq Capital Market has several additional quantitative and qualitative requirements companies must comply with to maintain this listing. While we believe we are currently in compliance with all Nasdaq requirements, there can be no assurance we will continue to meet Nasdaq listing requirements, that Nasdaq will interpret these requirements in the same manner we do if we believe we meet the requirements, or that Nasdaq will not change such requirements or add new requirements to include requirements we do not meet in the future.

If we were delisted from The Nasdaq Capital Market, our common stock may be considered a penny stock under the regulations of the SEC and would therefore be subject to rules that impose additional sales practice requirements on broker-dealers who sell our securities. The additional burdens imposed upon broker-dealers may discourage broker-dealers from effecting transactions in our common stock, which could severely limit market liquidity of the common stock and any stockholder's ability to sell our securities in the secondary market. This lack of liquidity would also likely make it more difficult for us to raise capital in the future.

***Provisions in our Certificate of Incorporation and bylaws and under Delaware law might discourage, delay or prevent a change of control of our company or changes in our management and, therefore, depress the trading price of our common stock.***

Our Certificate of Incorporation and bylaws contain provisions that could depress the trading price of our common stock by acting to discourage, delay or prevent a change of control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions:

- place restrictions on the transfer of our common stock that could adversely affect our ability to use our domestic NOL, which can have an effect of preventing a takeover;
- establish a classified board of directors through our 2020 annual meeting of stockholders so that not all members of our board of directors are elected at one time;
- provide that our board of directors may, without stockholder approval, issue shares of preferred stock with special voting or economic rights;
- prohibit stockholders from calling a special meeting of our stockholders;
- set forth supermajority requirements for amending certain provisions of our Certificate of Incorporation or our bylaws;
- provide that the board of directors is expressly authorized to make, alter or repeal our bylaws; and
- establish advance notice requirements for nominations for elections to our board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

Additionally, we are subject to Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any "interested" stockholder for a period of three years following the date on which the stockholder became an "interested" stockholder and which may discourage, delay, or prevent a change of control of our company.

Any provision of our Certificate of Incorporation, bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also negatively affect the price that some investors are willing to pay for our common stock.

#### **Risks related to the outstanding Notes**

***Servicing our debt will require a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.***

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the amounts payable under the Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and

our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

***We may not have the ability to raise the funds necessary to settle conversions of the Notes in cash or to repurchase the notes upon a fundamental change, and our future debt may contain, limitations on our ability to pay cash upon conversion or repurchase of the notes.***

Holders of the Notes will have the right to require us to repurchase their notes upon the occurrence of a fundamental change at a fundamental change repurchase price equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest, if any. In addition, upon conversion of the Notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the Notes being converted. However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of Notes surrendered therefor or Notes being converted. In addition, our ability to repurchase the Notes or to pay cash upon conversions of the Notes may be limited by law, by regulatory authority or by agreements governing our existing and future indebtedness. Our failure to repurchase Notes at a time when the repurchase is required by the indenture or to pay any cash payable on future conversions of the Notes as required by the indenture would constitute a default under the indenture. If a fundamental change occurs, or if the Notes are accelerated due to an event of default under the indenture, such events may lead to a default under agreements governing our future indebtedness. Any future indebtedness of ours may contain restrictions on our ability to pay cash upon conversion or repurchase of the Notes. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the Notes or make cash payments upon conversions thereof.

***The conditional conversion feature of the Notes, if triggered, may adversely affect our financial condition and operating results.***

In the event the conditional conversion feature of the Notes is triggered, holders of Notes will be entitled to convert the Notes at any time during specified periods at their option. If one or more holders elect to convert their Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share) or by electing an exchange process for the Notes and a designated financial institution delivers the applicable conversion consideration, we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders of Notes do not elect to convert their Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

***The accounting method for convertible debt securities that may be settled in cash, such as the Notes, could have a material effect on our reported financial results.***

Under Accounting Standards Codification 470-20, Debt with Conversion and Other Options (“ASC 470-20”), an entity must separately account for the liability and equity components of the convertible debt instruments (such as the Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer’s economic interest cost. The effect of ASC 470-20 on the accounting for the Notes is that the equity component is required to be included in the additional paid-in capital section of stockholders’ equity on our consolidated balance sheet at the issuance date and the value of the equity component would be treated as debt discount for purposes of accounting for the debt component of the Notes. As a result, we will be required to record a greater amount of non-cash interest expense as a result of the amortization of the discounted



carrying value of the Notes to their face amount over the term of the Notes. We will report lower net income (or larger net losses) in our financial results because ASC 470-20 will require interest to include both the amortization of the debt discount and the instrument's non-convertible coupon interest rate, which could adversely affect our reported or future financial results and the trading price of our common stock and the trading price of the Notes.

In addition, under certain circumstances, convertible debt instruments (such as the Notes) that may be settled entirely or partly in cash may be accounted for utilizing the treasury stock method, the effect of which is that the shares issuable upon conversion of such Notes are not included in the calculation of diluted earnings per share except to the extent that the conversion value of such Notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of common stock that would be necessary to settle such excess, if we elected to settle such excess in shares, are issued. We cannot be sure that the accounting standards in the future will continue to permit the use of the treasury stock method. If we are unable or otherwise elect not to use the treasury stock method in accounting for the shares issuable upon conversion of the Notes, then our diluted earnings per share could be adversely affected.

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

None.

#### **Item 2. Properties**

Our principal administrative and research and development activities are located in Loveland, Colorado. We lease approximately 60,000 square feet at a facility in Loveland, Colorado under an agreement that expires in 2023. Our principal production facility located in Des Moines, Iowa, consists of approximately 160,000 square feet of buildings on 34 acres of land, which we own. We also own a 169-acre farm used principally for testing products, located in Carlisle, Iowa. Our European facility in Fribourg, Switzerland has approximately 6,000 square feet leased under an agreement which expires in 2022. We also lease approximately 2,000 square feet at a facility in Nunawading, a suburb of Melbourne, Australia, with a base term that expires in January 2022. In November 2019, we acquired a 7,500 square foot facility on 4 acres of land in Les Ulis, France as part of the purchase agreement with Optomed. In December 2019, we entered into lease agreements for two warehouses in Tudela, Spain for the development of the business activities of the CVM companies. The warehouses are approximately 6,500 square feet and 4,000 square feet and are leased under agreements that both expire in November 2026.

#### **Item 3. Legal Proceedings**

From time to time, the Company may be involved in litigation relating to claims arising out of its operations. The Company records accruals for outstanding legal matters when it believes it is probable that a loss will be incurred, and the amount can be reasonably estimated.

As of December 31, 2019, we were not a party to any legal proceedings that are expected, individually or in the aggregate, to have a material adverse effect on our business, financial condition or operating results.

#### **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**

Our Public Common Stock is quoted on the Nasdaq Capital Market under the symbol "HSKA".

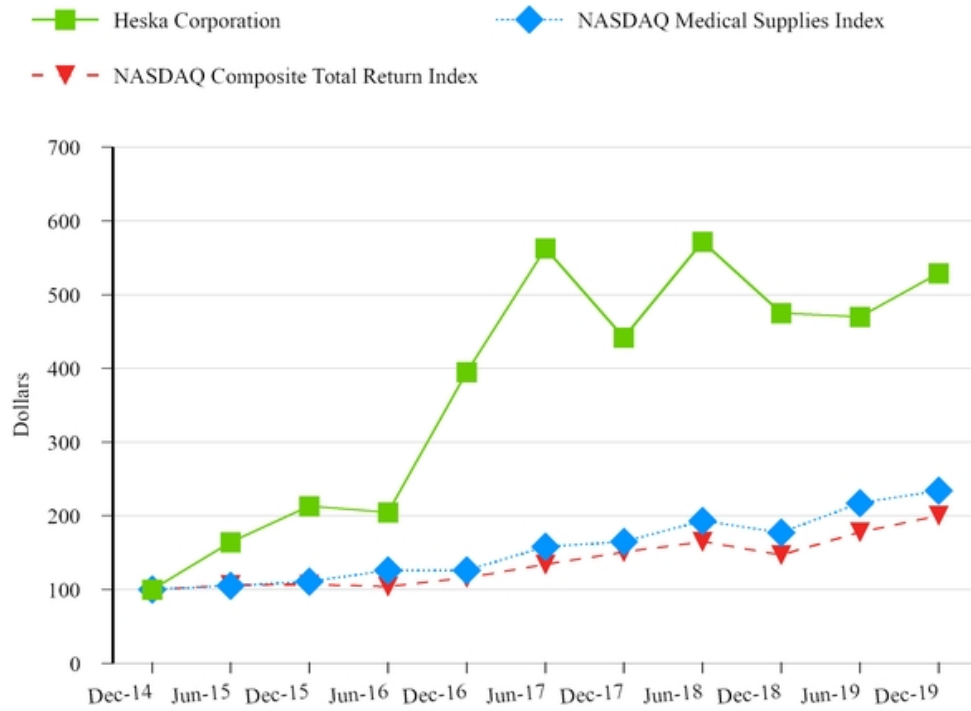
As of February 27, 2020, there were approximately 250 holders of record of our Public Common Stock, and approximately 4,000 beneficial stockholders. We do not anticipate any dividend payments in the foreseeable future.

#### **Issuer Purchases of Equity Securities**

There were no purchases of our outstanding Public Common Stock during the fourth quarter of our fiscal year ended December 31, 2019.

### STOCK PRICE PERFORMANCE GRAPH

The following graph provides a comparison over the five-year period ended December 31, 2019 of the cumulative total shareholder return from a \$100 investment in the Company's common stock with the NASDAQ Medical Supplies Index and the NASDAQ Composite Total Return:



	Dec-14	Dec-15	Dec-16	Dec-17	Dec-18	Dec-19
Heska Corporation	\$ 100	\$ 213	\$ 395	\$ 442	\$ 475	\$ 529
NASDAQ Medical Supplies Index	\$ 100	\$ 111	\$ 126	\$ 165	\$ 177	\$ 234
NASDAQ Composite Total Return Index	\$ 100	\$ 107	\$ 116	\$ 151	\$ 147	\$ 200

**Item 6. Selected Financial Data**

The selected consolidated statements of income and consolidated balance sheets data have been derived from our consolidated financial statements. The information set forth below is not necessarily indicative of the results of future operations and should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the Consolidated Financial Statements and related Notes included as Items 7 and 8, respectively, in this Form 10-K.

	2019	2018	2017	2016	2015
<b>(In thousands, except per share data)</b>					
<b>Consolidated Statements of Income Data:</b>					
Revenue, net	\$ 122,661	\$ 127,446	\$ 129,341	\$ 130,083	\$ 104,597
Net (loss) income attributable to Heska Corporation	\$ (1,465)	\$ 5,850	\$ 9,953	\$ 10,508	\$ 5,239
<b>(Loss) earnings per share attributable to Heska Corporation:</b>					
Basic (loss) earnings per share attributable to Heska Corporation	\$ (0.20)	\$ 0.81	\$ 1.42	\$ 1.55	\$ 0.80
Diluted (loss) earnings per share attributable to Heska Corporation	\$ (0.20)	\$ 0.74	\$ 1.30	\$ 1.43	\$ 0.74
Basic weighted-average common shares outstanding	7,446	7,220	7,026	6,783	6,509
Diluted weighted-average common shares outstanding	7,446	7,856	7,642	7,361	7,074
<b>Consolidated Balance Sheets Data:</b>					
Total assets	\$ 244,424	\$ 156,452	\$ 135,444	\$ 130,844	\$ 109,719
Long-term obligations and redeemable preferred stock	\$ 50,882	\$ 6,031	\$ 6,000	\$ —	\$ —
<b>Cash dividends declared per share:</b>	\$ —	\$ —	\$ —	\$ —	\$ —

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with "Selected Financial Data" and the Consolidated Financial Statements and related Notes included in Items 6 and 8, respectively, of this Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Such statements, which include statements concerning future revenue sources and concentration, gross profit margins, selling and marketing expenses, research and development expenses, general and administrative expenses, capital resources, additional financings or borrowings and additional losses, are subject to risks and uncertainties, including, but not limited to, those discussed below and elsewhere in this Form 10-K, particularly in Item 1A. "Risk Factors," that could cause actual results to differ materially from those projected. The forward-looking statements set forth in this Form 10-K are as of the close of business on February 27, 2020, and we undertake no duty and do not intend to update this information, except as required by applicable securities laws.

### **Overview**

We sell advanced veterinary diagnostic and specialty products. Our offerings include Point of Care laboratory instruments and consumables; Point of Care digital imaging diagnostic instruments; vaccines; local and cloud-based data services; allergy testing and immunotherapy; and single-use offerings such as in-clinic diagnostic tests and heartworm preventive products. Our core focus is on supporting veterinarians in the canine and feline healthcare space.

Our business is composed of two reportable segments, CCA and OVP. The CCA segment includes, primarily for canine and feline use, Point of Care laboratory instruments and consumables; digital imaging diagnostic instruments, software and services; local and cloud-based data services; allergy testing and immunotherapy; and single use offerings such as in-clinic diagnostic tests and heartworm preventive products. The OVP segment includes private label vaccine and pharmaceutical production, primarily for cattle but also for other species including equine, porcine, avian, feline and canine. OVP products are sold by third parties under third party labels.

CCA represented approximately 87% of our 2019 revenue. OVP represented approximately 13% of our 2019 revenue.

### **CCA Segment**

Revenue from Point of Care laboratory including instruments, consumables and other revenue such as service represented \$67.1 million, \$57.4 million and \$54.9 million of our 2019, 2018 and 2017 revenue, respectively. Revenue in this area primarily involves placing an instrument under contract in the field and generating future revenue from testing consumables, such as cartridges and reagents, as that instrument is used. Approximately \$53.6 million, \$44.8 million and \$39.2 million of our 2019, 2018 and 2017 revenue, respectively, resulted from the sale of such testing consumables to an installed base of instruments. Approximately \$12.1 million, \$10.8 million and \$13.8 million of our 2019, 2018 and 2017 revenue, respectively, was from instrument sales, including revenue recognized from sales-type lease treatment. Included in instrument sales are sales of infusion pumps, which are sold outright through distribution. Sales of infusion pumps were \$3.0 million, \$2.7 million, and \$4.0 million for 2019, 2018 and 2017, respectively. Approximately \$1.4 million, \$1.8 million and \$1.9 million of our 2019, 2018 and 2017 revenue, respectively, was from other revenue sources, such as charges for repairs. Instruments placed under subscription agreements are considered operating or sales-type leases, depending on the duration and other factors of the underlying agreement. A loss of, or disruption in, the supply of consumables we are selling to an installed base of instruments could substantially harm our business. All of our Point of Care laboratory and other non-imaging instruments and consumables are supplied by third parties, who typically own the product rights and

supply the product to us under marketing and/or distribution agreements. In many cases, we have collaborated with a third party to adapt a human instrument for veterinary use. Major products in this area include our instruments for chemistry, hematology, blood gas and immunodiagnostic testing and their affiliated operating consumables.

Point of Care digital imaging hardware, software and services represented approximately \$25.7 million, \$22.8 million and \$21.9 million of 2019, 2018 and 2017 revenue, respectively. Digital radiography is the largest product offering in this area, which also includes ultrasound instruments. Digital radiography solutions typically consist of a combination of hardware and software placed with a customer, often combined with an ongoing service and support contract. We sell our imaging solutions both in the U.S. and internationally. Our experience has been that most of the revenue is generated at the time of sale in this area, in contrast to the Point of Care diagnostics laboratory placements discussed above where ongoing consumable revenue is often a larger component of economic value as a given instrument is used.

Other CCA revenue, including single use diagnostic and other tests, pharmaceuticals and biologicals, as well as research and development, licensing and royalty revenue, represented \$13.8 million, \$28.7 million and \$28.4 million of our 2019, 2018 and 2017 revenue, respectively. Since items in this area are often single use by their nature, our typical aim is to build customer satisfaction and loyalty for each product, generate repeat annual sales from existing customers and expand our customer base in the future. Products in this area are both supplied by third parties and provided by us. Major products and services in this area include heartworm diagnostic tests and preventives, and allergy test kits, allergy immunotherapy and testing. Of our annual revenue, heartworm produced primarily for private-label accounted for approximately \$1.7 million in 2019 and \$16.8 million in both 2018 and 2017, respectively. The decrease in Other CCA revenue in 2019 was driven primarily by a \$14.9 million decrease from contract manufactured heartworm preventive, Tri-Heart, as a result of reduced customer demand.

We consider the CCA segment to be our core business and devote most of our management time and other resources to improving the prospects for this segment. Maintaining a continuing, reliable and economic supply of products we currently obtain from third parties is critical to our success in this area. Virtually all of our sales and marketing expenses occur in the CCA segment. The majority of our research and development spending is dedicated to this segment as well.

All of our CCA products are ultimately sold primarily to or through veterinarians. In many cases, veterinarians will mark up their costs to their customer. The acceptance of our products by veterinarians is critical to our success. CCA products are sold directly to end users by us as well as through distribution relationships, such as the sale of kits to conduct blood testing to third-party veterinary diagnostic laboratories and independent third-party distributors. Revenue from direct sales and distribution relationships represented approximately 74% and 26%, respectively, of CCA 2019 revenue, 57% and 43%, respectively, of CCA 2018 revenue and 58% and 42%, respectively, of CCA 2017 revenue.

#### ***OVP Segment***

The OVP segment includes our approximately 160,000 square foot USDA and FDA licensed production facility in Des Moines, Iowa. We view this facility as an asset which could allow us to control our cost of goods on any pharmaceuticals and vaccines that we may commercialize in the future. We have increased integration of this facility with our operations elsewhere. For example, virtually all our U.S. inventory, excluding our imaging products, is now stored at this facility and related fulfillment logistics are managed there. CCA segment products manufactured at this facility are transferred at cost and are not recorded as revenue for our OVP segment.

Historically, a significant portion of our OVP segment's revenue has been generated from the sale of certain bovine vaccines, which have been sold primarily under the Titanium® and MasterGuard® brands. We have an agreement with Elanco for the production of these vaccines (the "Elanco Agreement"). Our OVP segment also produces vaccines and pharmaceuticals for other third parties.

### **Critical Accounting Estimates**

The discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We evaluate our estimates on an ongoing basis. We base our estimates on historical experience and on various assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates. "Part II, Item 8. Note 1. Summary of Significant Accounting Policies" to the consolidated financial statements included in this Annual Report on Form 10-K describes the significant accounting policies used in preparation of these consolidated financial statements. We believe the following critical accounting estimates and assumptions may have a material impact on reported financial condition and operating performance and involve significant levels of judgment to account for highly uncertain matters or are susceptible to significant change.

### **Revenue Recognition**

Effective January 1, 2018, we adopted FASB Accounting Standards Codification ("ASC") Topic 606, *Revenue from Contracts with Customers* (the "New Revenue Standard"), using the modified retrospective method for all contracts not completed as of the date of adoption. Under the New Revenue Standard, revenue is recognized when, or as, performance obligations under the terms of a contract are satisfied, which occurs when control of the promised products or services is transferred to a customer. We exclude sales, use, value-added, and other taxes we collect on behalf of third parties from revenue. Revenue is measured as the amount of consideration we expect to receive in exchange for transferring products or services to a customer. To meet the requirements of the New Revenue Standard and accurately present the consideration received in exchange for promised products or services, we applied the prescribed five-step model outlined below:

1. Identification of a contract or agreement with a customer
2. Identification of our performance obligations in the contract or agreement
3. Determination of the transaction price
4. Allocation of the transaction price to the performance obligations
5. Recognition of revenue when, or as, we satisfy a performance obligation

See "Part II. Item 8. Financial Statements and Supplementary Data, Note 2. Revenue Recognition" to the consolidated financial statements for the year ended December 31, 2019, included in this Annual Report on Form 10-K for additional information about our revenue recognition policy and criteria for recognizing revenue.

Application of the various accounting principles in GAAP related to the measurement and recognition of revenue requires us to make judgments and estimates. Specifically, our subscription arrangements related to our Point of Care laboratory products provide our customers the right to use our instruments upon entering into multi-year agreements to purchase a minimum amount of consumables. These types of agreements include an embedded lease, designated as either an operating-type lease ("OTL") or a sales-type lease ("STL"), dependent upon individual contract terms, most often relating to the term of the contract relative to the life of the underlying instruments being placed under that contract. The determination of the amounts

allocated to each component of the contract are based upon fair value. Changes in fair value in any period of the underlying components will impact that amount of revenue recognized.

#### **Allowance for Doubtful Accounts**

We maintain an allowance for doubtful accounts receivable based on client-specific allowances, as well as a general allowance. Specific allowances are maintained for clients which are determined to have a high degree of collectability risk based on such factors, among others, as: (i) the aging of the accounts receivable balance; (ii) the client's past payment history; and (iii) a deterioration in the client's financial condition, evidenced by weak financial condition and/or continued poor operating results, reduced credit ratings and/or a bankruptcy filing. In addition to the specific allowance, the Company maintains a general allowance for credit risk in its accounts receivable which is not covered by a specific allowance. The general allowance is established based on such factors, among others, as: (i) the total balance of the outstanding accounts receivable, including considerations of the aging categories of those accounts receivable; (ii) past history of uncollectable accounts receivable write-offs; and (iii) the overall creditworthiness of the client base. A considerable amount of judgment is required in assessing the realizability of accounts receivable. Should any of the factors considered in determining the adequacy of the overall allowance change, an adjustment to the provision for doubtful accounts receivable may be necessary.

#### **Inventory Valuation**

We write down the carrying value of inventory for estimated obsolescence by an amount equal to the difference between the cost of inventory and the estimated market value when warranted based on assumptions of future demand, market conditions, remaining shelf life or product functionality. If actual market conditions or results of estimated functionality are less favorable than those we estimated, additional inventory write-downs may be required, which would have a negative effect on results of operations. The inventory allowance was \$1.3 million and \$1.6 million as of December 31, 2019 and 2018, respectively.

#### **Deferred Tax Assets – Valuation Allowance**

We evaluate our ability to realize the tax benefits associated with a deferred tax asset (“DTA”) by analyzing our forecasted taxable income using both historical and projected future operating results, the reversal of existing temporary differences, taxable income in prior carry back years (if permitted) and the availability of tax planning strategies. A valuation allowance is required to be established unless management determines that it is more likely than not that we will ultimately realize the tax benefit associated with a deferred tax asset. As of December 31, 2019 and 2018, we had valuation allowances of approximately \$5.7 million and \$10.2 million, respectively. The change in the valuation allowance resulted from the expiration of deferred tax assets which were offset with a valuation allowance at December 31, 2018. See "Part II. Item 8. Financial Statements and Supplementary Data, Note 5. Income Taxes" to the consolidated financial statements for additional information regarding our income taxes.

#### **Business Combinations**

We account for transactions that represent business combinations under the acquisition method of accounting, which requires us to allocate the total consideration paid for each acquisition to the assets we acquire and liabilities we assume based on their fair values as of the date of acquisition, including identifiable intangible assets. The allocation of the purchase price utilizes significant estimates in determining the fair values of identifiable assets acquired and liabilities assumed, especially with respect to intangible assets. We may refine our estimates and make adjustments to the assets acquired and liabilities assumed over a measurement period, not to exceed one year.



## Valuation of Goodwill and Intangibles

We assess goodwill for impairment annually, at the reporting unit level, in the fourth quarter and whenever events or circumstances indicate impairment may exist. In evaluating goodwill for impairment, we have the option to first assess the qualitative factors to determine whether it is more-likely-than-not that the estimated fair value of the reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the comparison of the estimated fair value of the reporting unit to the carrying value. The more-likely-than-not threshold is defined as having a likelihood of more than 50 percent. If, after assessing the totality of events or circumstances, we determine that it is more-likely-than-not that the estimated fair value of a reporting unit is less than its carrying amount, we would then estimate the fair value of the reporting unit and compare it to the carrying value. If the carrying value exceeds the estimated fair value we would recognize an impairment for the difference; otherwise, no further impairment test would be required. In contrast, we can opt to bypass the qualitative assessment for any reporting unit in any period and proceed directly to quantitative analysis. Doing so does not preclude us from performing the qualitative assessment in any subsequent period.

We performed qualitative assessments in the fourth quarters of 2019, 2018 and 2017 and determined that no indications of impairment existed.

We assess the realizability of intangible assets other than goodwill whenever events or changes in circumstances indicate that the carrying value may not be recoverable. If an impairment review is triggered, we evaluate the carrying value of intangible assets based on estimated undiscounted future cash flows over the remaining useful life of the primary asset of the asset group and compare that value to the carrying value of the asset group. The cash flows that are used contain our best estimates, using appropriate and customary assumptions and projections at the time. If the net carrying value of an intangible asset exceeds the related estimated undiscounted future cash flows, an impairment to adjust the intangible asset to its fair value would be reported as a non-cash charge to earnings. If necessary, we would calculate the fair value of an intangible asset using the present value of the estimated future cash flows to be generated by the intangible asset, and applying a risk-adjusted discount rate. We had no impairments of our intangible assets during the years ended December 31, 2019, 2018 and 2017.

These valuations require the use of management's assumptions, which would not reflect unanticipated events and circumstances that may occur.

## Share-Based Compensation Expense

We utilize share-based compensation arrangements as part of our long-term incentive plan. Under these incentive arrangements, we currently issue restricted stock awards, both tied to time vesting or performance and time vesting to employees and directors. We also issue stock options awards to employees. All significant inputs into the determination of expense as well as the related expense are discussed further in "Part II. Item 8. Financial Statements and Supplementary Data, Note 12. Capital Stock".

### *Restricted Stock Awards (Time Vesting)*

The fair value of restricted stock awards with only time-based vesting terms used in our expense recognition method is measured based on the number of shares granted and the closing market price of our common stock on the date of grant. Such value is recognized as an expense over the corresponding requisite service period. Forfeitures are accounted for as they occur.

### *Restricted Stock Awards (Performance Vesting)*

We also grant restricted stock awards subject to performance vesting criteria, in addition to service to our executive officers and other key employees. This type of grant consists of the right to receive shares of common stock, subject to achievement of time-based criteria and certain company and market performance-related goals over a specified period, as established by the Compensation Committee of our Board of Directors. We recognize any related share-based compensation expense ratably over the service period based on the probability assessment on the outcome of the performance condition related to company performance metrics. The fair value used in our expense recognition method is measured based on the number of shares granted and the closing market price of our common stock on the date of grant. The amount of share-based compensation expense recognized in any one period can vary based on the attainment or expected attainment of the performance goals. If such performance goals are not ultimately met, no compensation expense is recognized and any previously recognized compensation expense is reversed. We recognize any related share-based compensation expense ratably over the service period based on the most probable outcome of the performance condition related to market performance metrics. The fair value used in our expense recognition method is measured based on the number of shares granted, and a Monte Carlo simulation model, which incorporates the probability of the achievement of the market-related performance goals as part of the grant date fair value. If such performance goals are not ultimately met, the expense is not reversed.

As of December 31, 2019, we reviewed each of the underlying corporate performance targets and determined that approximately 219,000 shares of common stock were related to corporate performance targets in which we did not deem achievement probable. No compensation expense had been recorded at any period prior to December 31, 2019. The unrecognized compensation cost associated with the restricted stock awards not deemed probable, based on grant date fair value, is approximately \$17.8 million. Any change in the probability determination could accelerate the recognition of this expense.

### **Recent Accounting Pronouncements**

In addition to the impacts from new accounting pronouncements included above, see "Part II. Item 8. Financial Statements and Supplementary Data, Note 1. Summary of Significant Accounting Policies" to the consolidated financial statements for the year ended December 31, 2019, included in this Annual Report on Form 10-K for a complete discussion of recent accounting pronouncements adopted and not adopted.

## Results of Operations

Our analysis presented below is organized to provide the information we believe will facilitate an understanding of our historical performance and relevant trends going forward. This discussion should be read in conjunction with our consolidated financial statements, including the notes thereto, in Item 8 of this annual report on Form 10-K.

The following table sets forth, for the periods indicated, certain data derived from our Consolidated Statements of Income (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Revenue	\$ 122,661	\$ 127,446	\$ 129,341
Gross profit	54,449	56,638	58,261
Operating expenses	54,122	52,844	40,042
Operating income	327	3,794	18,219
Interest and other expense (income), net	2,910	(13)	(150)
(Loss) income before income taxes and equity in losses of unconsolidated affiliates	(2,583)	3,807	18,369
Income tax (benefit) expense	(1,446)	(2,115)	8,913
Net (loss) income before equity in losses of unconsolidated affiliates	(1,137)	5,922	9,456
Equity in losses of unconsolidated affiliates	(594)	(72)	—
Net (loss) income, after equity in losses of unconsolidated affiliates	(1,731)	5,850	9,456
Net (loss) income attributable to non-controlling interest	(266)	—	(497)
Net (loss) income attributable to Heska Corporation	\$ (1,465)	\$ 5,850	\$ 9,953

The following tables set forth, for the periods indicated, segment data derived from our Consolidated Statements of Income (in thousands):

### CCA Segment

	Year Ended December 31,			Change			
	2019	2018	2017	Dollar Change	% Change	Dollar Change	% Change
Point of Care Laboratory:	\$ 67,132	\$ 57,375	\$ 54,855	\$ 9,757	17%	\$ 2,520	5%
<i>Consumables</i>	53,590	44,771	39,161	8,819	20%	5,610	14%
<i>Instruments</i>	12,137	10,810	13,773	1,327	12%	(2,963)	(22)%
<i>Other</i>	1,405	1,794	1,921	(389)	(22)%	(127)	(7)%
Point of Care Imaging	25,652	22,832	21,907	2,820	12%	925	4%
Other CCA Revenue	13,786	28,717	28,429	(14,931)	(52)%	288	1%
Total CCA Revenue	\$ 106,570	\$ 108,924	\$ 105,191	\$ (2,354)	(2)%	\$ 3,733	4%
Percent of Total Revenue	86.9%	85.5%	81.3%				
Cost of Revenue	52,923	56,326	54,509	(3,403)	(6)%	1,817	3%
Gross Profit	53,647	52,598	50,682	1,049	2%	1,916	4%
Operating Income	\$ 1,358	\$ 2,040	\$ 12,656	\$ (682)	(33)%	\$ (10,616)	(84)%

## OVP Segment

	Year Ended December 31,			Change			
	2019	2018	2017	Dollar Change	% Change	Dollar Change	% Change
Revenue	\$ 16,091	\$ 18,522	\$ 24,150	\$ (2,431)	(13)%	\$ (5,628)	(23)%
Percent of Total Revenue	13.1%	14.5%	18.7%				
Cost of Revenue	15,289	14,482	16,570	807	6%	(2,088)	(13)%
Gross Profit	802	4,040	7,580	(3,238)	(80)%	(3,540)	(47)%
Operating (Loss) Income	\$ (1,031)	\$ 1,754	\$ 5,563	\$ (2,785)	(159)%	\$ (3,809)	(68)%

### Revenue

Total revenue decreased 4% to \$122.7 million in 2019 compared to \$127.4 million in 2018. Total revenue decreased 1% to \$127.4 million in 2018 compared to \$129.3 million in 2017.

CCA segment revenue decreased 2% to \$106.6 million in 2019 compared to \$108.9 million in 2018. The decrease was driven by an anticipated reduction in sales to Merck for a heartworm preventive as previously disclosed on our 2018 fourth quarter earnings release. The decline was offset by a 20% increase in Point of Care laboratory consumables, as well as a 12% increase from Point of Care imaging revenue primarily due to the Optomed acquisition. CCA segment revenue increased 4% to \$108.9 million in 2018 compared to \$105.2 million in 2017. The increase was driven primarily by a 14% increase in revenue from Point of Care laboratory consumables, as well as a 4% increase in revenue from Point of Care imaging products due to increased sales of digital radiography systems. This was partially offset by a 22% decrease in revenue from Point of Care laboratory instruments due to lower sales-type lease instrument revenue recognition of \$1.5 million and lower infusion pump sales of \$1.3 million.

OVP segment revenue decreased 13% to \$16.1 million in 2019 compared to \$18.5 million in 2018. The decrease was driven primarily by reduced customer requirements and supply issues with materials. OVP segment revenue decreased 23% to \$18.5 million in 2018 compared to \$24.2 million in 2017. The decrease was driven by decreased volume of sales under contract manufacturing arrangements.

### Gross Profit

Gross profit decreased 4% to \$54.4 million in 2019 compared to \$56.6 million in 2018. Gross margin percent remained consistent at 44.4% in 2019 compared to 44.4% in 2018. Gross profit decreased 3% to \$56.6 million in 2018 compared to \$58.3 million in 2017. Gross margin percent decreased to 44.4% in 2018 compared to 45.0% in 2017. The decrease in both gross profit and gross margin percentage was driven primarily by unfavorable product mix and plant utilization charges in our OVP segment.

### Operating Expenses

Selling and marketing expenses increased 12% to \$27.7 million in 2019 compared to \$24.7 million in 2018. Selling and marketing expenses increased 6% to \$24.7 million in 2018 compared to \$23.2 million in 2017. The increase in both periods was primarily driven by an increase in compensation, including stock-based compensation, benefits and commissions expense, which is mostly related to our commercial team expansion both domestically and internationally. The increase is in line with management expectations as we continue to invest in future growth and expanding the footprint of the Company.

Research and development expenses increased 147% to \$8.2 million in 2019, compared to \$3.3 million in 2018. Research and development increased 66% to \$3.3 million in 2018, as compared to \$2.0 million in 2017. The increase in both periods was primarily driven by spending on product development for urine and

fecal diagnostic analyzer and enhanced immunodiagnostic offerings. As we invest in future growth of the Company, the increased research and development expenses is consistent with the spending initiatives of management.

General and administrative expenses decreased 27% to \$18.2 million in 2019, compared to \$24.8 million in 2018. The decrease was primarily driven by a \$7.0 million settlement accrual and related legal expenses in the prior year; partially offset by increased expenses associated with international expansion. General and administrative expenses increased 68% to \$24.8 million in 2018, as compared to \$14.8 million in 2017. The increase was driven by a \$7.0 million settlement accrual and related legal expenses, a \$1.4 million increase in stock-based compensation, a \$0.6 million increase in compensation and benefits, a \$0.5 million increase in legal fees and a \$0.5 million increase in consulting fees.

#### ***Interest and Other Expense (Income), Net***

Interest and other expense (income), net, was expense of \$2.9 million in 2019, compared to income of \$13 thousand in 2018 and income of \$150 thousand in 2017. The increase in other expense in 2019 was primarily driven by interest expense as a result of the Notes. The decrease in other income in 2018, compared to 2017, was primarily driven by an increase in net foreign currency losses, and an increase in interest expense, partially offset by an increase in interest income and other gains.

#### ***Income Tax (Benefit) Expense***

In 2019, we had total income tax benefit of \$1.4 million compared to a total income tax benefit in 2018 of \$2.1 million and total income tax expense of \$8.9 million in 2017. See "Part II, Item 8. Financial Statements and Supplementary Data, Note 5. Income Taxes" in the accompanying notes to the consolidated financial statements for additional information regarding our income taxes.

#### ***Net (Loss) Income Attributable to Heska Corporation***

Net loss attributable to Heska Corporation was \$1.5 million in 2019, compared to net income attributable to Heska Corporation of \$5.9 million in 2018 and net income attributable to Heska Corporation of \$10.0 million in 2017. The difference between this line item and "Net (loss) income after equity in losses of unconsolidated affiliates" is the net income or loss attributable to our minority interest in our French subsidiary, which we purchased in February 2019. The difference between these line items was a gain of \$0.3 million for 2019. There was no difference between these line items in 2018, and a gain of \$0.5 million in 2017.

#### ***Non-GAAP Financial Measures***

In addition to financial measures presented on the basis of accounting principles generally accepted in the U.S. ("U.S. GAAP"), we also present fourth quarter and full year 2019 operating income, operating margin, net income attributable to Heska, earnings per diluted share, Adjusted EBITDA, Adjusted EBITDA margin, and the effective tax rate, excluding acquisition and other one-time charges, which are non-GAAP measures. We also present fourth quarter and full year 2018 operating income, operating margin, net income attributable to Heska, earnings per diluted share, Adjusted EBITDA, Adjusted EBITDA margin, and the effective tax rate, excluding TCPA Settlement, which are non-GAAP measures.

These measures should be viewed as a supplement to (not substitute for) our results of operations presented under U.S. GAAP. The non-GAAP financial measures presented may not be comparable to similarly titled measures of other companies because they may not calculate their measures in the same manner. Our management has included these measures to assist in comparing performance from period to period on a consistent basis.

The following tables reconcile our adjusted non-GAAP financial measures to our most directly comparable as-reported financial measures calculated in accordance with GAAP (in thousands, except per share amounts):

	Three Months Ended December 31,		Year Ended December 31,	
	2019	2018	2019	2018
Operating income	\$ 775	\$ 3,314	\$ 327	\$ 3,794
Acquisition-related costs <sup>(1)</sup>	674	—	674	—
Litigation and other one-time costs <sup>(2)</sup>	—	232	—	7,407
Non-GAAP operating income	\$ 1,449	\$ 3,546	\$ 1,001	\$ 11,201
Non-GAAP operating margin	4.3%	10.4%	0.8%	8.8%
Net (loss) income attributable to Heska Corporation	\$ (1,728)	\$ 3,468	\$ (1,465)	\$ 5,850
Income tax expense (benefit)	520	(175)	(1,446)	(2,115)
Interest expense (income)	2,075	4	2,428	49
Depreciation and amortization	1,157	1,122	4,916	4,595
EBITDA	\$ 2,024	\$ 4,419	\$ 4,433	\$ 8,379
Acquisition-related costs <sup>(1)</sup>	674	—	674	—
Litigation and other one-time costs <sup>(3)</sup>	(250)	232	307	7,407
Stock-based compensation	1,343	1,453	4,968	5,227
Adjusted EBITDA	\$ 3,791	\$ 6,104	\$ 10,382	\$ 21,013
Adjusted EBITDA margin <sup>(4)</sup>	11.2%	17.9%	8.5%	16.5%

<sup>(1)</sup> To exclude the effect of one-time charges of \$0.7 million in the fourth quarter and for the full year 2019 incurred as part of the expected acquisition of scil animal care company GmbH.

<sup>(2)</sup> To exclude \$0.2 million and \$7.4 million in the fourth quarter of 2018 and for the full year 2018, respectively, due to the agreement in principle to settle the complaint filed against the Company for \$6.75 million, approximately \$0.6 million of legal costs incurred in relation to the settlement negotiation, and other one-time costs.

<sup>(3)</sup> To exclude the effect of one-time benefit of \$0.3 million for the fourth quarter of 2019 related to the insurance recovery of cyber incident and a net charge of \$0.3 million for the full year of 2019 related to the costs associated with the cyber incident. In addition, this excludes \$0.2 million and \$7.4 million in the fourth quarter of 2018 and for the full year 2018, respectively, as noted above.

<sup>(4)</sup> Adjusted EBITDA margin is calculated as the ratio of adjusted EBITDA to revenue.

	Three Months Ended December 31,		Year Ended December 31,	
	2019	2018	2019	2018
GAAP net income attributable to Heska per diluted share	\$ (0.23)	\$ 0.44	\$ (0.20)	\$ 0.74
Acquisition-related costs <sup>(1)</sup>	0.08	—	0.08	—
Litigation and other one-time costs <sup>(2)</sup>	(0.03)	0.03	0.04	0.94
Amortization of debt discount and issuance costs	0.19	—	0.23	0.01
Stock-based compensation	0.17	0.18	0.62	0.67
Gain (loss) on equity investee transactions	0.02	0.01	0.07	0.01
Estimated income tax effect of above non-GAAP adjustments <sup>(3)</sup>	(0.11)	(0.06)	(0.26)	(0.40)
Discrete tax benefits associated with stock-based compensation activity	(0.02)	(0.06)	(0.21)	(0.33)
Non-GAAP net income per diluted share	<u>\$ 0.07</u>	<u>\$ 0.54</u>	<u>\$ 0.37</u>	<u>\$ 1.64</u>
Shares used in diluted per share calculations	<u>8,036</u>	<u>7,947</u>	<u>7,977</u>	<u>7,856</u>

<sup>(1)</sup> To exclude the effect of one-time charges of \$0.7 million in the fourth quarter and for the full year 2019 incurred as part of the expected acquisition of scil animal care company GmbH.

<sup>(2)</sup> To exclude the effect of a one-time benefit of \$0.3 million for the fourth quarter of 2019 of insurance recovery relating to the cyber incident disclosed in the third quarter 2019, and a net charge of \$0.3 million for the full year of 2019 related to the net loss after insurance recovery associated with the cyber incident. In addition, this also excludes \$0.2 million and \$7.4 million in the fourth quarter of 2018 and for the full year 2018, respectively, due to the agreement in principle to settle the complaint filed against the Company for \$6.75 million, approximately \$0.6 million of legal costs incurred in relation to the settlement negotiation, and other one-time costs.

<sup>(3)</sup> Represents income tax expense utilizing an estimated effective tax rate that adjusts for non-GAAP measures including: acquisition-related costs, litigation and other one-time costs, amortization of debt discount and issuance costs, and stock-based compensation. Adjusted effective tax rates are 25% for the fourth quarter and full year 2019 and 24% for the fourth quarter and full year 2018.

### **Impact of Inflation**

In recent years, inflation has not had a significant impact on our operations.

### **Liquidity, Capital Resources and Financial Condition**

We believe that adequate liquidity and cash generation is important to the execution of our strategic initiatives. Our ability to fund our operations, acquisitions, capital expenditures, and product development efforts may depend on our ability to generate cash from operating activities, which is subject to future operating performance, as well as general economic, financial, competitive, legislative, regulatory, and other conditions, some of which may be beyond our control. Our primary sources of liquidity are our available cash, including \$70.9 million from the issuance and sale of the Notes, after deducting the initial purchasers' discounts, debt issuance costs paid or payable by us, and the repayment in full of our Credit Facility, as described in Note 16 to our consolidated financial statements included elsewhere in this Annual Report on Form 10-K, and cash generated from current operations. Subsequent to December 31, 2019, the Company transferred \$14.6 million of consideration for the purchase of the CVM companies. Refer to Part II. Item 8. Financial Statements and Supplementary Data, Note 3. Acquisition and Related Party Items. Additionally, we announced our intention to acquire scil and finance the transaction through a private placement of convertible preferred equity. Refer to Part II. Item 8. Financial Statements and Supplementary Data, Note 19. Subsequent Events.

For the year ended December 31, 2019, we had a net loss after equity in losses of unconsolidated affiliates of \$1.7 million and net cash provided by operations of \$3.3 million. At December 31, 2019, we had \$89.0 million of cash and cash equivalents and working capital of \$107.7 million.

A summary of our cash provided by and used in operating, investing and financing activities is as follows (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Net cash provided by operating activities	\$ 3,296	\$ 13,287	\$ 10,409
Net cash used in investing activities	(1,923)	(12,174)	(17,169)
Net cash provided by financing activities	74,264	2,627	5,551
Effect of currency translation on cash	4	(10)	74
Increase (decrease) in cash and cash equivalents	75,641	3,730	(1,135)
Cash and cash equivalents, beginning of the period	13,389	9,659	10,794
Cash and cash equivalents, end of the period	\$ 89,030	\$ 13,389	\$ 9,659

Net cash provided by operating activities was \$3.3 million in 2019, compared to net cash provided by operating activities of \$13.3 million in 2018, a decrease of approximately \$10.0 million. Net cash provided by operating activities decreased due to significant working capital fluctuations such as a \$12.0 million decrease in cash provided by accrued liabilities, primarily driven by a \$6.8 million settlement payment and \$0.3 million in related legal fees in 2019 (see Note 14. Commitments and Contingencies in our Consolidated Financial Statements included in Item 8 of this Form 10-K) and a \$5.1 million decrease in cash provided by inventories, due to the timing of purchases and lower sales in the current year. Additionally, net cash from operating activities was \$7.6 million less in 2019 due to the decrease in net income compared to 2018. These factors were partially offset by a \$9.7 million decrease in cash used by the aggregate of accounts receivable, accounts payable, related party balances, deferred revenue and other current and non-current assets, due to the timing of collections and payments in the ordinary course of business. Non-cash transactions impacting cash provided by operating activities included a \$1.8 million increase related to the amortization of debt discount and issuance costs and \$1.6 million increase from our leases and rights of use asset amortization.

Net cash provided by operating activities was \$13.3 million in 2018, compared to net cash provided by operating activities of \$10.4 million in 2017, an increase of approximately \$2.9 million. Net cash provided by operating activities increased due to significant working capital fluctuations such as a \$19.9 million increase in cash provided by inventories, due to the timing of inventory purchases in 2017; a \$7.5 million increase in cash provided by accrued liabilities, largely due to a preliminary settlement agreement relating to outstanding litigation in the amount of \$6.8 million which we paid in the first half of 2019 (see Note 14. Commitments and Contingencies in our Consolidated Financial Statements included in Item 8 of this Form 10-K); and a \$2.8 million increase in cash provided by current and non-current lease receivables due to a lower level of sales-type lease placements and timing of collections on existing leases. These factors were partially offset by a \$3.6 million decrease in net income, as well as a \$15.2 million increase in cash used by the aggregate of accounts receivable, accounts payable, related party balances, deferred revenue and other current assets, due to the timing of collections and payments in the ordinary course of business. Non-cash transactions impacting cash provided by operating activities included a \$11.1 million increase in our deferred tax benefit, net, offset by a \$2.5 million increase in stock-based compensation.

Net cash used in investing activities was \$1.9 million in 2019, compared to net cash used in investing activities of \$12.2 million in 2018, a decrease of approximately \$10.3 million. The decrease in cash used for



investing activities was mainly driven by the 2018 investments made in unconsolidated affiliates for \$8.1 million and 2018 intangible asset acquisition for \$2.8 million (cash portion). This was partially offset by \$1.2 million increase in cash used for the Optomed real estate asset acquisition; and \$0.9 million increase in acquired cash from the acquisition of CVM. Net cash used in investing activities was \$12.2 million in 2018, compared to net cash used in investing activities of \$17.2 million in 2017, a decrease of approximately \$5.0 million. The decrease in cash used for investing activities was mainly driven by the 2017 purchase of the Heska Imaging minority for \$13.8 million, compared to the 2018 investments made in unconsolidated affiliates for \$8.1 million and 2018 intangible asset acquisition for \$2.8 million (cash portion). Additionally, we had a \$2.1 million decrease in cash used for purchases of property and equipment.

Net cash provided by financing activities was \$74.3 million in 2019, compared to net cash provided by financing activities of \$2.6 million in 2018, an increase of approximately \$71.6 million. The change was driven primarily by an \$86.3 million increase in proceeds from the convertible notes offering (see Note 16. Convertible Notes and Credit Facility in our Consolidated Financial Statements included in Item 8 of this Form 10-K). The increase in proceeds from the notes was partially offset by a \$6.0 million decrease in net borrowings as a result of the repayment in full of our Credit Facility; \$3.2 million of cash used to pay debt issuance costs; and \$2.2 million decrease in proceeds from issuance of common stock, net of distributions. Net cash provided by financing activities was \$2.6 million in 2018, compared to net cash provided by financing activities of \$5.6 million in 2017, a decrease of approximately \$2.9 million. The change was driven primarily by a \$5.3 million decrease in borrowings, net of repayments. This was partially offset by a \$1.6 million increase in proceeds from issuance of common stock, net of distributions, and a \$0.8 million decrease in distributions to non-controlling interest members.

We believe that our cash, cash equivalents and marketable securities balances, as well as the cash flows generated by our operations, will be sufficient to satisfy our anticipated cash needs for working capital and capital expenditures, including selling and marketing team expansion and product development initiatives, for at least the next 12 months. Our belief may prove to be incorrect, however, and we could utilize our available financial resources sooner than we currently expect. For example, we are actively seeking acquisitions that are consistent with our strategic direction, which may require additional capital. Our future capital requirements and the adequacy of available funds will depend on many factors, including those set forth in Part I, Item 1A, "Risk Factors", of this Form 10-K. We may be required to seek additional equity or debt financing in order to meet these future capital requirements, even in the absence of any acquisitions. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us, or at all. If we are unable to raise additional capital when desired, our business, results of operations and financial condition would be adversely affected.

#### ***Effect of currency translation on cash***

Net effect of foreign currency translations on cash changed \$14 thousand to a \$4 thousand positive impact in 2019, compared to a \$10 thousand negative impact in 2018. The net effect of foreign currency translation on cash changed \$84 thousand to a \$10 thousand negative impact in 2018 from a \$74 thousand positive impact in 2017. These effects are related to changes in exchange rates between the U.S. Dollar and the Swiss Franc, Euro, and Australian Dollar which are the functional currencies of our subsidiaries.

#### **Off Balance Sheet Arrangements**

We have no off balance sheet arrangements or variable interest entities.

## Contractual Obligations

The Company has not entered into any transactions with unconsolidated entities whereby the Company has financial guarantees, subordinated retained interests, derivative instruments, or other contingent arrangements that expose the Company to material continuing risks, contingent liabilities, or any other obligation under a variable interest in an unconsolidated entity that provided financing, liquidity, market risk or credit risk support to the Company, or engages in leasing, hedging or research and development services with the Company.

Purchase obligations represent contractual agreements to purchase goods or services that are legally binding; specify a fixed, minimum or range of quantities; specify a fixed, minimum, variable, or indexed price provision; and specify approximate timing of the transaction.

See "Part II, Item 8. Financial Statements and Supplementary Data, Note 6. Leases", included in this Form 10-K for a description of our operating lease obligations, and "Part II, Item 8. Financial Statements and Supplementary Data, Note 1. Operations and Summary of Significant Accounting Policies", for a discussion of the impact of the adoption of FASB Accounting Standards Codification ("ASC") Topic 842, *Leases*.

The following table presents certain future payments due by the Company as of December 31, 2019 (in thousands):

	<u>Total</u>	<u>Less Than 1 Year</u>	<u>1 - 3 Years</u>	<u>3 - 5 Years</u>	<u>After 5 Years</u>
Purchase obligations	\$ 13,539	\$ 9,122	\$ 3,329	\$ 1,088	\$ —
Consideration payable for acquisition <sup>(1)</sup>	14,579	14,579	—	—	—
Operating lease obligations	6,727	1,792	3,052	1,826	57
Finance lease obligations	82	46	34	2	—
Other long term borrowings	1,121	—	—	673	448
Convertible senior notes <sup>(2)</sup>	86,250	—	—	—	86,250
Future interest obligations <sup>(3)</sup>	22,650	3,237	6,475	6,473	6,465
Total	<u>\$ 144,948</u>	<u>\$ 28,776</u>	<u>\$ 12,890</u>	<u>\$ 10,062</u>	<u>\$ 93,220</u>

<sup>(1)</sup> Relates to acquisition of CVM companies. For additional information, refer to Part II, Item 8. Financial Statements and Supplementary Data, Note 3. Acquisition and Related Party Items.

<sup>(2)</sup> Includes the principal amount of the convertible senior notes. Although the notes mature in 2026, they can be converted into cash and shares of our common stock prior to maturity if certain conditions are met. Any conversion prior to maturity can result in repayments of the principal amounts sooner than the scheduled repayments as indicated in the table. For additional information, refer to Part II, Item 8. Financial Statements and Supplementary Data, Note 16. Convertible Notes and Credit Facility.

<sup>(3)</sup> Includes interest payments for both the convertible senior notes and other long term borrowings.

## Net Operating Loss Carryforwards

As of December 31, 2019, we had a net operating loss carryforward ("NOL") and domestic research and development tax credit carryforward. See "Part II, Item 8. Financial Statements and Supplementary Data, Note 5. Income Taxes" in our Consolidated Financial Statements for additional information regarding our carryforwards.

## Recent Accounting Pronouncements

From time to time, the FASB or other standard setting bodies issue new accounting pronouncements. Updates

to the FASB ASC are communicated through issuance of an ASU. Unless otherwise discussed, we believe that the impact of recently issued guidance, whether adopted or to be adopted in the future, is not expected to have a material impact on our Consolidated Financial Statements upon adoption.

To understand the impact of recently issued guidance, whether adopted or to be adopted, please review the information provided in Note 1. Operations and Summary of Significant Accounting Policies to our Consolidated Financial Statements included in Item 8 of this Form 10-K.

## **Item 7A. Quantitative and Qualitative Disclosures about Market Risk**

Market risk represents the risk of loss that may impact the financial position, results of operations or cash flows due to adverse changes in financial and commodity market prices and rates. We are exposed to market risk in the areas of changes in U.S. and foreign interest rates and changes in foreign currency exchange rates as measured against the U.S. Dollar. These exposures are directly related to our normal operating and funding activities.

### **Interest Rate Risk**

In September 2019, we issued \$86.25 million aggregate principal amount of Notes. The fair market value of the Notes is affected by our common stock price. The fair value of the Notes will generally increase as our common stock price increases and will generally decrease as our common stock price declines in value. In addition, the fair market value of the Notes is exposed to interest rate risk. Generally, the fair market value of our fixed interest rate Notes will increase as interest rates fall and decrease as interest rates rise. Additionally, on our balance sheet we carry the Notes at face value less unamortized discount and debt issuance cost and we present the fair value for required disclosure purposes only. For additional information, refer to Part II, Item 8. Financial Statements and Supplementary Data, Note 16. Credit Facility and Long-Term Debt to our consolidated financial statements included in this Form 10-K.

At December 31, 2019, we terminated our revolving credit facility with Chase. We had no interest rate hedge transactions in place on December 31, 2019.

### **Foreign Currency Risk**

Foreign currency risk may impact our results of operations. In cases where we purchase inventory in one currency and sell corresponding products in another, our gross margin percentage is typically at risk based on foreign currency exchange rates. In addition, in cases where we may be generating operating income in foreign currencies, the magnitude of such operating income when translated into U.S. dollars will be at risk based on foreign currency exchange rates. We had no foreign currency hedge transactions in place on December 31, 2019. We do not currently consider foreign currency risk to be material to our business.

Item 8. Financial Statements and Supplementary Data

HESKA CORPORATION

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors of Heska Corporation

### ***Opinions on the Financial Statements and Internal Control over Financial Reporting***

We have audited the accompanying consolidated balance sheets of Heska Corporation and subsidiaries (the “Company”) as of December 31, 2019 and 2018, the related consolidated statements of income, comprehensive income, stockholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2019, and the related notes (collectively referred to as the “financial statements”). We also have audited the Company's internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the “COSO framework”).

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2019, in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in the COSO framework.

### ***Change in Accounting Principle***

As discussed in Note 1 to the financial statements, the Company adopted the Accounting Standards Codification (ASC) Topic 842, “Leases,” using the modified retrospective adoption method on January 1, 2019.

### ***Basis for Opinion***

The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Controls over Financial Reporting. Our responsibility is to express an opinion on the Company's financial statements and an opinion on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the financial statements included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other

procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

***Definition and Limitations of Internal Control over Financial Reporting***

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Plante & Moran, PLLC

We have served as the Company's auditor since 2006.

Denver, Colorado

February 28, 2020

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of  
Heska Corporation  
Loveland, Colorado

### OPINION ON THE CONSOLIDATED FINANCIAL STATEMENTS

We have audited the accompanying consolidated statements of income, comprehensive income, stockholders' equity, and cash flows of Heska Corporation and subsidiaries (the "Company") for the year ended December 31, 2017, and the related notes (collectively referred to as the "financial statements").

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2017, and the results of its operations and its cash flows for the year ended December 31, 2017, 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 audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (the "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. Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ EKS&H LLLP

March 19, 2018  
Denver, Colorado

We began serving as the Company's auditor in 2006. In 2018, we became the predecessor auditor.



**HESKA CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except share and per share amounts)

	December 31,	
	2019	2018
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 89,030	\$ 13,389
Accounts receivable, net of allowance for doubtful accounts of \$186 and \$245, respectively	15,161	16,454
Inventories, net	26,601	25,104
Net investment in leases, current, net of allowance for doubtful accounts of \$105 and \$40, respectively	3,856	2,989
Prepaid expenses	2,219	1,533
Other current assets	3,000	2,938
Total current assets	139,867	62,407
Property and equipment, net	15,469	15,981
Operating lease right-of-use assets	5,726	—
Goodwill	36,204	26,679
Other intangible assets, net	11,472	9,764
Deferred tax asset, net	6,429	14,121
Net investment in leases, non-current	14,307	11,908
Investments in unconsolidated affiliates	7,424	8,018
Other non-current assets	7,526	7,574
Total assets	\$ 244,424	\$ 156,452
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 6,600	\$ 7,469
Due to related parties	—	226
Accrued liabilities	6,345	10,142
Accrued purchase consideration payable	14,579	—
Current operating lease liabilities	1,745	—
Current portion of deferred revenue, and other	2,930	2,526
Total current liabilities	32,199	20,363
Convertible note, long-term, net	45,348	—
Deferred revenue, net of current portion	5,966	7,082
Line of credit and other long-term borrowings	1,121	6,000
Non-current operating lease liabilities	4,413	—
Deferred tax liability	691	—
Other liabilities	152	598
Total liabilities	89,890	34,043
Redeemable non-controlling interest and mezzanine equity	170	—
Stockholders' equity:		
Preferred stock, \$.01 par value, 2,500,000 and 2,500,000 shares authorized, respectively, none issued or outstanding	—	—
Original common stock, \$.01 par value, 10,250,000 and 10,250,000 shares authorized, respectively, none issued or outstanding	—	—
Public common stock, \$.01 par value, 10,250,000 and 10,250,000 shares authorized, 7,881,928 and 7,675,692 shares issued and outstanding, respectively	79	77
Additional paid-in capital	290,216	257,034
Accumulated other comprehensive income	513	277
Accumulated deficit	(136,444)	(134,979)
Total stockholders' equity	154,364	122,409
Total liabilities and stockholders' equity	\$ 244,424	\$ 156,452

See accompanying notes to consolidated financial statements.

**HESKA CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF INCOME**  
(in thousands, except per share amounts)

	Year Ended December 31,		
	2019	2018	2017
<b>Revenue:</b>			
Core companion animal	\$ 106,570	\$ 108,924	\$ 105,191
Other vaccines and pharmaceuticals	16,091	18,522	24,150
Total revenue, net	<u>122,661</u>	<u>127,446</u>	<u>129,341</u>
Cost of revenue	<u>68,212</u>	<u>70,808</u>	<u>71,080</u>
Gross profit	<u>54,449</u>	<u>56,638</u>	<u>58,261</u>
<b>Operating expenses:</b>			
Selling and marketing	27,678	24,663	23,225
Research and development	8,240	3,334	2,004
General and administrative	18,204	24,847	14,813
Total operating expenses	<u>54,122</u>	<u>52,844</u>	<u>40,042</u>
Operating income	327	3,794	18,219
Interest and other expense (income), net	2,910	(13)	(150)
(Loss) income before income taxes and equity in losses of unconsolidated affiliates	<u>(2,583)</u>	<u>3,807</u>	<u>18,369</u>
<b>Income tax (benefit) expense:</b>			
Current income tax expense	359	140	49
Deferred income tax (benefit) expense	(1,805)	(2,255)	8,864
Total income tax (benefit) expense	<u>(1,446)</u>	<u>(2,115)</u>	<u>8,913</u>
Net (loss) income before equity in losses of unconsolidated affiliates	(1,137)	5,922	9,456
Equity in losses of unconsolidated affiliates	(594)	(72)	—
Net (loss) income, after equity in losses of unconsolidated affiliates	<u>(1,731)</u>	<u>5,850</u>	<u>9,456</u>
Net loss attributable to non-controlling interest	(266)	—	(497)
Net (loss) income attributable to Heska Corporation	<u>\$ (1,465)</u>	<u>\$ 5,850</u>	<u>\$ 9,953</u>
Basic (loss) earnings per share attributable to Heska Corporation	<u>\$ (0.20)</u>	<u>\$ 0.81</u>	<u>\$ 1.42</u>
Diluted (loss) earnings per share attributable to Heska Corporation	<u>\$ (0.20)</u>	<u>\$ 0.74</u>	<u>\$ 1.30</u>
Weighted average outstanding shares used to compute basic (loss) earnings per share attributable to Heska Corporation	<u>7,446</u>	<u>7,220</u>	<u>7,026</u>
Weighted average outstanding shares used to compute diluted (loss) earnings per share attributable to Heska Corporation	<u>7,446</u>	<u>7,856</u>	<u>7,642</u>

See accompanying notes to consolidated financial statements.

**HESKA CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(in thousands)

	Year Ended December 31,		
	2019	2018	2017
Net (loss) income, after equity in losses of unconsolidated affiliates	\$ (1,731)	\$ 5,850	\$ 9,456
Other comprehensive income (loss):			
Minimum pension liability	73	70	12
Foreign currency translation	163	(25)	123
Comprehensive (loss) income	(1,495)	5,895	9,591
Comprehensive loss attributable to non-controlling interest	(266)	—	(497)
Comprehensive (loss) income attributable to Heska Corporation	<u>\$ (1,229)</u>	<u>\$ 5,895</u>	<u>\$ 10,088</u>

See accompanying notes to consolidated financial statements.

**HESKA CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balances, January 1, 2017	7,026	\$ 70	\$ 238,635	\$ 97	\$ (151,827)	\$ 86,975
Net income attributable to Heska Corporation	—	—	—	—	9,456	9,456
Issuance of common stock, net of shares withheld for employee taxes	277	3	1,373	—	—	1,376
Stock-based compensation	—	—	2,745	—	—	2,745
Accretion of non-controlling interest	—	—	845	—	—	845
Distribution for Heska Imaging minority	—	—	—	—	(1,092)	(1,092)
Other comprehensive income	—	—	—	135	—	135
Balances, December 31, 2017	7,303	\$ 73	\$ 243,598	\$ 232	\$ (143,463)	\$ 100,440
Adoption of accounting standards	—	—	—	—	2,634	2,634
Balances, January 1, 2018, as adjusted	7,303	73	243,598	232	(140,829)	103,074
Net income attributable to Heska Corporation	—	—	—	—	5,850	5,850
Issuance of common stock, net of shares withheld for employee taxes	318	3	2,759	—	—	2,762
Issuance of common stock related to acquisition of assets from Cuattro, LLC	55	1	5,450	—	—	5,451
Stock-based compensation	—	—	5,227	—	—	5,227
Other comprehensive income	—	—	—	45	—	45
Balances, December 31, 2018	7,676	77	257,034	277	(134,979)	122,409
Net loss attributable to Heska Corporation	—	—	—	—	(1,465)	(1,465)
Issuance of common stock, net of shares withheld for employee taxes	206	2	(1,620)	—	—	(1,618)
Stock-based compensation	—	—	4,968	—	—	4,968
Convertible notes, equity	—	—	29,834	—	—	29,834
Other comprehensive income	—	—	—	236	—	236
Balances, December 31, 2019	7,882	\$ 79	\$ 290,216	\$ 513	\$ (136,444)	\$ 154,364

See accompanying notes to consolidated financial statements.

**HESKA CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	Year Ended December 31,		
	2019	2018	2017
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net (loss) income, after equity in losses from unconsolidated affiliates	\$ (1,731)	\$ 5,850	\$ 9,456
Adjustments to reconcile net income to cash provided by operating activities:			
Depreciation and amortization	4,916	4,595	4,754
Non-cash impact of operating leases	1,565	—	—
Deferred income tax (benefit) expense	(1,805)	(2,255)	8,864
Stock-based compensation	4,968	5,227	2,745
Equity in losses of unconsolidated affiliates	594	72	—
Amortization of debt discount and issuance costs	1,842	—	—
Accretion of non-controlling interest	14	—	—
Unrealized foreign currency transaction loss on purchase consideration payable	159	—	—
Other losses (gains)	387	8	(46)
Changes in operating assets and liabilities (net of effect of acquisitions):			
Accounts receivable	3,796	(1,076)	5,243
Inventories	918	6,046	(13,834)
Due from related parties	—	1	99
Lease receivable, current	(846)	(920)	(1,244)
Other current assets	(394)	(505)	(474)
Accounts payable	(1,686)	(2,020)	3,143
Due to related parties	(226)	(1,477)	250
Accrued liabilities and other	(5,883)	6,146	(1,380)
Lease receivable, non-current	(2,283)	(2,294)	(4,782)
Other non-current assets	(57)	(871)	(984)
Deferred revenue and other	(952)	(3,240)	(1,401)
Net cash provided by operating activities	3,296	13,287	10,409
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Investment in subsidiary, net of cash acquired	(622)	—	—
Cash acquired from acquisition of CVM	927	—	—
Acquisition of intangible asset	—	(2,750)	—
Investments in unconsolidated affiliates	—	(8,091)	—
Purchase of minority interest	—	—	(13,757)
Real estate asset acquisition	(1,184)	—	—
Purchases of property and equipment	(1,044)	(1,358)	(3,469)
Proceeds from disposition of property and equipment	—	25	57
Net cash used in investing activities	(1,923)	(12,174)	(17,169)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from issuance of common stock	1,829	4,034	2,452
Repurchase of common stock	(3,447)	(1,271)	(1,076)
Distributions to non-controlling interest members	—	(126)	(965)
Convertible debt proceeds	86,250	—	—
Proceeds from line of credit borrowings	6,750	3,000	40,307
Repayments of line of credit borrowings	(12,750)	(3,000)	(34,979)
Repayments of other debt	(1,191)	(10)	(68)
Payment of debt issuance costs	(3,177)	—	(120)
Net cash provided by financing activities	74,264	2,627	5,551
NET EFFECT OF EXCHANGE RATE CHANGES ON CASH	4	(10)	74
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	75,641	3,730	(1,135)
CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	13,389	9,659	10,794
CASH AND CASH EQUIVALENTS, END OF YEAR	\$ 89,030	\$ 13,389	\$ 9,659

NON-CASH TRANSACTIONS:

Transfers of equipment between inventory and property and equipment, net	\$	827	\$	1,449	\$	1,637
Consideration payable for CVM Acquisition (See Note 3)	\$	14,420	\$	—	\$	—
Common stock issued as partial consideration of Cuattro acquisition transactions (See Note 3)	\$	—	\$	5,450	\$	—

See accompanying notes to consolidated financial statements.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Heska Corporation and its wholly-owned subsidiaries ("Heska", the "Company", "we" or "our") sell veterinary and animal health diagnostic and specialty products. Our offerings include Point of Care diagnostic laboratory instruments and supplies; digital imaging diagnostic products, software and services; vaccines; local and cloud-based data services; allergy testing and immunotherapy; and single-use offerings such as in-clinic diagnostic tests and heartworm preventive products. Our core focus is on supporting veterinarians in the canine and feline healthcare space.

*Basis of Presentation and Consolidation*

In the opinion of management, the accompanying Consolidated Financial Statements contain all adjustments, consisting of normal, recurring adjustments, necessary to present fairly the financial position of the Company as of December 31, 2019 and 2018, as well as the results of our operations, statements of stockholders' equity and cash flows for the twelve months ended December 31, 2019, 2018 and 2017.

The audited Consolidated Financial Statements included herein have been prepared pursuant to the rules and regulations of the SEC. Our audited Consolidated Financial Statements include our accounts and the accounts of our wholly-owned subsidiaries since their respective dates of acquisitions. All intercompany accounts and transactions have been eliminated in consolidation. Where our ownership of a subsidiary was less than 100%, the non-controlling interest is reported on our consolidated balance sheets. The non-controlling interest in our consolidated net income is reported as "Net loss attributable to non-controlling interest" on our Consolidated Statements of Income. Our audited Consolidated Financial Statements are stated in U.S. Dollars and have been prepared in accordance with accounting principles generally accepted in the U.S. ("GAAP").

*Reclassification*

To maintain consistency and comparability, certain amounts in the financial statements have been reclassified to conform to current year presentation.

*Use of Estimates*

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates are required when establishing the allowance for doubtful accounts and the net realizable value of inventory; determining future costs associated with warranties provided; determining the period over which our obligations are fulfilled under agreements to license product rights and/or technology rights; evaluating long-lived and intangible assets and investments for estimated useful lives and impairment; estimating the useful lives of instruments under leasing arrangements; determining the allocation of purchase price under purchase accounting; estimating the expense associated with the granting of stock options; determining the need for, and the amount of a valuation allowance on deferred tax assets; determining the non-controlling interest in a business combination; and determining the fair value of the liability component associated with the issuance of convertible debt.

*Concentration of Credit Risk*

Financial instruments that potentially subject us to a concentration of credit risk consist of cash and cash equivalents and accounts receivable. We maintain the majority of our cash and cash equivalents with financial

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

institutions that management believes are creditworthy in the form of demand deposits. We have no off-balance-sheet concentrations of credit risk such as foreign exchange contracts, options contracts or other foreign currency hedging arrangements. Our accounts receivable balances are due largely from distribution partners, domestic veterinary clinics and individual veterinarians and other animal health companies.

Covetrus represented 19% and 12% of our consolidated accounts receivable at December 31, 2019 and 2018, respectively. Merck entities represented approximately 1% and 10% of our consolidated accounts receivable at December 31, 2019 and 2018, respectively. Elanco represented approximately 4% and 32% of our consolidated accounts receivable at December 31, 2019 and 2018, respectively. No other customer accounted for more than 10% of our consolidated accounts receivable at December 31, 2019 or 2018.

We have established an allowance for doubtful accounts based upon factors surrounding the credit risk of specific customers, historical trends and other information.

*Accounts Receivable and Allowance for Doubtful Accounts*

Accounts receivable are recorded at net realizable value. From time to time, our customers are unable to meet their payment obligations. We continuously monitor our customers' credit worthiness and use our judgment in establishing a provision for estimated credit losses based upon our historical experience and any specific customer collection issues that we have identified. While such credit losses have historically been within our expectations and the provisions established, there is no assurance that we will continue to experience the same credit loss rates that we have in the past. A significant change in the liquidity or financial position of our customers could have a material adverse impact on the collectability of accounts receivable and our future operating results.

Changes in allowance for doubtful accounts are summarized as follows (in thousands):

	<b>Years Ended December 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Balances at beginning of period	\$ 245	\$ 215	\$ 237
Additions - charged to expense	113	104	168
Deductions - write offs, net of recoveries	(172)	(74)	(190)
Balances at end of period	<u>\$ 186</u>	<u>\$ 245</u>	<u>\$ 215</u>

*Cash and Cash Equivalents*

Cash and cash equivalents are stated at cost, which approximates market value, and include short-term, highly liquid investments with original maturities of less than three months. We valued our foreign cash accounts at the spot market foreign exchange rate as of each balance sheet date, with changes due to foreign exchange fluctuations recorded in current earnings. The majority of our cash and cash equivalents are held in accounts not insured by governmental entities. The foreign cash balances are summarized as follows (in thousands):

	<b>As of December 31,</b>	
	<b>2019</b>	<b>2018</b>
European Union Euros	1,773	1,615
Swiss Francs	124	156
Canadian Dollars	88	—
Australian Dollars	54	—



**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

*Fair Value of Financial Instruments*

Our financial instruments consist of cash and cash equivalents, short-term trade receivables and payables, and the Notes. The carrying values of cash and cash equivalents and short-term trade receivables and payables approximate fair value because of the short-term nature of the instruments. The fair value of our line of credit balance was estimated based on current rates available for similar debt with similar maturities and collateral, and at December 31, 2018, approximated the carrying value due primarily to the floating rate of interest on such debt instruments. The Company repaid all outstanding indebtedness and terminated Revolving Commitments under the Credit Agreement with JPMorgan Chase Bank, N.A., effective as of December 31, 2019.

The estimated fair value of the convertible senior notes disclosed at each reporting period is evaluated through consideration of quoted market prices in less active markets. The fair value measurement is classified as Level 2 in the fair value hierarchy, which is defined in ASC 820 as inputs other than quoted prices in active markets that are either directly or indirectly observable. For additional information regarding the Company's accounting treatment for the issuance of the convertible senior notes, including the fair value measurement of the liability component, refer to Note 16. Convertible Notes and Credit Facility.

*Property and Equipment*

Property and equipment is stated at cost, net of accumulated depreciation. The costs of additions and improvements are capitalized, while maintenance and repairs are charged to expense as incurred. When an item is sold or retired, the cost and related accumulated depreciation is relieved and the resulting gain or loss, if any, is recognized in the Consolidated Statements of Income. We provide for depreciation primarily using the straight-line method by charges to income in amounts that allocate the cost of property and equipment over their estimated useful lives as follows:

<b>Asset Classification</b>	<b>Estimated Useful Life</b>
Building	10 to 20 years
Machinery and equipment	2 to 10 years
Office furniture and equipment	3 to 7 years
Computer hardware and software	3 to 5 years
Leasehold and building improvements	5 to 15 years

We capitalize certain costs incurred in connection with developing or obtaining software designated for internal use based on three distinct stages of development. Qualifying costs incurred during the application development stage, which consist primarily of internal payroll and direct fringe benefits and external direct project costs, including labor and travel, are capitalized and amortized on a straight-line basis over the estimated useful life of the asset, which range from three to five years. Costs incurred during the preliminary project and post-implementation and operation phases are expensed as incurred. These costs are general and administrative in nature and related primarily to the determination of performance requirements, data conversion and training.

*Inventories*

Inventories are stated at the lower of cost or net realizable value using the first-in, first-out method. Inventory we manufacture includes the cost of material, labor and overhead. If the cost of inventories exceeds estimated net realizable value, provisions are made to reduce the carrying value to estimated net realizable value. This

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

estimate is calculated utilizing various information, including assumptions of future market demand, market conditions and remaining shelf life.

*Investments in Unconsolidated Affiliates*

Investments in unconsolidated affiliates are measured and recorded as either non-marketable equity securities or equity method investments. Non-marketable equity securities are equity securities without readily determinable fair value that are measured and recorded using a measurement alternative which measures the securities at cost minus impairment, if any, plus or minus changes from qualifying observable price changes. Equity method investments are equity securities in investees we do not control but over which we have the ability to exercise significant influence. When the equity method of accounting is determined to be appropriate, the initial measurement of the investment includes the cost of the investment and all direct transaction costs incurred to acquire the investment. Equity method investments are measured at cost minus impairment, if any, plus or minus our share of equity method investee income or loss, which is recorded as a separate line on the income statement. Both types of investments are evaluated for impairment if a triggering event occurs.

*Goodwill, Intangible and Other Long-Lived Assets*

Goodwill is initially valued based on the excess of the purchase price of a business combination over the fair value of acquired net assets recognized and represents the future economic benefits arising from other assets acquired that could not be individually identified and separately recognized. Intangible assets other than goodwill are initially valued at fair value. If a quoted price in an active market for the identical asset is not readily available at the measurement date, the fair value of the intangible asset is estimated based on discounted cash flows using market participant assumptions, which are assumptions that are not specific to the Company. The selection of appropriate valuation methodologies and the estimation of discounted cash flows require significant assumptions about the timing and amounts of future cash flows, risks, appropriate discount rates, and the useful lives of intangible assets. When material, we utilize independent valuation experts to advise and assist us in determining the fair values of the identified intangible assets acquired in connection with a business acquisition and in determining appropriate amortization methods and periods for those intangible assets.

We assess goodwill for impairment annually, at the reporting unit level, in the fourth quarter and whenever events or circumstances indicate impairment may exist. In evaluating goodwill for impairment, we have the option to first assess the qualitative factors to determine whether it is more-likely-than-not that the estimated fair value of the reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the comparison of the estimated fair value of the reporting unit to the carrying value. The more-likely-than-not threshold is defined as having a likelihood of more than 50 percent. If, after assessing the totality of events or circumstances, we determine that it is more-likely-than-not that the estimated fair value of a reporting unit is less than its carrying amount, we would then estimate the fair value of the reporting unit and compare it to the carrying value. If the carrying value exceeds the estimated fair value we would recognize an impairment for the difference; otherwise, no further impairment test would be required. In contrast, we can opt to bypass the qualitative assessment for any reporting unit in any period and proceed directly to quantitative analysis. Doing so does not preclude us from performing the qualitative assessment in any subsequent period.

We performed qualitative assessments in the fourth quarters of 2019, 2018, and 2017 and determined that no indications of impairment existed.

We assess the realizability of intangible assets other than goodwill whenever events or changes in circumstances indicate that the carrying value may not be recoverable. If an impairment review is triggered,

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

we evaluate the carrying value of intangible assets based on estimated undiscounted future cash flows over the remaining useful life of the primary asset of the asset group and compare that value to the carrying value of the asset group. The cash flows that are used contain our best estimates, using appropriate and customary assumptions and projections at the time. If the net carrying value of an intangible asset exceeds the related estimated undiscounted future cash flows, an impairment to adjust the intangible asset to its fair value would be reported as a non-cash charge to earnings. If necessary, we would calculate the fair value of an intangible asset using the present value of the estimated future cash flows to be generated by the intangible asset, and applying a risk-adjusted discount rate. We had no impairments of our intangible assets during the years ended December 31, 2019, 2018, and 2017.

*Revenue Recognition*

We account for revenue in accordance with ASC Topic 606, *Revenue from Contracts with Customers*, which we adopted on January 1, 2018, using the modified retrospective transition approach. See "Adoption of New Accounting Pronouncements" below for impacts of adoption.

We generate our CCA segment revenue through the sale of products, either by outright purchase by our customers or through a subscription agreement whereby our customers receive instruments and pay us a monthly fee for the consumables needed to conduct testing. Subscription placement is the majority of our Point of Care laboratory transactions while outright sales to customers are the majority of both Point of Care imaging diagnostic transactions and the sale of pharmaceuticals and vaccines.

For outright sales of products, revenue is recognized when control of the promised product or service is transferred to our customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those products or services (the transaction price). Taxes assessed by governmental authorities and collected from the customer are excluded from our revenue recognition. A performance obligation is a promise in a contract to transfer a distinct product or service to a customer and is the unit of account under ASC 606. For instruments, consumables and most software licenses sold by the Company, control transfers to the customer at a point in time. To indicate the transfer of control, the Company must have a present right to payment, legal title must have passed to the customer, the customer must have the significant risks and rewards of ownership and where acceptance is not a formality, the customer must have accepted the product or service. Heska's principal terms of sale are FOB Shipping Point, or equivalent, and, as such, we primarily transfer control and record revenue for product sales upon shipment. If a performance obligation to the customer with respect to a sales transaction remains unfulfilled following shipment (typically owed installation or acceptance by the customer), revenue recognition for that performance obligation is deferred until such commitments have been fulfilled. For extended warranty and service plans, control transfers to the customer over the term of the arrangement. Revenue for extended warranties and service is recognized based upon the period of time elapsed under the arrangement.

Our revenue under subscription agreements relates to OTL arrangements or STL arrangements. Determination of an OTL or STL is primarily determined as a result of the length of the contract as compared to the estimated useful life of the instrument, among other factors. Leases are outside of the scope of ASC 606 and are therefore accounted for in accordance with ASC 842, *Leases*. A STL would result in earlier recognition of instrument revenue as compared to an OTL, which is generally upon installation of the instruments. The cash collected under both arrangements is over the term of the contract. The cost of the customer-leased instruments is removed from inventory and recognized in the Consolidated Statements of Income. Instrument lease revenue for OTL agreements is recognized on a straight-line basis over the life of the lease, and the costs of customer-leased instruments are recorded within property and equipment in the accompanying Consolidated Balance Sheets and depreciated over the instrument's estimated useful life. The depreciation expense is reflected in cost of revenue in the accompanying Consolidated Statements of Income. The OTLs

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

and STLs are not cancellable until after an initial term. OTLs may include a minimum utilization rather than a minimum supply credit.

For contracts with multiple performance obligations, the Company allocates the contracts' transaction price for each performance obligation on a relative standalone selling price basis using our best estimate of the standalone selling price of each distinct product or service in the contract. The primary method used to estimate the standalone selling price is the price observed in standalone sales to customers of a prior period. Changes in these values can impact the amount of consideration allocated to each component of the contract. When prices in standalone sales are not available, we may use a cost-plus margin approach. Allocation of the transaction price is determined at the contracts' inception. The Company does not adjust the transaction price for the effects of a significant financing component when the period between the transfer of the promised good or service to the customer and payment for that good or service by the customer is expected to be one year or less. This allocation approach also applies to contracts for which a portion of the contract relates to a lease component.

To the extent the transaction price includes variable consideration, such as future payments based on consumable usage over time, we apply judgment to determine if the variable consideration should be constrained. As the variable consideration is highly susceptible to factors outside of the Company's influence, and the potential values contain a broad range of possible outcomes given all potential amounts of consumption that could occur, it is likely that a significant revenue reversal would occur should the variable consideration be estimated at an amount greater than the minimum stated amount until such a time as the uncertainty is resolved.

We generate revenue within our OVP segment through contract manufacturing agreements with customers. The timing of revenue recognition of our customer contracts are generally recognized upon shipment or acceptance by our customer, under the same guidelines noted above for other outright product sales. Heska assessed the over-time criteria within ASC 606 and concluded that while products within this segment have no alternative use to Heska, as Heska is contractually prohibited to redirect the product to other customers, Heska does not have right to payment for performance to date. Therefore, point in time revenue recognition has been determined to be appropriate.

Revenue generated from licensing arrangements is recognized based on the underlying terms of the contract.

Recording revenue from the sale of products involves the use of estimates and management's judgment. We must make a determination at the time of sale whether the customer has the ability and intent to make payments in accordance with arrangements. While we do utilize past payment history and, to the extent available for new customers, public credit information in making our assessment, the determination of whether collectability is reasonably assured is ultimately a judgment that must be made by management. For contracts with multiple performance obligations, we exercise judgment in allocating the transaction price for each performance obligation based on an estimated standalone selling price for each distinct product or service. We must also make estimates regarding our future obligations relating to returns, rebates, allowances and similar other programs. We do not generally allow return of products or instruments. Distributor rebates are recorded as a reduction to revenue.

Refer to Note 2 for additional disclosures required by ASC 606.

Prior to the adoption of ASC 606 on January 1, 2018, the Company recognized revenue in accordance with Topic 605, *Revenue Recognition*. Our policy was to recognize revenue when the applicable revenue recognition criteria were met, which generally included the following: persuasive evidence of an arrangement exists; delivery has occurred or services rendered; price is fixed or determinable; and collectability is

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

reasonably assured. The adoption of the new revenue standard did not materially change our recognition from ASC 605 (as disclosed under *Adoption of New Accounting Pronouncements*).

*Stock-based Compensation*

Stock-based compensation expense is measured at the grant date based upon the estimated fair value of the portion of the award that is ultimately expected to vest and is recognized as expense over the applicable vesting period of the award generally using the straight-line method.

*Advertising Costs*

Advertising costs are expensed as incurred and are included in sales and marketing expenses. Advertising expenses were \$0.3 million for the year ended December 31, 2019 and \$0.2 million for each of the years ended December 31, 2018 and 2017.

*Income Taxes*

The Company records a current provision for income taxes based on estimated amounts payable or refundable on tax returns filed or to be filed each year. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates, in each tax jurisdiction, expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date. The overall change in deferred tax assets and liabilities for the period measures the deferred tax expense or benefit for the period. Deferred tax assets are reduced by a valuation allowance based on a judgmental assessment of available evidence if the Company is unable to conclude that it is more likely than not that some or all of the deferred tax assets will be realized.

*Earnings Per Share*

Basic earnings per share is computed by dividing income available to common shareholders by the weighted-average number of shares of common stock outstanding during the period. Diluted earnings per share is computed by dividing income available to common shareholders by the weighted-average number of shares of common stock outstanding during the period increased to include the number of additional shares of common stock that would have been outstanding if the potentially dilutive securities had been issued.

*Foreign Currency Translation*

The functional currency of certain foreign subsidiaries is the local currency. Accordingly, assets and liabilities of these subsidiaries are translated using the exchange rate in effect at the balance sheet date. Revenue and expense accounts and cash flows are translated using an average of exchange rates in effect during the period. Cumulative translation gains and losses are shown in the Consolidated Balance Sheets as a separate component of stockholders' equity. Exchange gains and losses arising from transactions denominated in foreign currencies (i.e., transaction gains and losses) are recognized as a component of other income (expense) in current operations, as are exchange gains and losses on intercompany transactions expected to be settled in the near term.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

*Warranty Costs*

The Company generally provides for the estimated cost of hardware and software warranties in the period the related revenue is recognized. The Company assesses the adequacy of its accrued warranty liabilities and adjusts the amounts as necessary based on actual experience and changes in future estimates. Should product failure rates differ from our estimates, actual costs could vary significantly from our expectations. Extended warranties are sold to our customers and revenue is recognized over the term of the warranty agreement, as expected costs are incurred.

*Adoption of New Accounting Pronouncements*

Effective January 1, 2019, we adopted Accounting Standard Update ("ASU") 2018-07, *Compensation – Stock Compensation (Topic 718), Improvements to Non-employee Share-Based Payment Accounting*. This ASU is intended to simplify aspects of share-based compensation issued to non-employees by making the guidance consistent with accounting for employee share-based compensation. Guidance related to the stock compensation granted to employees is followed for non-employees, including the measurement date, valuation approach and performance conditions. The expense is recognized in the same period as though cash were paid for the good or service, ratably over the service period. The adoption of this ASU did not have an impact on our consolidated financial statements but did have a minimal impact on our related disclosures.

Effective January 1, 2019, we adopted ASU 2018-02, *Income Statement-Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*. The ASU permits companies to elect a reclassification of the disproportionate tax effects in accumulated other comprehensive income ("AOCI") caused by the 2017 Tax Act to retained earnings. As of December 31, 2019, the Company does not have any disproportionate income tax effects in AOCI to reclassify. However, if the Company did have disproportionate income tax effects in AOCI in the future, it would reclassify them to retained earnings.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, which supersedes ASC 840, *Leases*. This update requires lessees to recognize a right-of-use ("ROU") asset and a lease liability for all leases, including operating leases, with terms greater than 12 months on its balance sheet. The update also expands the required quantitative and qualitative disclosures by lessees and lessors about the amount, timing and uncertainty of cash flows arising from leases. The accounting for lessors does not fundamentally change except for changes to conform and align guidance to the lessee guidance as well as to the new revenue recognition guidance in ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)*. Subsequent to the issuance of Topic 842, the FASB clarified the guidance through several ASUs; hereinafter the collection of lease guidance is referred to as "ASC 842".

The Company adopted ASC 842 on January 1, 2019, using the modified retrospective approach for all lease arrangements at the beginning of the period of adoption. Results for reporting periods beginning January 1, 2019 are presented under ASC 842, while prior period amounts were not adjusted and continue to be reported in accordance with the Company's historic accounting under ASC 840, *Leases*. For leases that commenced before the effective date of ASC 842, the Company elected the permitted practical expedients to not reassess the following: (i) whether any expired or existing contracts contain leases; (ii) the lease classification for any expired or existing leases; and (iii) initial direct costs for any existing leases. The Company also elected to exclude leases with a term of 12 months or less from the recognized ROU assets and lease liabilities.

Adoption of the standard did not have a material net impact in our Consolidated Balance Sheets, Consolidated Statements of Income or Consolidated Statements of Cash Flows. The most significant impact was the recognition of ROU assets and lease liabilities for the operating leases, of which we are the lessee. As a result of the cumulative impact of adopting ASC 842, the Company recorded operating lease ROU assets of \$6.5

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

million and operating lease liabilities of \$6.9 million as of January 1, 2019, primarily related to building, vehicle, and office equipment leases, based on the present value of the future lease payments on the date of adoption. As a lessor, accounting for our subscription agreements remains substantially unchanged. Refer to Note 6 for additional disclosures required by ASC 842.

The Company determines if an arrangement is a lease at inception based on whether control of an identified asset is transferred. For leases where the Company is the lessee, ROU assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent an obligation to make lease payments arising from the lease. ROU assets and lease liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. As most of the Company's leases do not provide an implicit interest rate, the Company uses its incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. The lease terms used to calculate the ROU asset and related lease liability include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Lease expense for operating leases is recognized on a straight-line basis over the lease term as an operating expense while the expense for finance leases is recognized as amortization expense and interest expense. The Company has lease agreements which require payments for lease and non-lease components and has elected to account for these as a single lease component for our building and office equipment leases, but as separate components for our vehicle leases.

Our revenue under subscription agreements relates to both operating-type lease ("OTL") arrangements and sales-type lease ("STL") arrangements. Determination of an OTL or STL is primarily a result of the length of the contract as compared to the estimated useful life of the instrument, among other factors. A STL results in earlier recognition of instrument revenue. The cost of the customer-leased instruments is removed from inventory and recognized in the Consolidated Statements of Income. There is no residual value taken into consideration as it does not meet our capitalization requirements. Instrument lease revenue for OTL agreements is recognized on a straight-line basis over the life of the lease and included with the predominant non-lease components in consumable revenue. The costs of customer-leased instruments are recorded within property and equipment in the accompanying Consolidated Balance Sheets and depreciated over the instrument's estimated useful life. The depreciation expense is reflected in cost of revenue in the accompanying Consolidated Statements of Income. The OTLs and STLs are not cancellable until after an initial term and include an option to renew.

For lease arrangements with lease and non-lease components where the Company is the lessor, the Company allocates the total contract consideration to the lease and non-lease components on a relative standalone selling price basis using the Company's best estimate of the standalone selling price of each distinct product or service in the contract. The primary method used to estimate standalone selling price is the price observed in standalone sales to customers of a prior period. Changes in these values can impact the amount of consideration allocated to each component of the contract. When prices in standalone sales are not available, we may use a cost-plus margin approach. Allocation of the transaction price is determined at the inception of the lease arrangement. The Company's leases consist of leases with fixed and variable lease payments. For those leases with variable lease payments, the variable lease payment is typically based upon purchase of consumables used with the leased instruments and included in consumable revenue.

Effective January 1, 2018, we adopted FASB ASU 2017-09, *Compensation - Stock Compensation (Topic 718): Scope of Modification Accounting*, which provides clarification on accounting for modifications in share-based payment awards. The adoption of this guidance did not have an impact on our consolidated financial statements or related disclosures as there were no modifications to our share-based payment awards during 2018.

In March 2018, we adopted FASB ASU 2018-05, *Income Taxes (Topic 740): Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 118*, which updates the income tax accounting to reflect the

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

SEC's interpretive guidance released on December 22, 2017, when the 2017 Tax Act was signed into law. See Item 8, Note 5. Income Taxes, for the impact of adoption to our consolidated financial statements.

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers* and has subsequently issued several supplemental and/or clarifying ASUs (collectively "ASC 606"). ASC 606 prescribes a single common revenue standard that replaces most existing GAAP revenue recognition guidance. ASC 606 outlines a five-step model, under which Heska recognized revenue as performance obligations within customer contracts are satisfied. ASC 606 is intended to provide more consistent interpretation and application of the principles outlined in the standard across filers in multiple industries and within the same industries compared to current practices, which should improve comparability. Along with the issuance of ASC 606, additional cost guidance was issued and codified under ASC 340-40 that outlines the requirements for capitalizing incremental costs of obtaining a contract and costs to fulfill a contract that meet certain capitalization criteria.

On January 1, 2018, we adopted ASC 606 using the modified retrospective method for all customer contracts not yet completed as of the adoption date. Results for reporting periods beginning January 1, 2018 are presented under ASC 606, while prior period amounts were not adjusted and continue to be reported in accordance with the Company's historic accounting under Topic 605, *Revenue Recognition*.

We recorded an increase to beginning retained earnings of \$2.6 million as of January 1, 2018 due to the cumulative impact of adopting ASC 606. The impact to beginning retained earnings was primarily driven by the capitalization of certain costs to obtain our customer contracts, which were primarily sales-related commissions. The adoption of ASC 606 did not have a significant impact on our Consolidated Financial Statements as of and for the twelve months ended December 31, 2019 and 2018. As a result, comparisons of revenues and operating profit performance between periods are not affected by the adoption of this ASU.

*Accounting Pronouncements Not Yet Adopted*

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses (Topic 326)*, which requires that financial assets measured at amortized cost be presented at the net amount expected to be collected. The allowance for credit losses is a valuation account that is deducted from the amortized cost basis of the financial asset to present the net carrying value at the amount expected to be collected. The income statement reflects the measurement of credit losses for newly recognized financial assets, as well as the increases or decreases of expected credit losses that have taken place during the period. The measurement of expected credit losses is based upon historical experience, current conditions and reasonable and supportable forecasts that affect the collectability of the reported amount. Subsequent to the issuance of ASU 2016-13, the FASB issued ASU 2018-19, *Codification Improvements to Topic 326, Financial Instruments - Credit Losses*, in November 2018. This ASU clarifies that receivables from operating leases are accounted for using the lease guidance and not as financial instruments. In April 2019, the FASB issued ASU 2019-04, *Codification Improvements to Topic 326, Financial Instruments - Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments*, which further clarifies and improves guidance related to accounting for credit losses. In May 2019, the FASB issued ASU 2019-05, *Financial Instruments - Credit Losses (Topic 326)*. This ASU provides relief to certain entities adopting ASU 2016-13. The amendment provides entities with an option to irrevocably elect the fair value option for certain financial assets. These amendments are effective for fiscal years beginning after December 15, 2019 and interim periods within those annual periods. We evaluated the impact of the standard on our consolidated financial statements and do not expect the standard to have a material impact on our consolidated financial statements and disclosures, accounting processes, and internal controls. We expect to implement the standard with a cumulative-effect adjustment in retained earnings effective as of the beginning of the period of adoption.



**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which is intended to simplify various aspects related to the 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 will be effective for interim and annual periods beginning after December 15, 2020, and early adoption is permitted. We are currently evaluating the impact of this update on our consolidated financial statements.

**2. REVENUE**

We separate our goods and services among two reportable segments, Core companion animal ("CCA") and Other vaccines and pharmaceuticals ("OVP"). The CCA segment consists of revenue generated from the following:

- Point of Care laboratory products including instruments, consumables and services;
- Point of Care imaging products including instruments, software and services;
- Single use pharmaceuticals, vaccines and diagnostic tests primarily related to companion animals; and
- Other vaccines and pharmaceuticals.

The OVP segment consists of revenue generated from the following:

- Contract manufacturing agreements; and
- Other license, research and development revenue.

The following table summarizes our CCA revenue (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Point of Care laboratory revenue:	\$ 67,132	\$ 57,375	\$ 54,855
<i>Consumables</i>	53,590	44,771	39,161
<i>Sales-type leases</i>	6,890	5,888	7,382
<i>Outright instrument sales</i>	5,247	4,922	6,391
<i>Other</i>	1,405	1,794	1,921
Point of Care imaging revenue:	25,652	22,832	21,907
<i>Outright instrument sales</i>	22,594	19,746	19,187
<i>Other</i>	3,058	3,086	2,720
Other CCA revenue:	13,786	28,717	28,429
<i>Other pharmaceuticals, vaccines and diagnostic tests</i>	13,495	28,265	28,008
<i>Research and development, license and royalty revenue</i>	291	452	421
<b>Total CCA revenue</b>	<b>\$ 106,570</b>	<b>\$ 108,924</b>	<b>\$ 105,191</b>

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

The following table summarizes our OVP revenue (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Contract manufacturing	\$ 15,374	\$ 17,508	\$ 23,490
License, research and development	717	1,014	660
<b>Total OVP revenue</b>	<b>\$ 16,091</b>	<b>\$ 18,522</b>	<b>\$ 24,150</b>

**Remaining Performance Obligations**

Remaining performance obligations related to ASC 606 represent the aggregate transaction price allocated to performance obligations with an original contract term greater than one year which are fully or partially unsatisfied at the end of the period. Remaining performance obligations include noncancelable purchase orders, the non-lease portion of minimum purchase commitments under long-term supply arrangements, extended warranty, service and other long-term contracts. Remaining performance obligations do not include revenue from contracts with customers with an original term of one year or less, revenue from long-term supply arrangements with no minimum purchase requirements, revenue expected from purchases made in excess of the minimum purchase requirements, or revenue from instruments leased to customers. While the remaining performance obligation disclosure is similar in concept to backlog, the definition of remaining performance obligations excludes leases and contracts that provide the customer with the right to cancel or terminate for convenience with no substantial penalty, even if historical experience indicates the likelihood of cancellation or termination is remote. Additionally, the Company has elected to exclude contracts with customers with an original term of one year or less from remaining performance obligations.

As of December 31, 2019, the aggregate amount of the transaction price allocated to remaining minimum performance obligations was approximately \$117.8 million. As of December 31, 2019, the Company expects to recognize revenue as follows (in thousands):

Year Ending December 31,	Revenue
2020	\$ 26,939
2021	23,808
2022	20,724
2023	17,815
2024	13,626
Thereafter	14,897
	<b>\$ 117,809</b>

**Contract Balances**

The timing of revenue recognition, billings and cash collections results in billed accounts receivable, unbilled receivables (contract assets) and deferred revenue, and customer deposits and billings in excess of revenue recognized (contract liabilities) on the Consolidated Balance Sheets. In addition, the Company defers certain costs incurred to obtain contracts (contract costs).

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

*Contract Receivables*

Certain unbilled receivable balances related to long-term contracts for which we provide a free term to the customer are recorded in "Other current assets" and "Other non-current assets" on the accompanying Consolidated Balance Sheets. We have no further performance obligations related to these receivable balances and the collection of these balances occurs over the term of the underlying contract. The balances as of December 31, 2019 were \$1.1 million and \$3.7 million for current and non-current assets, respectively, shown net of related unearned interest. The balances as of December 31, 2018 were \$0.9 million and \$3.3 million for current and non-current assets, respectively, shown net of related unearned interest.

*Contract Liabilities*

The Company receives cash payments from customers for licensing fees or other arrangements that extend for a specified term. These contract liabilities are classified as either current or long-term in the Consolidated Balance Sheets based on the timing of when the Company expects to recognize revenue. As of December 31, 2019 and 2018, contract liabilities were \$8.7 million and \$9.6 million, respectively, and are included within "Current portion of deferred revenue, and other" and "Deferred revenue, net of current portion" in the accompanying Consolidated Balance Sheets. The decrease in the contract liability balance during the year ended December 31, 2019 is \$3.1 million of revenue recognized during the period, offset by \$2.2 million of additional deferred sales. The decrease in the contract liability balance during the year ended December 31, 2018 is \$4.1 million of revenue recognized during the period, offset by \$1.4 million of additional deferred sales.

*Contract Costs*

The Company capitalizes certain direct incremental costs incurred to obtain customer contracts, typically sales-related commissions, where the recognition period for the related revenue is greater than one year. Contract costs are classified as current or non-current, and are included in "Other current assets" and "Other non-current assets" in the Consolidated Balance Sheets based on the timing of when the Company expects to recognize the expense. Contract costs are generally amortized into selling and marketing expense with a certain percentage recognized immediately based upon placement of the instrument with the remainder recognized on a straight-line basis (which is consistent with the transfer of control for the related goods or services) over the average term of the underlying contracts, approximately 6 years. Management assesses these costs for impairment at least quarterly on a portfolio basis and as "triggering" events occur that indicate it is more-likely-than-not that an impairment exists. The balance of contract costs as of December 31, 2019 and December 31, 2018 was \$2.7 million and \$2.5 million, respectively. Amortization expense for the year ended December 31, 2019 was approximately \$0.9 million, offset by approximately \$1.1 million of additional contract costs capitalized. Amortization expense for the year ended December 31, 2018 was approximately \$1.0 million, offset by approximately \$1.0 million of additional contract costs capitalized.

Contract liabilities are reported on the accompanying Consolidated Balance Sheets on a contract-by-contract basis whereas contract costs are calculated and reported on a portfolio basis.

### **3. ACQUISITION AND RELATED PARTY ITEMS**

#### **CVM**

On December 5, 2019, Heska entered into a definitive agreement to purchase 100% of the outstanding shares of CVM Diagnostico Veterinario S.L. and CVM Ecografia S.L. ("CVM", collectively), primarily to expand international operations in Europe. CVM is headquartered in Tudela, outside of Madrid, Spain. CVM mainly operates in Spain. The terms of the agreement transferred administrative control of CVM upon signing, and

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

the transfer of the purchase price of approximately \$14.4 million and shares occurred subsequently in January 2020. The purchase price exceeded the fair value of the identifiable net assets and, accordingly, \$8.8 million was allocated to goodwill based on the preliminary purchase price allocation, all of which is tax deductible for U.S. federal income tax purposes.

The preliminary fair values allocated to CVM's assets and liabilities as of the acquisition date, as well as the purchase price, are reflected in the table below (in thousands):

<b>Purchase Price</b>	<b>December 5, 2019</b>	
Consideration payable to former owners	\$	14,420
Total	\$	14,420
<b>Net Assets Acquired</b>		
Cash and cash equivalents	\$	927
Accounts receivable		2,392
Inventories		1,494
Other current assets		10
Property and equipment		382
Other intangible assets		2,551
Other non-current assets		178
Accounts payable		(250)
Current portion of deferred revenue, and other		(164)
Deferred tax liability		(683)
Other long-term borrowings		(1,109)
Other liabilities		(157)
Total fair value of net assets acquired		5,571
Goodwill		8,849
Total fair value of consideration transferred	\$	14,420

The Company's preliminary estimates of fair values of the assets acquired and the liabilities assumed are based on the information that was available at the date of the acquisition, and the Company is continuing to evaluate the underlying inputs and assumptions used in its valuations. Accordingly, these preliminary estimates are subject to change during the measurement period, which is up to one year from the date of the acquisition.

Intangible assets acquired, amortization method and estimated useful life as of December 5, 2019, was as follows (dollars in thousands):

	<b>Useful Life</b>	<b>Amortization Method</b>	<b>Fair Value</b>
Customer relationships	6 years	Straight-line	\$2,440
Trade name	4 years	Straight-line	\$111

The Company incurred acquisition related costs of approximately \$0.1 million for the year ended December 31, 2019, which are included within general and administrative expenses on our Consolidated Statements of Income.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

CVM generated net revenue of \$0.8 million and net income of \$0.1 million, for the period from December 6, 2019 to December 31, 2019.

*Unaudited Pro Forma Financial Information*

The following table presents unaudited supplemental pro forma financial information as if the CVM acquisition had occurred on January 1, 2018 (in thousands):

	<b>Year Ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
Total revenue, net	\$ 130,434	\$ 135,344
Net (loss) income attributable to Heska Corporation	(788)	5,970

The pro forma financial information presented above has been prepared by combining our historical results and the historical results of CVM and further reflects the effect of purchase accounting adjustments. The unaudited pro forma results are presented for informational purposes only and are not necessarily indicative of what actual results of operations would have been if the acquisition had occurred as the beginning of the period presented, nor are they indicative of future results of operations.

**Optomed**

On February 22, 2019, Heska acquired 70% of the equity of Optomed, a French-based endoscopy company, in exchange for approximately \$0.2 million in cash and the assumption of approximately \$0.4 million in debt. As part of the purchase, Heska entered into put and call options on the remaining 30% minority interest. The written put options can be exercised based on the achievement of certain financial conditions over a specified period of time for a fixed amount. The options are not currently exercisable at the acquisition date or the reporting date. The estimated value of the non-controlling interest is inclusive of the probability weighted outcome of the options described herein. As of December 31, 2019, the purchase price allocation is final. As part of the purchase agreement, Heska also committed to purchase from the minority interest holder real estate in the amount of \$1.2 million, which was paid in full as of December 31, 2019.

**Cuatro Veterinary Acquisitions**

In February 2013, the Company acquired a majority interest in Cuatro Veterinary USA, LLC, which was owned by Kevin S. Wilson, the CEO and President of the Company, among other members. The subsidiary was subsequently renamed Heska Imaging US, LLC ("US Imaging"). The remaining minority position in US Imaging was subject to purchase by Heska under a performance-based put option which was exercised in March 2017. In May 2017, we purchased the remaining minority interest position in US Imaging.

In May 2016, the Company closed a transaction to acquire Cuatro Veterinary, LLC ("International Imaging"), which was owned by Kevin S. Wilson, among other members. International Imaging is a provider to international markets of digital radiography technologies for veterinarians. As a leading provider of advanced veterinary diagnostic and specialty products, we made the acquisition in an effort to combine International Imaging's global reach with our domestic success in the imaging and laboratory markets in the United States.

In June 2017, the Company consolidated its assets and liabilities in the US Imaging and International Imaging companies into Heska Imaging, LLC ("Heska Imaging"). Cuatro, LLC ("Cuatro") is owned by Kevin S. Wilson, in addition to Mrs. Wilson and trusts for the benefit of Mr. and Mrs. Wilson's children and family. Steven M. Asakowicz and Rodney A. Lippincott, members of Cuatro Veterinary USA, LLC and Cuatro

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

International prior to the acquisitions, and as of December 31, 2019, serve as Executive Vice President, Companion Animal Health Sales for the Company.

**Purchase Agreement for Certain Assets**

On December 21, 2018, the Company closed a transaction (the "Asset Acquisition") to acquire certain assets from Cuattro, LLC ("Cuattro"), all related to the CCA segment. Cuattro is owned by Kevin S. Wilson, the CEO and President of Heska Corporation. Pursuant to the Asset Acquisition, dated November 26, 2018, the Company issued 54,763 shares of the Company's common stock, \$0.01 par value per share (the "Common Stock"), to Cuattro on the Closing Date, at an aggregate value equal to approximately \$5.4 million based on the adjusted closing price per share of the Common Stock as reported on the Nasdaq Stock Market on the Asset Acquisition agreement date. These shares were issued to Cuattro in a private placement in reliance upon an exemption from the registration requirements of the Securities Act pursuant to Section 4(a)(2) thereof and the safe harbor provided by Rule 506 of Regulation D promulgated thereunder. In addition to the Common Stock, the Company paid cash in the amount of \$2.8 million to Cuattro as part of the transaction. The total purchase price was determined based on a valuation report from an independent third party. Part of the Asset Acquisition was an agreement to terminate the supply and license agreement that Heska had been operating under since the acquisition of Cuattro Veterinary USA, LLC.

The Company evaluated the acquisition of the purchased assets under ASC 805, *Business Combinations* and ASU 2017-01, *Business Combinations (Topic 805)* and concluded that as substantially all of the fair value of the gross assets acquired is concentrated in an identifiable group of similar assets, the transaction did not meet the requirements to be accounted for as a business combination and therefore was accounted for as an asset acquisition. Accordingly, the \$8.2 million purchase price of the purchased assets was allocated entirely to an identifiable intangible asset amortizing on a straight-line basis over a 10-year useful life. In addition to the software assets acquired, Cuattro is obligated, without further compensation, to assist the Company with the implementation of third-party image hosting platform and necessary data migration.

**Related Party Activities**

Cuattro, LLC charged Heska Imaging \$6.0 thousand, \$4.6 million and \$17.7 million during 2019, 2018 and 2017, respectively, primarily related to digital imaging products, pursuant to an underlying supply contract that contains minimum purchase obligations, software and services as well as other operating expenses. The Company charged Cuattro, LLC \$0, \$3.0 thousand and \$0.1 million in the years ended December 31, 2019, 2018 and 2017, respectively, for facility usage and other services.

The Company had no receivables from Cuattro, LLC as of December 31, 2019 and 2018. Heska Imaging owed Cuattro \$0 and \$0.2 million as of December 31, 2019 and 2018, respectively, which is included in "Due to - related parties" on the Company's Consolidated Balance Sheets.

Heska Corporation charged U.S. Imaging \$2.9 million from January 1, 2017 to May 31, 2017, prior to the acquisition of the minority interest.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

**4. INVESTMENTS IN UNCONSOLIDATED AFFILIATES**

The carrying values of investments in unconsolidated affiliates, categorized by type of investment, is as follows (in thousands):

	<b>December 31, 2019</b>	<b>December 31, 2018</b>
Equity method investment	\$ 4,406	\$ 5,000
Non-marketable equity security investment	3,018	3,018
	<u>\$ 7,424</u>	<u>\$ 8,018</u>

*Equity Method Investment*

On September 24, 2018, the Company invested \$5.1 million, including costs, in exchange for a 28.7% interest of a business as part of our product development strategy. In connection with the investment, the Company entered into a 15-year Manufacturing Supply Agreement, which grants the Company global exclusivity to specified products to be delivered under the agreement for a 15-year period that begins upon the Company's receipt and acceptance of an initial order under the agreement. The Company accounts for this investment using the equity method of accounting. Under the equity method, the carrying value of the investment is adjusted for the Company's proportionate share of the investee's reported earnings or losses with the corresponding share of earnings or losses reported as Equity in losses of unconsolidated affiliates, listed below Net income before equity in losses of unconsolidated affiliates within the Consolidated Statements of Income.

*Non-Marketable Equity Security Investment*

On August 8, 2018, the Company invested \$3.0 million, including costs, in MBio Diagnostics, Inc. ("MBio"), in exchange for 1,714,285 shares of Series B-3 preferred stock, representing a 6.9% interest in MBio. The Company's investment in MBio is a non-marketable equity security, recorded using the measurement alternative of cost minus impairment, if any, plus or minus changes resulting from qualifying observable price changes.

As part of the agreement, the Company entered into a Supply and License Agreement with MBio, which provides that MBio produce and commercialize products that will enhance the Company's diagnostic portfolio. As part of this agreement, the Company made upfront payment to MBio of \$1.0 million related to a worldwide exclusive license agreement over a 20-year period, recorded in both short and long-term other assets. In addition, the agreement provides for an additional contingent payment from Heska to MBio of \$10.0 million, relating to the successful achievement of sales milestones. This potential future milestone payment has not yet been accrued as it is not deemed by the Company to be probable at this time.

Both parties in this arrangement are active participants and are exposed to significant risks and rewards dependent on the commercial success of the activities of the collaboration. The parties are actively working on developing and testing the product as well as funding the research and development. Heska classifies the amounts paid for MBio's research and development work within the CCA segment research and development operating segments. Expense is recognized ratably when incurred and in accordance with the development plan.

The Company evaluated both its equity method investment and non-marketable equity security investment for impairment as of December 31, 2019, and determined that no indications of impairment existed.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

**5. INCOME TAXES**

*Income Taxes*

As of December 31, 2019, the Company had net operating loss carryforwards ("NOL"), of approximately \$47.0 million, a foreign tax credit of \$64 thousand and a domestic research and development tax credit carryforward of approximately \$1.0 million. Our federal NOL is expected to expire as follows if unused: \$41.0 million in 2020 through 2022, \$5.5 million in 2024 through 2025 and \$0.5 million in 2027 and later.

The Company is subject to income taxes in the U.S. federal jurisdiction, and various foreign, state and local jurisdictions. Tax regulations within each jurisdiction are subject to the interpretation of the related tax laws and regulations and require significant judgment to apply. Although the U.S. and many states generally have statutes of limitations ranging from 3 to 5 years, those statutes could be extended due to the Company's net operating loss and tax credit carryforward positions in several of the Company's tax jurisdictions. In the U.S., the tax years 2016 - 2018 remain open to examination by the Internal Revenue Service.

Cash paid for income taxes for the years ended December 31, 2019, 2018 and 2017 was \$128 thousand, \$36 thousand and \$213 thousand, respectively.

The components of income before income taxes were as follows (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Domestic	\$ (1,872)	\$ 3,602	\$ 18,188
Foreign	(711)	205	181
	<u>\$ (2,583)</u>	<u>\$ 3,807</u>	<u>\$ 18,369</u>



**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

Temporary differences that give rise to the components of net deferred tax assets are as follows (in thousands):

	December 31,	
	2019	2018
Inventory	\$ 2,005	\$ 1,249
Accrued compensation	122	110
Stock options	1,858	1,281
Research and development	990	476
Legal settlement	—	1,678
Research and development expense	1,417	—
Deferred revenue	2,052	3,305
Property and equipment	3,469	3,065
Net operating loss carryforwards	11,676	17,088
Foreign tax credit carryforward	64	38
Sales-type leases	(1,968)	(3,936)
Convertible debt equity component	(9,421)	—
Foreign intangible	(691)	—
Other	(179)	—
	<u>11,394</u>	<u>24,354</u>
Valuation allowance	(5,656)	(10,233)
Total net deferred tax assets	<u>\$ 5,738</u>	<u>\$ 14,121</u>

The components of the income tax (benefit) expense are as follows (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Current income tax expense:			
Federal	\$ —	\$ (115)	\$ —
State	189	192	6
Foreign	170	63	43
Total current expense	<u>\$ 359</u>	<u>\$ 140</u>	<u>\$ 49</u>
Deferred income tax (benefit) expense:			
Federal	\$ (1,610)	\$ (1,877)	\$ 9,736
State	(307)	(378)	(872)
Foreign	112	—	—
Total deferred (benefit) expense	<u>(1,805)</u>	<u>(2,255)</u>	<u>8,864</u>
Total income tax (benefit) expense	<u>\$ (1,446)</u>	<u>\$ (2,115)</u>	<u>\$ 8,913</u>

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

The Company's income tax (benefit) expense relating to income (loss) for the periods presented differs from the amounts that would result from applying the federal statutory rate to that income (loss) as follows:

	<b>Year Ended December 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Statutory federal tax rate	21 %	21 %	34 %
State income taxes, net of federal benefit	9 %	(8)%	(5)%
Non-controlling interest in Heska Imaging US, LLC	— %	— %	1 %
Non-controlling interest in Optomed	(2)%	— %	— %
Non-temporary stock option benefit	48 %	(50)%	(30)%
Meals and entertainment permanent difference	(2)%	1 %	— %
GILTI permanent difference	2 %	1 %	— %
Other permanent differences	(1)%	1 %	1 %
Foreign tax rate differences	6 %	— %	— %
Change in tax rate	(6)%	— %	32 %
Change in valuation allowance	(17)%	— %	16 %
Other deferred differences	(9)%	(21)%	— %
Transaction costs	(6)%	— %	— %
Executive compensation limit	(7)%	— %	— %
Research & development credit	20 %	— %	— %
Other	— %	(1)%	— %
Effective income tax rate	<u>56 %</u>	<u>(56)%</u>	<u>49 %</u>

In 2019, we had total income tax benefit of \$1.4 million, including \$1.9 million in domestic deferred income tax benefit and \$0.1 million in foreign deferred tax expense, and \$0.4 million in current income tax expense. In 2018, we had total income tax benefit of \$2.1 million, including approximately \$2.3 million in domestic deferred income tax benefit, a non-cash benefit, and approximately \$0.1 million in current income tax expense. In 2017, we had total income tax expense of \$8.9 million, including \$8.9 million in domestic deferred income tax expense, a non-cash expense, and \$0.05 million in current income tax expense. Income tax benefit decreased in 2019 from 2018 due to executive compensation limitations and lower excess tax benefits related to stock-based compensation deductions. Income tax expense decreased in 2018 from 2017 from the recognition of \$1.9 million in tax benefits related to stock-based compensation deductions.

ASC 740 provides detailed guidance for the financial statement recognition, measurement and disclosure of uncertain tax positions recognized in the financial statements. Tax positions must meet a "more-likely-than-not" recognition threshold before a benefit is recognized in the financial statements. As of December 31, 2019, the Company has not recorded a liability for uncertain tax positions. The Company would recognize interest and penalties related to uncertain tax positions in income tax (benefit) expense. No interest and penalties related to uncertain tax positions were accrued at December 31, 2019.

## **6. LEASES**

### *Lessee Accounting*

The Company leases buildings, office equipment, and vehicles. The Company's finance leases were not material as of December 31, 2019 and for the twelve-month period then ended. ROU assets arising from finance leases are included in Property and equipment, net in the accompanying Consolidated Balance Sheets.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

The current portion of the finance lease liabilities are included in Current portion of deferred revenue, and other and the non-current portion of the finance lease liabilities are included in Other liabilities in the accompanying Consolidated Balance Sheets.

For the twelve months ended December 31, 2019, operating lease expense was approximately \$2.4 million, including immaterial variable lease costs. The Company had building and other rent expense of \$1.9 million and \$2.0 million for the years ended December 31, 2018 and 2017, respectively, under ASC 840, *Leases*.

Supplemental cash flow information related to the Company's operating leases for the twelve months ended December 31, 2019 was as follows (in thousands):

Cash paid for amounts included in the measurement of operating lease liabilities	\$	1,800
ROU assets obtained in exchange for operating lease obligations		604

The following table presents the weighted average remaining lease term and weighted average discount rate related to the Company's operating leases as of December 31, 2019:

Weighted average remaining lease term	3.8 years
Weighted average discount rate	4.44%

The following table presents the maturity of the Company's operating lease liabilities as of December 31, 2019 (in thousands):

<b>Year Ending December 31,</b>		
2020	\$	1,792
2021		1,639
2022		1,413
2023		1,796
2024		30
Thereafter		57
<b>Total operating lease payments</b>		<b>6,727</b>
Less: imputed interest		569
<b>Total operating lease liabilities</b>	<b>\$</b>	<b>6,158</b>

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

*Lessor Accounting*

In our CCA segment, primarily related to our Point of Care laboratory products, the Company enters into sales-type leases as part of our subscription agreements. The following table presents the maturity of the Company's undiscounted lease receivables as of December 31, 2019 (in thousands):

<b>Year Ending December 31,</b>		
2020	\$	3,856
2021		4,087
2022		3,758
2023		3,047
2024		2,118
Thereafter		1,297
	\$	<u>18,163</u>

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

**7. EARNINGS PER SHARE**

Basic earnings per share ("EPS") is computed by dividing net income attributable to the Company by the weighted-average number of common shares outstanding during the period. The computation of diluted EPS is similar to the computation of basic EPS except that the numerator is increased to exclude charges that would not have been incurred, and the denominator is increased to include the number of additional common shares that would have been outstanding (using the if-converted and treasury stock methods), if securities containing potentially dilutive common shares (stock options and restricted stock awards but excluding options to purchase fractional shares resulting from the Company's December 2010 1-for-10 reverse stock split) had been converted to common shares, and if such assumed conversion is dilutive.

The following is a reconciliation of the weighted-average shares outstanding used in the calculation of basic and diluted earnings per share for the years ended December 31, 2019, 2018 and 2017 (in thousands, except per share data):

	<b>Years ended December 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Net (loss) income attributable to Heska Corporation	\$ (1,465)	\$ 5,850	\$ 9,953
Basic weighted-average common shares outstanding	7,446	7,220	7,026
Assumed exercise of dilutive stock options and restricted shares	—	636	616
Diluted weighted-average common shares outstanding	7,446	7,856	7,642
Basic (loss) earnings per share attributable to Heska Corporation	\$ (0.20)	\$ 0.81	\$ 1.42
Diluted (loss) earnings per share attributable to Heska Corporation	\$ (0.20)	\$ 0.74	\$ 1.30

The following stock options and restricted awards were excluded from the computation of diluted earnings per share because they would have been anti-dilutive (in thousands):

	<b>Years ended December 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Stock options and restricted shares	300	111	123

As more fully described in Note 16, our Notes are convertible under certain circumstances, as defined in the indenture, into a combination of cash and shares of our common stock. The Company intends to settle the principal value of the Notes in cash and issue shares of our common stock to settle the intrinsic value of the conversion feature. The Company will use the treasury stock method when calculating the potential dilutive effect of the conversion feature on earnings per share, if any. Potential dilution upon conversion of the Notes occurs when the market price per share of our common stock is greater than the conversion price of the Notes of \$86.63. The average price of our common stock exceeded the conversion price of the Notes during the fourth quarter of 2019; therefore, under the net share settlement method, less than one thousand potential shares issuable under the Notes would be included in the calculation of diluted EPS for the year ended December 31, 2019. However, these shares were excluded from the computation of diluted EPS because the effect would have been anti-dilutive.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

**8. GOODWILL AND OTHER INTANGIBLES**

The following summarizes the changes in goodwill during the years ended December 31, 2019 and 2018 (in thousands):

Carrying amount, December 31, 2017	\$	26,687
Foreign currency adjustments		(8)
Carrying amount, December 31, 2018	\$	26,679
Goodwill attributable to acquisitions (subject to change)		9,396
Foreign currency adjustments		129
Carrying amount, December 31, 2019	\$	<u>36,204</u>

Other intangibles assets, net consisted of the following as of December 31, 2019 and 2018 (in thousands):

	2019			2018		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Developed technology	\$ 8,200	\$ (819)	\$ 7,381	\$ 8,200	\$ —	\$ 8,200
Customer relationships and other	6,317	(2,226)	4,091	3,303	(1,739)	1,564
Total intangible assets	<u>\$ 14,517</u>	<u>\$ (3,045)</u>	<u>\$ 11,472</u>	<u>\$ 11,503</u>	<u>\$ (1,739)</u>	<u>\$ 9,764</u>

Amortization expense relating to other intangibles is as follows (in thousands):

	Years Ended December 31,		
	2019	2018	2017
Amortization expense	\$ 1,278	\$ 388	\$ 388

Estimated amortization expense related to intangibles for each of the five years from 2020 through 2024 and thereafter is as follows (in thousands):

Year Ending December 31,	
2020	\$ 1,738
2021	1,734
2022	1,716
2023	1,364
2024	1,231
Thereafter	3,689
	<u>\$ 11,472</u>

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

**9. PROPERTY AND EQUIPMENT**

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

	December 31,	
	2019	2018
Land	\$ 694	\$ 377
Building	3,845	2,978
Machinery and equipment	28,777	33,087
Office furniture and equipment	1,345	1,687
Computer hardware and software	3,408	4,704
Leasehold and building improvements	10,558	9,953
Construction in progress	671	1,274
Property and equipment, gross	49,298	54,060
Less accumulated depreciation	(33,829)	(38,079)
Total property and equipment, net	<u>\$ 15,469</u>	<u>\$ 15,981</u>

The Company has subscription agreements whereby its instruments in inventory may be placed in a customer's location on a rental basis. The cost of these instruments is transferred to machinery and equipment and depreciated, typically over a five to seven-year period depending on the circumstance under which the instrument is placed with the customer. Our cost of equipment under operating leases at December 31, 2019 and 2018, respectively, was \$8.1 million and \$10.8 million, before accumulated depreciation of \$4.6 million and \$6.1 million.

Depreciation expense for property and equipment was \$3.6 million, \$4.2 million and \$4.3 million for the years ended December 31, 2019, 2018 and 2017, respectively.

**10. INVENTORIES, NET**

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

	December 31,	
	2019	2018
Raw materials	\$ 15,320	\$ 15,000
Work in process	2,802	3,592
Finished goods	9,786	8,085
Allowance for excess or obsolete inventory	(1,307)	(1,573)
Total inventory, net	<u>\$ 26,601</u>	<u>\$ 25,104</u>

Inventories are measured on a first-in, first-out basis and stated at lower of cost or net realizable value.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

**11. ACCRUED LIABILITIES**

Accrued liabilities consisted of the following (in thousands):

	December 31,	
	2019	2018
Accrued payroll and employee benefits	\$ 1,175	\$ 759
Accrued property taxes	681	632
Accrued settlement (see Note 14)	—	6,750
Accrued purchase orders	739	699
Other	3,750	1,302
Total accrued liabilities	\$ 6,345	\$ 10,142

Other accrued liabilities consist of items that are individually less than 5% of total current liabilities.

**12. CAPITAL STOCK**

*Stock Plans*

We have two stock option plans which authorize granting of stock options, restricted and stock purchase rights to our employees, officers, directors and consultants. In 1997, the board of directors adopted the 1997 Stock Incentive Plan (the "1997 Plan") and terminated two prior stock plans. All shares that remained available for grant under the terminated plans were incorporated into the 1997 Plan, including shares subsequently canceled under prior plans. In May 2012, the stockholders approved an amendment to the 1997 Plan allowing for an increase of 250,000 shares and an annual increase through 2016 based on the number of non-employee directors serving as of our Annual Meeting of Stockholders, subject to a maximum of 45,000 shares per year. In May 2016, the stockholders approved a further amendment to the 1997 Plan to authorize an additional 500,000 shares to be available for issuance thereunder. In May 2018, the stockholders approved a further amendment to the 1997 Plan to authorize an additional 250,000 shares to be available for issuance thereunder. In December 2018, the Company's Board of Directors amended the 1997 Plan and renamed it the "Stock Incentive Plan". In May 2003, the stockholders approved a new plan, the 2003 Equity Incentive Plan (the "2003 Plan"), which allows for the granting of stock options/restricted stock for up to 239,050 shares of the Company's common stock. The number of shares reserved for issuance under both plans as of December 31, 2019 was 85,850.

*Stock Options*

The stock options granted by the Board of Directors may be either incentive stock options ("ISOs") or non-qualified stock options ("NQs"). The exercise price for options under all of the plans may be no less than 100% of the fair value of the underlying common stock. Options granted will expire no later than the tenth anniversary subsequent to the date of grant or three months following termination of employment, except in cases of death or disability, in which case the options will remain exercisable for up to twelve months. Under the terms of the Stock Incentive Plan, in the event we are sold or merged, outstanding options will either be assumed by the surviving corporation or vest immediately.

There are four key inputs to the Black-Scholes model which we use to estimate the fair value for options which we issue: expected term, expected volatility, risk-free interest rate and expected dividends, all of which require us to make estimates. Our estimates for these inputs may not be indicative of actual future performance and changes to any of these inputs can have a material impact on the resulting estimated fair value calculated for the option. Our expected term input was estimated based on our historical experience for



**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

time from option grant to option exercise for all employees in 2019, 2018 and 2017. We treated all employees in one grouping in all three years. Our expected volatility input was estimated based on our historical stock price volatility in 2019, 2018 and 2017. Our risk-free interest rate input was determined based on the U.S. Treasury yield curve at the time of option issuance in 2019, 2018 and 2017. Our expected dividends inputs were zero in all periods as we did not anticipate paying dividends in the foreseeable future. We recognize forfeitures as they occur.

The fair value of each option grant was estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions for options granted in 2019, 2018 and 2017 for the year ended December 31, 2019.

	<b>2019</b>	<b>2018</b>	<b>2017</b>
Risk-free interest rate	1.62%	2.66%	1.76%
Expected lives	4.7 years	4.9 years	4.8 years
Expected volatility	40%	40%	41%
Expected dividend yield	0%	0%	0%

A summary of our stock option plans is as follows:

	<b>Year Ended December 31,</b>	
	<b>2019</b>	
	<b>Options</b>	<b>Weighted Average Exercise Price</b>
Outstanding at beginning of period	620,553	\$ 40.741
Granted at market	88,200	\$ 84.234
Forfeited	(1,353)	\$ 98.660
Expired	(716)	\$ 98.660
Exercised	(170,369)	\$ 18.125
Outstanding at end of period	536,315	\$ 54.855
Exercisable at end of period	315,964	\$ 37.644

The total estimated fair value of stock options granted was computed to be approximately \$2.6 million, \$4.4 million and \$1.0 million during the years ended December 31, 2019, 2018 and 2017, respectively. The amounts are amortized ratably over the vesting periods of the options. The weighted average estimated fair value of options granted was computed to be approximately \$29.89, \$28.81 and \$37.35 during the years ended December 31, 2019, 2018 and 2017, respectively. The total intrinsic value of options exercised was \$12.8 million, \$10.5 million and \$17.7 million during the years ended December 31, 2019, 2018 and 2017, respectively. The cash proceeds from options exercised were \$1.0 million, \$3.2 million and \$1.8 million during the years ended December 31, 2019, 2018 and 2017, respectively.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

The following table summarizes information about stock options outstanding and exercisable at December 31, 2019.

Exercise Prices	Options Outstanding			Options Exercisable		
	Number of Options Outstanding at December 31, 2019	Weighted Average Remaining Contractual Life in Years	Weighted Average Outstanding Price	Number of Options Exercisable at December 31, 2019	Weighted Average Remaining Contractual Life in Years	Weighted Average Exercise Price
\$4.96 - \$7.36	85,552	3.18	\$ 7.043	85,552	3.18	\$ 7.043
\$7.37 - \$32.21	74,668	4.25	\$ 15.697	74,668	4.25	\$ 15.697
\$32.22 - \$62.50	52,939	6.07	\$ 39.800	52,771	6.07	\$ 39.752
\$62.51 - \$69.77	128,333	8.18	\$ 69.770	41,670	8.18	\$ 69.770
\$69.78 - \$108.25	194,823	8.46	\$ 85.125	61,303	7.18	\$ 83.428
\$4.96 - \$108.25	<u>536,315</u>	6.73	\$ 54.855	<u>315,964</u>	5.35	\$ 37.644

As of December 31, 2019, there was approximately \$5.1 million of total unrecognized compensation cost related to outstanding stock options. That cost is expected to be recognized over a weighted-average period of 1.54 years with all cost to be recognized by the end of November 2022, assuming all options vest according to the vesting schedules in place at December 31, 2019. As of December 31, 2019, the aggregate intrinsic value of outstanding options was approximately \$22.3 million and the aggregate intrinsic value of exercisable options was approximately \$18.5 million.

*Employee Stock Purchase Plan*

Under the 1997 Employee Stock Purchase Plan (the "ESPP"), we are authorized to issue up to 450,000 shares of common stock to our employees, of which 440,427 had been issued as of December 31, 2019. On May 5, 2015, our shareholders approved the amendment and restatement of the ESPP, including a 75,000 share increase to 450,000 total shares authorized under the ESPP as well as changes discussed below as compared to the ESPP prior to the amendment and restatement. Employees who are expected to work at least 20 hours per week and 5 months per year are eligible to participate and can choose to have up to 10% of their compensation withheld to purchase our stock under the ESPP when they choose to withhold a whole percentage of their compensation.

Beginning on July 1, 2013, our ESPP had a 27-month offering period and three-month accumulation periods ending on each March 31, June 30, September 30 and December 31. The purchase price of stock on March 31, June 30, September 30 and December 31 was the lesser of (1) 85% of the fair market value at the time of purchase and (2) the greater of (i) 95% of the fair market value at the beginning of the applicable offering period or (ii) 65% of the fair market value at the time of purchase. In addition, participating employees may purchase shares under the ESPP at the beginning of an applicable offering period for a purchase price of stock equal to 95% of the fair market value at such time or at 5 pm on a day other than March 31, June 30, September 30 and December 31 during the applicable offering period for a purchase price of stock equal to 95% of the fair market value at purchase.

Beginning April 1, 2015, employees may elect to withhold a positive fixed amount from each compensation payment in addition to the previous approach of withholding a whole percentage of such compensation payment, with all withholding for a given employee subject to a maximum monthly amount of \$2,500 following the amendment and restatement as opposed to a \$25,000 maximum annual amount prior to the amendment and restatement. For offering periods beginning on or after April 1, 2015, the purchase price of stock on March 31, June 30, September 30 and December 31 is to be the lesser of (1) 85% of the fair market

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

value at the time of purchase and (2) the greater of (i) 85% of the fair market value at the beginning of the applicable offering period, (ii) the fair market value at the beginning of the applicable offering period less 1 cent and (iii) 65% of the fair market value at the time of purchase. In addition, participating employees may elect to purchase shares under the ESPP at the beginning of an applicable offering period for a purchase price of stock equal to the greater of (1) 85% of the fair market value at the beginning of the applicable offering period and (2) the fair market value at the beginning of the applicable offering period less 1 cent or at 5 pm on a day other than March 31, June 30, September 30 and December 31 during the applicable offering period for a purchase price of stock equal to the greater of (1) 85% of the fair market value at the time of purchase and (2) the fair market value at the time of purchase less 1 cent.

We issued 10,698, 10,078 and 10,983 shares under the ESPP for the years ended December 31, 2019, 2018 and 2017, respectively.

For the years ended December 31, 2019, 2018 and 2017, we estimated the fair values of stock purchase rights granted under the ESPP using the Black-Scholes pricing model and the following weighted average assumptions:

	2019	2018	2017
Risk-free interest rate	2.09%	1.67%	0.74%
Expected lives	1.1 years	1.2 years	1.2 years
Expected volatility	40%	42%	45%
Expected dividend yield	0%	0%	0%

The weighted-average fair value of the purchase rights granted was \$18.10, \$18.14 and \$15.72 per share for the years ended December 31, 2019, 2018 and 2017, respectively.

*Restricted Stock*

We have granted non-vested restricted stock awards (“restricted stock”) to management and directors pursuant to the 1997 Plan. The restricted stock awards have varying vesting periods, but generally become fully vested between one and four years after the grant date, depending on the specific award, performance targets met for performance based awards granted to management, and vesting period for time based awards. Management performance based awards are granted at the target amount of shares that may be earned. We valued the restricted stock awards related to service and/or company performance targets based on grant date fair value and expense over the period when achievement of those conditions is deemed probable. For restricted stock awards related to market conditions, we utilize a Monte Carlo simulation model to estimate grant date fair value and expense over the requisite period. We recognize forfeitures as they occur.

The following table summarizes restricted stock transactions for the year ended December 31, 2019:

	Restricted Stock	Weighted-Average Grant Date Fair Value Per Award
Non-vested as of December 31, 2018	259,430	\$ 74.26
Granted	83,567	\$ 74.93
Vested	(4,230)	\$ 85.09
Forfeited	(3,100)	\$ 80.90
Non-vested as of December 31, 2019	335,667	\$ 74.29

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

The weighted average grant date fair value of awards granted during the year was \$74.93, \$71.77 and \$82.36 for the years ended December 31, 2019, 2018 and 2017, respectively. Fair value of restricted stock vested was \$0.3 million, \$4.4 million and \$3.9 million for the years ended December 31, 2019, 2018 and 2017, respectively.

As of December 31, 2019, there was approximately \$2.7 million of total unrecognized compensation cost related to restricted stock with market and time vesting conditions. The Company expects to recognize this expense over a weighted average period of 1.1 years. As of December 31, 2019, we reviewed each of the underlying corporate performance targets and determined that approximately 219,000 shares of common stock were related to corporate performance targets in which we did not deem achievement probable. No compensation expense had been recorded at any period prior to December 31, 2019. The unrecognized compensation cost associated with the restricted stock awards not deemed probable, based on grant date fair value, is approximately \$17.8 million. Any change in the probability determination could accelerate the recognition of this expense.

**13. ACCUMULATED OTHER COMPREHENSIVE INCOME**

Accumulated other comprehensive income consisted of the following (in thousands):

	<b>Minimum pension liability</b>	<b>Foreign currency translation</b>	<b>Total accumulated other comprehensive income</b>
Balances at December 31, 2017	\$ (489)	\$ 721	\$ 232
Other comprehensive income	70	(25)	45
Balances at December 31, 2018	(419)	696	277
Other comprehensive income	73	163	236
Balances at December 31, 2019	<u>\$ (346)</u>	<u>\$ 859</u>	<u>\$ 513</u>

**14. COMMITMENTS AND CONTINGENCIES**

*Royalty Agreements*

The Company holds certain rights to market and manufacture all products developed or created under certain research, development and licensing agreements with various entities. In connection with such agreements, the Company has agreed to pay the entities royalties on net product sales. Royalties of \$0.3 million became payable under these agreements for each of the years ended December 31, 2019, 2018 and 2017, respectively.

*Warranties*

The Company's current terms and conditions of sale include a limited warranty that its products and services will conform to published specifications at the time of shipment and a more extensive warranty related to certain of its products. The Company also sells a renewal warranty for certain of its products. The typical remedy for breach of warranty is to correct or replace any defective product, and if not possible or practical, the Company will accept the return of the defective product and refund the amount paid. Historically, the Company has incurred minimal warranty costs. The Company's warranty reserve was \$0.3 million and \$0.2 million as of December 31, 2019 and 2018.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

*Litigation*

From time to time, the Company may be involved in litigation relating to claims arising out of its operations. The Company records accruals for outstanding legal matters when it believes it is probable that a loss will be incurred, and the amount can be reasonably estimated.

On October 10, 2018, we reached an agreement in principle to settle the complaint that was filed against the Company by Shaun Fauley on March 12, 2015 in the U.S. District Court Northern District of Illinois (the "Court") alleging our transmittal of unauthorized faxes in violation of the federal Telephone Consumer Protection Act of 1991, as amended by the Junk Fax Prevention Act of 2005, as a class action (the "Fauley Complaint"). The settlement, which received the Court's approval on February 28, 2019 and was not subsequently appealed by a class member, required us to make available a total of \$6.8 million to pay class members, as well as to pay attorneys' fees and expenses to legal counsel to the class. The Company recorded the loss provision in the third quarter of 2018 in connection with the settlement agreement and does not have insurance coverage for the Fauley Complaint. The payment in respect of the settlement was made in full on April 3, 2019, and all activity related to the Fauley Complaint has ceased.

At December 31, 2019, the Company was not a party to any other legal proceedings that were expected, individually or in the aggregate, to have a material adverse effect on our business, financial condition or operating results.

**15. INTEREST AND OTHER EXPENSE (INCOME)**

Interest and other expense (income), net, consisted of the following (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Interest income	\$ (661)	\$ (261)	\$ (167)
Interest expense	3,089	310	245
Other expense (income), net	482	(62)	(228)
Interest and other expense (income), net	<u>\$ 2,910</u>	<u>\$ (13)</u>	<u>\$ (150)</u>

Cash paid for interest was \$351 thousand, \$224 thousand and \$206 thousand for the years ended December 31, 2019, 2018 and 2017, respectively.

**16. CONVERTIBLE NOTES AND CREDIT FACILITY**

*Convertible Notes*

On September 17, 2019, the Company issued \$86.25 million aggregate principal amount of 3.750% Convertible Senior Notes due 2026, which included the exercise in full of an \$11.25 million purchase option, to certain financial institutions as the initial purchasers of the Notes (the "Initial Purchasers"). The Notes are senior unsecured obligations of the Company. The Notes were issued pursuant to an Indenture, dated September 17, 2019 (the "Indenture"), between the Company and U.S. Bank National Association, as trustee.

The net proceeds from the sale of the Notes were approximately \$83.7 million after deducting the initial purchasers' discounts and the offering expenses payable by the Company. The Company used approximately \$12.8 million of the net proceeds from the Notes to repay all outstanding indebtedness on its existing Credit Facility (defined below), and an additional \$2.0 million to fully fund a cash collateralized, letter of credit facility under the new Credit Facility as amended by the Amendment (as defined below). The Company expects to use the remainder of the net proceeds from the sale of the Notes to fund our intended

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

expansion efforts, including through acquisitions of complementary businesses or technologies or other strategic transactions, and for working capital and other general corporate purposes.

The Notes are senior unsecured obligations of the Company and will rank senior in right of payment to any of our indebtedness that is expressly subordinated in right of payment to the Notes; equal in right of payment to any of our unsecured indebtedness that is not so subordinated; effectively junior in right of payment to any of our secured indebtedness (including any letters of credit issued under our Credit Facility) to the extent of the value of assets securing such indebtedness; and structurally junior to all indebtedness and other liabilities (including trade payables) of our subsidiaries.

The Company pays interest on the Notes semiannually in arrears at a rate of 3.750% per annum on March 15 and September 15 of each year. The Notes are convertible based upon an initial conversion rate of 11.5434 shares of the Company's common stock per \$1,000 principal amount of Notes (equivalent to a conversion price of approximately \$86.63 per share of common stock). The Notes would convert in full into 995,618 shares of common stock based on the initial conversion rate. The conversion rate will be subject to standard anti-dilution adjustments upon the occurrence of certain events but will not be adjusted for accrued and unpaid interest. The interest rate on the Notes may be increased by up to 0.50% upon the occurrence of certain events of default or non-timely filings until such matter has been cured.

The Indenture includes customary covenants, but no financial or operating covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities, and sets forth certain events of default and certain types of bankruptcy or insolvency events of default involving the Company after which the Notes become automatically due and payable. The Company can settle any conversions of the Notes in cash, shares of the Company's common stock or a combination thereof, with the form of consideration determined at the Company's election. The Company intends to settle the principal value of the Notes in cash and issue shares of the Company's common stock to settle the intrinsic value of the conversion feature. There can be no guarantee, however, that any settlement will be affected by the Company as currently intended, and the timing and other factors of any settlement, many of which may be outside the Company's control, could impact the actual amounts to be settled in either cash or common stock.

The Notes will mature on September 15, 2026, unless earlier repurchased, redeemed or converted. Prior to March 15, 2026, holders may convert all or a portion of their Notes only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on December 31, 2019 (and only during such calendar quarter), if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the 5 business day period after any 5 consecutive trading day period (the "Notes measurement period") in which the trading price per \$1,000 principal amount of Notes for each trading day of the Notes measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such trading day; (3) with respect to any Notes called for redemption by the Company, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or (4) upon the occurrence of specified corporate events. On and after March 15, 2026 until the close of business on the scheduled trading day immediately preceding the maturity date, holders may convert their Notes at any time, regardless of the foregoing circumstances. Holders of Notes who convert their Notes in connection with a notice of a redemption or a make-whole fundamental change (each as defined in the Indenture) may be entitled to a premium in the form of an increase in the conversion rate of the Notes.

The Company may not redeem the Notes prior to September 20, 2023. On or after September 20, 2023, the Company may redeem for cash all or part of the Notes if the last reported sale price of the Company's

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

common stock equals or exceeds 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the Company provides notice of the redemption. The redemption price will be 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any. No sinking fund is provided for the Notes.

Upon the occurrence of a fundamental change (as defined in the Indenture), holders may require the Company to repurchase all or a portion of their Notes for cash at a price equal to 100% of the principal amount of the Notes to be repurchased plus any accrued but unpaid interest to, but excluding, the fundamental change repurchase date.

In accounting for the issuance of the Notes, the Company separated the Notes into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability that does not have an associated convertible feature. The carrying amount of the equity component, representing the conversion option, which does not meet the criteria for separate accounting as a derivative as it is indexed to the Company's own stock, was determined by deducting the fair value of the liability component from the par value of the Notes. The difference between the principal amount of the Notes and the liability component represents the debt discount, which is recorded as a direct deduction from the related debt liability in the Consolidated Balance Sheet and amortized to interest expense using the effective interest method over the term of the Notes. The effective interest rate of the Notes is 10.8% per annum. The equity component of the Notes of approximately \$39.5 million, net of allocated issuance costs and deferred tax impacts, is included in additional paid-in capital in the Consolidated Balance Sheet and is not remeasured as long as it continues to meet the conditions for equity classification. The Company allocated transaction costs related to the Notes using the same proportions as the proceeds from the Notes. Transaction costs attributable to the liability component were recorded as a direct deduction from the related debt liability in the Consolidated Balance Sheet and amortized to interest expense over the term of the Notes, and transaction costs attributable to the equity component were netted with the equity component in shareholders' equity.

In addition, the Company determined that the additional interest that could be due to the holders of the Notes upon an event of default or non-timely filing represented an embedded derivative feature that should be bifurcated from the Notes. The Company concluded that the fair value of this embedded derivative feature was de minimis upon the issuance of the Notes and at December 31, 2019.

The following table summarizes the net carrying amount of the Notes as of December 31, 2019 (in thousands):

	<b>December 31, 2019</b>
Carrying amount of equity component	\$ 39,508
Principal amount of the Notes	86,250
Unamortized debt discount	(40,902)
Net carrying amount	\$ 45,348

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

Interest expense related to the Notes for the year ended December 31, 2019 was \$2.7 million, which is comprised of the amortization of debt discount and debt issuance costs and the contractual coupon interest as follows (in thousands):

	<b>Twelve Months Ended December 31, 2019</b>
Interest expense related to contractual coupon interest	\$ 925
Interest expense related to amortization of the debt discount	1,744
	\$ 2,669

As of December 31, 2019, the remaining period over which the unamortized discount will be amortized is 80.5 months.

The estimated fair value of the Notes was \$116.0 million as of December 31, 2019, determined through consideration of quoted market prices in less active markets. The fair value measurement is classified as Level 2 in the fair value hierarchy, which is defined in ASC 820 as inputs other than quoted prices in active markets that are either directly or indirectly observable. Based on our closing stock price of \$95.94 on December 31, 2019, the if-converted value exceeded the aggregate principal amount of the Notes by \$9.3 million.

*Credit Facility*

We entered into a Credit Agreement, dated July 27, 2017, as amended in May 2018, December 2018, and July 2019 (the "Credit Agreement") with JPMorgan Chase Bank, N.A. ("Chase") which provided for a revolving credit facility up to \$30.0 million (the "Credit Facility"). The Credit Facility provided us with the ability to borrow up to \$30.0 million, although the amount of the Credit Facility may have been increased by an additional \$20.0 million up to a total of \$50.0 million subject to receipt of additional lender commitments and other conditions. Any interest on borrowings due was to be charged at either the (i) rate of interest per annum publicly announced from time to time by Chase at its prime rate in effect at its principal offices in New York City, subject to a floor, minus 1.65%, or (ii) the interest rate per annum equal to (a) LIBOR for the interest period in effect multiplied by (b) Chase's Statutory Reserve Rate (as defined in the Credit Agreement), plus 1.10% and payable monthly. There was an annual minimum interest charge of \$60 thousand under the Credit Agreement. Chase held first right of priority over all other liens, if any were to exist.

In September 2019, we entered into an amendment to the Credit Agreement (the "Amendment"), which among other things, reduced and limited the Credit Facility to a \$2.0 million, cash collateralized, letter of credit facility and eliminated a majority of the negative covenants previously contained in the Credit Facility, including any covenants that could have prohibited the issuance of any Notes and the Company's ability to pay cash upon conversion, repurchase or redemption of any Notes issued. The Company was required to repay in full the approximately \$12.8 million of indebtedness outstanding under the Credit Facility and fully fund the \$2.0 million collateral account to be held by Chase to secure the Company's obligations under the Amendment to the Credit Facility in connection with the issuance of the Notes. The maturity date of the Credit Facility, as amended by the Amendment, was September 9, 2021. This Amendment became effective on September 17, 2019, the first date any Notes were issued. The Company accounted for the modification of the Credit Facility by writing off approximately \$33 thousand of remaining unamortized debt issuance costs related to the Credit Agreement. On December 31, 2019, we terminated our \$2.0 million letter of credit facility with Chase and expensed the remaining debt issuance costs.

As of December 31, 2018, we had \$6.0 million of borrowings outstanding under the Credit Agreement. In connection with the Credit Agreement, the Company incurred debt issuance costs of \$120 thousand. These



**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

costs are included in other non-current assets on the Company's Consolidated Balance Sheet as of December 31, 2018.

**17. SEGMENT REPORTING**

The Company's two reportable segments are CCA and OVP. The CCA segment includes Point of Care diagnostic laboratory instruments and consumables, and Point of Care digital imaging diagnostic instruments and software services as well as single use diagnostic and other tests, pharmaceuticals and vaccines, primarily for canine and feline use. These products are sold directly by the Company as well as through independent third party distributors and through other distribution relationships. CCA segment products manufactured at the Des Moines, Iowa production facility included in the OVP segment's assets are transferred at cost and are not recorded as revenue for the OVP segment. The OVP segment includes private label vaccine and pharmaceutical production, primarily for cattle, in addition to other small mammals. All OVP products are sold by third parties under third party labels.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

Summarized financial information concerning the Company's reportable segments is shown in the following tables (in thousands):

<b>Year Ended December 31, 2019</b>	<b>Core Companion Animal</b>	<b>Other Vaccines and Pharmaceuticals</b>	<b>Total</b>
Total revenue	\$ 106,570	\$ 16,091	\$ 122,661
Operating income (loss)	1,358	(1,031)	327
(Loss) income before income taxes	(1,552)	(1,031)	(2,583)
Investments in unconsolidated affiliates	7,424	—	7,424
Total assets	223,980	20,444	244,424
Net assets	137,072	17,292	154,364
Capital expenditures	259	785	1,044
Depreciation and amortization	3,611	1,305	4,916

<b>Year Ended December 31, 2018</b>	<b>Core Companion Animal</b>	<b>Other Vaccines and Pharmaceuticals</b>	<b>Total</b>
Total revenue	\$ 108,924	\$ 18,522	\$ 127,446
Operating income	2,040	1,754	3,794
Income before income taxes	2,053	1,754	3,807
Investments in unconsolidated affiliates	8,018	—	8,018
Total assets	133,586	22,866	156,452
Net assets	96,129	26,280	122,409
Capital expenditures	180	1,178	1,358
Depreciation and amortization	3,369	1,226	4,595

<b>Year Ended December 31, 2017</b>	<b>Core Companion Animal</b>	<b>Other Vaccines and Pharmaceuticals</b>	<b>Total</b>
Total revenue	\$ 105,191	\$ 24,150	\$ 129,341
Operating income	12,656	5,563	18,219
Income before income taxes	12,828	5,541	18,369
Investments in unconsolidated affiliates	—	—	—
Total assets	111,625	23,819	135,444
Net assets	75,984	24,456	100,440
Capital expenditures	209	3,260	3,469
Depreciation and amortization	3,736	1,018	4,754

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

Revenue is attributed to individual countries based on customer location. Total revenue by principal geographic area was as follows (in thousands):

	<b>For the Years Ended December 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
U.S.	\$ 108,469	\$ 115,543	\$ 116,823
Canada	3,042	2,992	2,924
Europe	8,289	5,995	4,780
Other International	2,861	2,916	4,814
<b>Total</b>	<b>\$ 122,661</b>	<b>\$ 127,446</b>	<b>\$ 129,341</b>

Total long-lived assets by principal geographic areas were as follows (in thousands):

	<b>As of December 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
U.S.	\$ 14,712	\$ 15,933	\$ 17,288
Europe	576	37	18
Other International	181	11	25
<b>Total</b>	<b>\$ 15,469</b>	<b>\$ 15,981</b>	<b>\$ 17,331</b>

In our CCA segment, revenue from Covetrus represented approximately 14%, 15% and 13% of our consolidated revenue for the years ended December 31, 2019, 2018 and 2017, respectively. Revenue from Merck entities, including Merck Animal Health, represented approximately 1%, 12% and 12% for the years ended December 31, 2019, 2018 and 2017, respectively. In our OVP segment, revenue from Elanco represented approximately 8%, 9% and 11% for the years ended December 31, 2019, 2018 and 2017, respectively. No other customer accounted for more than 10% of our consolidated revenue for the years ended December 31, 2019, 2018 or 2017.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

**18. SUPPLEMENTAL QUARTERLY FINANCIAL DATA (Unaudited)**

The following tables present quarterly unaudited results for the two years ended December 31, 2019 and 2018 (amounts in thousands, except per share data).

	Q1	Q2	Q3	Q4	Total
<b>2019</b>					
Total revenue	\$ 29,511	\$ 28,146	\$ 31,237	\$ 33,767	\$ 122,661
Gross profit	12,543	12,412	13,664	15,830	54,449
Operating income (loss)	(75)	(566)	193	775	327
Net income (loss) before equity in losses of unconsolidated affiliates	951	(161)	(204)	(1,723)	(1,137)
Net income (loss), after equity in losses of unconsolidated affiliates	770	(288)	(351)	(1,862)	(1,731)
Net income (loss) attributable to Heska Corporation	814	(241)	(310)	(1,728)	(1,465)
Basic earnings (loss) per share attributable to Heska Corporation	0.11	(0.03)	(0.04)	(0.23)	(0.20)
Diluted earnings (loss) per share attributable to Heska Corporation	0.10	(0.03)	(0.04)	(0.23)	(0.20)
<b>2018</b>					
Total revenue	\$ 32,765	\$ 29,662	\$ 30,955	\$ 34,064	\$ 127,446
Gross profit	13,307	13,065	14,794	15,472	56,638
Operating income (loss)	1,871	2,204	(3,595)	3,314	3,794
Net income (loss) before equity in losses of unconsolidated affiliates	2,155	1,897	(1,670)	3,540	5,922
Net income (loss), after equity in losses of unconsolidated affiliates	2,155	1,897	(1,670)	3,468	5,850
Net income (loss) attributable to Heska Corporation	2,155	1,897	(1,670)	3,468	5,850
Basic earnings (loss) per share attributable to Heska Corporation	0.30	0.26	(0.23)	0.47	0.81
Diluted earnings (loss) per share attributable to Heska Corporation	0.28	0.24	(0.23)	0.44	0.74

Note that the sum of each value line for the four quarters does not necessarily equal the amount reported for the full year due to rounding.

**19. SUBSEQUENT EVENTS**

On January 14, 2020, the Company entered into an agreement (the "Agreement") among the Company, Heska GmbH, Covetrus Animal Health Holdings Limited and Covetrus, Inc. regarding the sale and purchase of the sole share in scil animal care company GmbH ("scil") whereby Heska is acquiring 100% of the capital stock of scil from Covetrus Animal Health Holdings Limited, a subsidiary of Covetrus, Inc. ("Covetrus"). Heska will purchase scil (the "Acquisition") for \$125 million in cash, subject to working capital and other adjustments. The Acquisition is expected to close no later than by the end of the second quarter of 2020.

The obligation of Heska and Covetrus to consummate the Acquisition is subject to the satisfaction or waiver of closing conditions set forth in the Agreement, including, among others (i) the receipt by Heska of audited financial statements of scil for the years ended December 31, 2018 and 2019 and (ii) the absence of a "Material Adverse Change" (as defined in the Agreement) with respect to scil and its subsidiaries or the ability of Covetrus to consummate the Acquisition. The Acquisition is not subject to any financing condition.

**HESKA CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**

Under the terms of the Agreement, each of Heska and Covetrus has agreed to certain indemnification obligations with respect to the guarantees made by each party and/or each party's respective subsidiaries under the Agreement.

If the Acquisition has not been consummated by May 31, 2020, each of Heska and Covetrus may terminate the Agreement.

Heska expects to finance the Acquisition through a private offering of \$125 million of Series X Convertible Preferred Stock, par value \$0.01 per share (the "Preferred") pursuant to a Securities Purchase Agreement, dated as of January 12, 2020, among the Company and certain investors. The Preferred offering is being undertaken in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 of Regulation D as promulgated by the SEC under the Securities Act, as a transaction not involving a public offering. 125,000 shares of Preferred will be issued at the Closing of the Preferred offering, and the Preferred is convertible into shares of the Company's Public Common Stock at an initial ratio of approximately 12 shares of Public Common Stock for each Preferred share at the option of the Preferred holders or the Company. The Preferred offering is expected to close at the time the Company closes the Acquisition, subject to customary closing conditions. The Company expects to exercise its right to convert the Preferred shares into 1,508,751 shares of Public Common Stock after the Company's annual shareholder meeting, subject to the receipt of an affirmative shareholder vote to amend the Company's Restated Certificate of Incorporation, as amended (the "Certificate"), to increase the number of authorized shares of Public Common Stock. The conversion of the Preferred shares will result in dilution of less than 20% of total shares of the Company's Public Common Stock currently issued and outstanding. If such shareholder vote is not obtained and the conversion of the Preferred shares does not occur, the Company will be required to pay a cash dividend to the Investors at a per annum rate of 5.75%; provided, that such amount shall increase in subsequent periods up to a maximum per annum rate of 7.25%. In connection with the Preferred offering, the Company has agreed to enter into a Registration Rights Agreement with the Investors pursuant to which the Company is obligated to file a registration statement with the Commission relating to the shares of Public Common Stock issuable to the Investors upon conversion of the Preferred shares.

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

None.

**Item 9A. Controls and Procedures**

**Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our principal executive officer and our principal financial officer, evaluated the effectiveness of our disclosure controls and procedures, as defined by Rule 13a-15 of the Exchange Act, as of December 31, 2019. Based on this evaluation, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time period specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding disclosure.

## **Management's Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, the Company conducted an evaluation of the effectiveness of its internal control over financial reporting based on criteria set forth in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this evaluation, the Company's management has concluded that the Company's internal control over financial reporting was effective as of December 31, 2019.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. Accordingly, even an effective system of internal control will provide only reasonable assurance that the objectives of the internal control system are met.

Plante & Moran, PLLC, an independent registered public accounting firm, has audited our Consolidated Financial Statements included in this Form 10-K, and as part of the audit, has issued a report, included herein, on the effectiveness of our internal control over financial reporting as of December 31, 2019.

## **Changes in Internal Control over Financial Reporting**

There was no change in our internal control over financial reporting that occurred during the fourth quarter of 2019 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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

None.

## PART III

Certain information required by Part III is incorporated by reference to our definitive Proxy Statement to be filed with the SEC in connection with the solicitation of proxies for our 2020 Annual Meeting of Stockholders.

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

#### **Executive Officers**

The information required by this item with respect to executive officers is incorporated by reference to Item 1 of this report and can be found under the caption "Information About Our Executive Officers."

#### **Directors**

The information required by this section with respect to our directors will be incorporated by reference to the information in the sections entitled Proposal No. 1 "Election of Directors" in the Proxy Statement.

#### **Code of Ethics**

Our Board of Directors has adopted a code of ethics for our senior executive and financial officers (including our principal executive officer, principal financial officer and principal accounting officer). The code of ethics is available on our website at [www.heska.com](http://www.heska.com) under the Corporate Governance section under the Investor Relations section under the "Company" tab. We intend to disclose any amendments to or waivers from the code of ethics at that location.

#### **Audit Committee**

The information required by this section with respect to our Audit Committee will be incorporated by reference to the information in the section entitled "Board Structure and Committees" in the Proxy Statement.

### **Item 11. Executive Compensation**

The information required by this section will be incorporated by reference to the information in the sections entitled "Director Compensation," "Executive Compensation," "Compensation Committee Report" in the Proxy Statement.

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

The other information required by this section will be incorporated by reference to the information in the section entitled "Ownership of Securities - Common Stock Ownership of Certain Beneficial Owners and Management" in the Proxy Statement.

## Equity Compensation Plan Information

The following table sets forth information about our common stock that may be issued upon exercise of options and rights under all of our equity compensation plans as of December 31, 2019, including the Stock Incentive Plan, as amended and restated, the 2003 Stock Incentive Plan, as amended and restated and the 1997 Employee Stock Purchase Plan, as amended and restated (the "1997 ESPP"). Our stockholders have approved all of these plans.

<b>Plan Category</b>	<b>(a) Number of Securities to be Issued Upon Exercise of Outstanding Options and Rights</b>	<b>(b) Weighted-Average Exercise Price of Outstanding Options and Rights</b>	<b>(c) Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans</b>
Equity Compensation Plans Approved by Stockholders	536,315	\$54.86	95,423
Equity Compensation Plans Not Approved by Stockholders	None	None	None
<b>Total</b>	<b>536,315</b>	<b>\$54.86</b>	<b>95,423</b>

### Item 13. Certain Relationships and Related Transactions and Director Independence

The information required by this section will be incorporated by reference to the information in the sections entitled "Board Structure and Committees" and "Significant Relationships and Transactions with Directors, Officers or Principal Stockholders" in the Proxy Statement.

### Item 14. Principal Accountant Fees and Services

The information required by this section will be incorporated by reference to the information in the section entitled "Auditor Fees and Services" in the Proxy Statement.

The information required by Part III to the extent not set forth herein, will be incorporated herein by reference to our definitive Proxy Statement for the 2020 Annual Meeting of Stockholders.



## PART IV

### Item 15. Exhibits and Financial Statement Schedules

(a) The following documents are filed as a part of this Form 10-K.

**(1) Financial Statements:**

Reference is made to the Index to Consolidated Financial Statements under Item 8 in Part II of this Form 10-K.

**(2) Financial Statement Schedules:**

**NOTE:** All schedules have been omitted because they are either not required or the information is included in the financial statements and notes thereto.

**(3) Exhibits:**

The exhibits listed below are required by Item 601 of Regulation S-K. Each management contract or compensatory plan or arrangement required to be filed as an exhibit to this Form 10-K has been identified.

Exhibit Number	Notes	Description of Document
2.1#++		<a href="#">Agreement regarding the sale and purchase of the sole share in scil animal care company GmbH among Registrant, Heska GmbH, Covetrus Animal Health Holdings Limited and Covetrus, Inc. dated January 14, 2020.</a>
3(i)	(8)	<a href="#">Restated Certificate of Incorporation of the Registrant.</a>
3(ii)	(8)	<a href="#">Certificate of Amendment to Restated Certificate of Incorporation of Registrant.</a>
3(iii)	(8)	<a href="#">Certificate of Amendment to the Restated Certificate of Incorporation, as amended, of Registrant.</a>
3(iv)	(19)	<a href="#">Certificate of Amendment to the Restated Certificate of Incorporation, as amended, of Registrant.</a>
3(v)	(20)	<a href="#">Certificate of Amendment to the Restated Certificate of Incorporation, as amended, of Registrant.</a>
3(vi)	(25)	<a href="#">Certificate of Amendment to the Restated Certificate of Incorporation, as amended, of Registrant.</a>
3(vii)	(29)	<a href="#">Certificate of Amendment to the Restated Certificate of Incorporation, as amended, of Registrant.</a>
3(viii)	(29)	<a href="#">Amended and Restated Bylaws of the Registrant, as amended.</a>
4.1	(32)	<a href="#">Indenture, dated as of September 17, 2019, by and between Heska Corporation and U.S. National Bank Association, as Trustee (including the form of the Notes).</a>
4.2		<a href="#">Description of Securities</a>
10.1*	(29)	<a href="#">Heska Corporation Stock Incentive Plan, as amended and restated.</a>
10.2*	(31)	<a href="#">Stock Incentive Plan Restricted Stock Grant Agreement.</a>
10.3*	(31)	<a href="#">Stock Incentive Plan Restricted Stock Grant Agreement (Performance-based Award).</a>
10.4*	(31)	<a href="#">Stock Incentive Plan Restricted Stock Grant Agreement (Management Incentive Plan Award).</a>
10.5*	(31)	<a href="#">Stock Incentive Plan Restricted Stock Grant Agreement (Outside Director Award).</a>

10.6*	(31)	<a href="#">Stock Incentive Plan Employees and Consultants Option Agreement.</a>
10.7*	(31)	<a href="#">Stock Incentive Plan Outside Directors Option Agreement.</a>
10.8*	(6)	<a href="#">2003 Equity Incentive Plan, as amended and restated.</a>
10.09*	(19)	<a href="#">2003 Equity Incentive Plan Restricted Stock Grant Agreement (Performance-based Award).</a>
10.10*	(19)	<a href="#">2003 Equity Incentive Plan Restricted Stock Grant Agreement (Management Incentive Plan Award).</a>
10.11*	(19)	<a href="#">2003 Equity Incentive Plan Restricted Stock Grant Agreement (Outside Director Award).</a>
10.12*	(19)	<a href="#">2003 Equity Incentive Plan Employees and Consultants Option Agreement.</a>
10.13*	(19)	<a href="#">2003 Equity Incentive Plan Outside Directors Option Agreement.</a>
10.14*	(14)	<a href="#">1997 Employee Stock Purchase Plan of Registrant, as amended and restated.</a>
10.15*	(13)	<a href="#">Amended and Restated Management Incentive Plan Master Document.</a>
10.16*		<a href="#">Director Compensation Policy.</a>
10.17*	(5)	<a href="#">Form of Indemnification Agreement entered into between Registrant and its directors and certain officers.</a>
10.18*	(24)	<a href="#">Employment Agreement between Registrant and Kevin S. Wilson, effective as of March 7, 2018.</a>
10.19*	(11)	<a href="#">Restricted Stock Grant Agreement between Registrant and Kevin S. Wilson, effective as of March 26, 2014.</a>
10.20*	(13)	<a href="#">Restricted Stock Grant Agreement between Registrant and Kevin S. Wilson, effective as of May 6, 2014.</a>
10.21*	(23)	<a href="#">Restricted Stock Grant Agreement between Registrant and Kevin S. Wilson, effective as of December 1, 2017.</a>
10.22*	(24)	<a href="#">Restricted Stock Grant Agreement between Registrant and Kevin S. Wilson, effective as of March 7, 2018.</a>
10.23*	(26)	<a href="#">Restricted Stock Grant Agreement between Registrant and Kevin S. Wilson, effective as of May 3, 2018.</a>
10.24*	(1)	<a href="#">Employment Agreement between Registrant and Jason A. Napolitano, effective as of May 6, 2002.</a>
10.25*	(5)	<a href="#">Amendment to Employment Agreement between Registrant and Jason A. Napolitano, effective as of January 1, 2008.</a>
10.26*		<a href="#">Separation Agreement and Release between Registrant and Jason A. Napolitano, effective as of January 31, 2020.</a>
10.27*	(30)	<a href="#">Employment Agreement between Registrant and Catherine I. Grassman, effective as of June 1, 2019</a>
10.28*	(4)	<a href="#">Employment Agreement between Registrant and Nancy Wisnewski, effective as of April 15, 2002.</a>
10.29*	(5)	<a href="#">Amendment to Employment Agreement between Registrant and Nancy Wisnewski, effective as of January 1, 2008.</a>
10.30*	(11)	<a href="#">Employment Agreement between Registrant and Steven M. Eyl, effective as of May 15, 2013.</a>
10.31*	(24)	<a href="#">Amendment to Employment Agreement between Registrant and Steven M. Eyl, effective as of January 1, 2018.</a>
10.32*	(8)	<a href="#">Employment Agreement between Registrant and Steven M. Asakowicz, effective as of February 22, 2013.</a>

10.33*	(13)	<a href="#"><u>Amendment to Employment Agreement between Registrant and Steven M. Asakowicz, effective as of March 1, 2015.</u></a>
10.34*	(24)	<a href="#"><u>Amendment to Employment Agreement between Registrant and Steven M. Asakowicz, effective as of January 1, 2018.</u></a>
10.35*		<a href="#"><u>Separation Agreement and Release between Registrant and Steven M. Asakowicz, effective as of February 5, 2020.</u></a>
10.36*	(8)	<a href="#"><u>Employment Agreement between Registrant and Rodney A. Lippincott, effective as of February 22, 2013.</u></a>
10.37*	(13)	<a href="#"><u>Amendment to Employment Agreement between Registrant and Rodney A. Lippincott, effective as of March 1, 2015.</u></a>
10.38*	(24)	<a href="#"><u>Amendment to Employment Agreement between Registrant and Rodney A. Lippincott, effective as of January 1, 2018.</u></a>
10.39*		<a href="#"><u>Separation Agreement and Release between Registrant and Rodney A. Lippincott, effective as of February 4, 2020.</u></a>
10.40*	(26)	<a href="#"><u>Employment Agreement between Registrant and Jason D. Aroesty, effective as of April 23, 2018.</u></a>
10.41*	(27)	<a href="#"><u>Restricted Stock Agreement and Notice of Stock Option Grant for grants issued to Jason D. Aroesty on July 25, 2018.</u></a>
10.42*	(24)	<a href="#"><u>Restricted Stock Grant Agreement form for grants issued on March 7, 2018 (for officers other than Kevin S. Wilson).</u></a>
10.43*	(24)	<a href="#"><u>Notice of Stock Option Grant for grants issued on March 7, 2018.</u></a>
10.44	(2)	<a href="#"><u>Net Lease Agreement between Registrant and CCMRED 40, LLC, effective as of May 24, 2004.</u></a>
10.45	(3)	<a href="#"><u>First Amendment to Net Lease Agreement and Development Agreement between Registrant and CCMRED 40, LLC, dated February 11, 2005.</u></a>
10.46	(3)	<a href="#"><u>Second Amendment to Net Lease Agreement between Registrant and CCMRED 40, LLC, dated July 14, 2005.</u></a>
10.47	(7)	<a href="#"><u>Third Amendment to Net Lease Agreement between Registrant and Millbrae Square Company, effective as of January 1, 2010.</u></a>
10.48+	(4)	<a href="#"><u>Supply and License Agreement between Registrant and Schering-Plough Animal Health Corporation, effective as of August 1, 2003.</u></a>
10.49+	(6)	<a href="#"><u>Amendment No. 1 to Supply and License Agreement between Registrant and Schering-Plough Animal Health Corporation, effective as of August 31, 2005.</u></a>
10.50+	(8)	<a href="#"><u>Amendment No. 2 to Supply and License Agreement between Registrant and Intervet Inc., d/b/a Merck Animal Health, effective as of December 7, 2011.</u></a>
10.51+	(10)	<a href="#"><u>Amendment No. 3 to Supply and License Agreement between Registrant and Intervet Inc., d/b/a Merck Animal Health, effective as of July 30, 2013.</u></a>
10.52+	(11)	<a href="#"><u>Amendment No. 4 to Supply and License Agreement between Registrant and Intervet Inc., d/b/a Merck Animal Health, effective as of December 9, 2013.</u></a>
10.53+	(17)	<a href="#"><u>Amendment No. 5 to Supply and License Agreement between Registrant and Intervet Inc., d.b.a. Merck Animal Health, effective as of October 30, 2015.</u></a>
10.54+	(23)	<a href="#"><u>Amendment No. 6 to Supply and License Agreement between Registrant and Intervet Inc., d.b.a. Merck Animal Health, effective as of November 27, 2017.</u></a>
10.55+	(12)	<a href="#"><u>Clinical Chemistry Analyzer Agreement between Registrant and FUJIFILM Corporation, effective as of January 30, 2007; and First Amendment to Clinical Chemistry Analyzer Agreement between Registrant and FUJIFILM Corporation, effective as of April 1, 2014.</u></a>
10.56	(14)	<a href="#"><u>Second Amendment to Clinical Chemistry Analyzer Agreement between Registrant and FUJIFILM Corporation, effective as of April 1, 2015.</u></a>

10.57++		<a href="#"><u>Third Amendment to Clinical Chemistry Analyzer Agreement between Registrant and FUJIFILM Corporation, effective as of August 27, 2019.</u></a>
10.58	(28)	<a href="#"><u>Purchase Agreement for Certain Assets between Heska Imaging, LLC and Cuattro, LLC, dated November 26, 2018.</u></a>
10.59+	(9)	<a href="#"><u>Asset Purchase and License Agreement between Diamond Animal Health, Inc., and Elanco Animal Health, a division of Eli Lilly and Company effective as of June 17, 2013.</u></a>
10.60++	(29)	<a href="#"><u>Amendment No. 1 to the Asset Purchase and License Agreement between Diamond Animal Health, Inc., and Elanco Animal Health, a division of Eli Lilly and Company, effective as of July 6, 2015.</u></a>
10.61++	(29)	<a href="#"><u>Amendment No. 2 to the Asset Purchase and License Agreement between Diamond Animal Health, Inc., and Elanco US Inc., effective as of June 27, 2019.</u></a>
10.62+	(15)	<a href="#"><u>Master Supply Agreement between Diamond Animal Health, Inc. and Eli Lilly and Company and its Affiliates, operating through its Elanco Animal Health division, effective as of October 1, 2014.</u></a>
10.63+	(15)	<a href="#"><u>Supplemental Agreement between Diamond Animal Health, Inc. and Eli Lilly and Company and its Affiliates, operating through its Elanco Animal Health division, effective as of October 1, 2014.</u></a>
10.64++	(29)	<a href="#"><u>Amendment No. 1 to the Supplemental Agreement between Elanco US Inc. and Diamond Animal Health, Inc., effective as of June 27, 2019.</u></a>
10.65+	(23)	<a href="#"><u>Exclusive Supply Agreement by and between Registrant and Shenzhen Mindray Bio-Medical Electronics Co., Ltd., effective as of September 1, 2013; and Supplemental memo to September 1, 2013 Exclusive Supply Agreement by and between Registrant and Shenzhen Mindray Bio-Medical Electronics Co., Ltd., effective as of March 1, 2015.</u></a>
10.66+	(23)	<a href="#"><u>Exclusive Supply Agreement by and between Registrant and Shenzhen Mindray Bio-Medical Electronics Co., Ltd., effective as of February 1, 2016; and Amendment to February 1, 2016 Exclusive Supply Agreement by and between Registrant and Shenzhen Mindray Bio-Medical Electronics Co., Ltd., effective as of January 1, 2017.</u></a>
10.67+	(23)	<a href="#"><u>Master Supply Agreement between Registrant and Butler Animal Health Supply, LLC d/b/a Henry Schein Animal Health effective as of October 17, 2014.</u></a>
10.68#		<a href="#"><u>Securities Purchase Agreement, dated as of January 12, 2020, among the Registrant and the purchasers named therein.</u></a>
21.1		<a href="#"><u>Subsidiaries of the Company.</u></a>
23.1		<a href="#"><u>Consent of Plante &amp; Moran, PLLC, Independent Registered Public Accounting Firm.</u></a>
23.2		<a href="#"><u>Consent of EKS&amp;H LLLP, Independent Registered Public Accounting Firm.</u></a>
24.1		<a href="#"><u>Power of Attorney (See Signature Page of this Form 10-K).</u></a>
31.1		<a href="#"><u>Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.</u></a>
31.2		<a href="#"><u>Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.</u></a>
32.1**		<a href="#"><u>Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u></a>
101.INS		XBRL Instance Document.
101.SCH		XBRL Taxonomy Extension Schema Document.
101.CAL		XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF		XBRL Taxonomy Extension Definition Linkbase Document.

101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.

Notes

*	Indicates management contract or compensatory plan or arrangement.
+	Portions of the exhibit have been omitted pursuant to a request for confidential treatment.
++	Certain confidential information contained in this exhibit has been omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.
#	Certain personally identifiable information has been omitted from this exhibit pursuant to Item 601(a)(6) under Regulation S-K.
**	Furnished herewith but not filed.
(1)	Filed with the Registrant's Form 10-K for the year ended December 31, 2002.
(2)	Filed with the Registrant's Form 10-K for the year ended December 31, 2004.
(3)	Filed with the Registrant's Form 10-Q for the quarter ended June 30, 2005.
(4)	Filed with the Registrant's Form 10-K for the year ended December 31, 2006.
(5)	Filed with the Registrant's Form 10-K for the year ended December 31, 2007.
(6)	Filed with the Registrant's Form 10-K for the year ended December 31, 2008.
(7)	Filed with the Registrant's Form 10-K for the year ended December 31, 2011.
(8)	Filed with the Registrant's Form 10-K for the year ended December 31, 2012.
(9)	Filed with the Registrant's Form 8-K/A on August 29, 2013.
(10)	Filed with the Registrant's Form 10-Q for the quarter ended September 30, 2013.
(11)	Filed with the Registrant's Form 10-K for the year ended December 31, 2013.
(12)	Filed with the Registrant's Form 10-Q for the quarter ended June 30, 2014.
(13)	Filed with the Registrant's Form 10-K for the year ended December 31, 2014.
(14)	Filed with the Registrant's Form 10-Q for the quarter ended March 31, 2015.
(15)	Filed with the Registrant's Form 10-Q for the quarter ended June 30, 2015.
(16)	Filed with the Registrant's Form 10-Q for the quarter ended September 30, 2015.
(17)	Filed with the Registrant's Form 10-Q for the quarter ended March 31, 2016.
(18)	Filed with the Registrant's Form 10-Q for the quarter ended June 30, 2016.
(19)	Filed with the Registrant's Form 10-K for the year ended December 31, 2016.
(20)	Filed with the Registrant's Form 10-Q for the quarter ended March 31, 2017.
(21)	Filed with the Registrant's Form 10-Q for the quarter ended June 30, 2017.
(22)	Filed with the Registrant's Form 8-K on August 2, 2017.
(23)	Filed with the Registrant's Form 10-K for the year ended December 31, 2017.
(24)	Filed with the Registrant's Form 10-Q for the quarter ended March 31, 2018.
(25)	Filed with the Registrant's Form 8-K on May 9, 2018.
(26)	Filed with the Registrant's Form 10-Q for the quarter ended June 30, 2018.
(27)	Filed with the Registrant's Form 10-Q for the quarter ended September 30, 2018.
(28)	Filed with the Registrant's Form 8-K on November 30, 2018.
(29)	Filed with the Registrant's Form 10-Q for the quarter ended June 30, 2019.
(30)	Filed with the Registrant's Form 8-K on June 1, 2019.
(31)	Filed with the Registrant's Form 10-K for the year ended December 31, 2018.
(32)	Filed with the Registrant's Form 8-K on September 17, 2019.

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

Registrants may voluntarily include a summary of information required by Form 10-K under this item 16. The Registrant has elected not to include such summary information.

## 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, on February 28, 2020.

HESKA CORPORATION

By: /s/ KEVIN S. WILSON

Kevin S. Wilson

Chief Executive Officer and President

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Catherine Grassman his or her true and lawful attorneys-in-fact, with full power of substitution, for him or her in any and all capacities, to sign any amendments to this 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 of said attorney-in-fact or their substitute 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 below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ KEVIN S. WILSON</u> Kevin S. Wilson	Chief Executive Officer, President and Director (Principal Executive Officer)	February 28, 2020
<u>/s/ CATHERINE GRASSMAN</u> Catherine Grassman	Executive Vice President, Chief Financial Officer (Principal Financial and Accounting Officer)	February 28, 2020
<u>/s/ SCOTT HUMPHREY</u> Scott Humphrey	Chair	February 28, 2020
<u>/s/ MARK F. FURLONG</u> Mark F. Furlong	Director	February 28, 2020
<u>/s/ SHARON J. LARSON</u> Sharon J. Larson	Director	February 28, 2020
<u>/s/ DAVID E. SVEEN</u> David E. Sveen, Ph.D.	Director	February 28, 2020
<u>/s/ BONNIE J. TROWBRIDGE</u> Bonnie J. Trowbridge	Director	February 28, 2020

Certain confidential information contained in this document, marked by brackets as [\*\*\*], has been omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed. In addition, certain personally identifiable information contained in this document, marked by brackets as [\*\*\*], has been omitted from this exhibit pursuant to Item 601(a)(6) under Regulation S-K.

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## AGREEMENT

regarding the sale and purchase of the sole share in  
scil animal care company GmbH

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## AGREEMENT

regarding the sale and purchase of the sole share in scil animal care company GmbH

dated 14 January 2020

## PARTIES

1. Covetrus Animal Health Holdings Limited, The Point Building, 9th Floor, 37 North Wharf Road, Paddington, London W2 1AF, UK, registered with the Company House Cardiff under company no. 07402799 (the **Seller**);
2. Covetrus, Inc., a Delaware corporation, 7 Custom House St., Portland, ME 04101, U.S.A. (the **Seller's Guarantor**);
3. Heska GmbH, c/o Heussen Rechtsanwaltsgesellschaft mbH, Seidenstrasse 19, 70174 Stuttgart, Germany, registered with the commercial register of the lower court of Stuttgart under docket number HRB 760321 (the **Purchaser**); and
4. Heska Corporation, a Delaware corporation, 3760 Rocky Mountain Ave, Loveland, CO 80538 (the **Purchaser's Guarantor**)

(the Seller, the Seller's Guarantor, the Purchaser and the Purchaser's Guarantor together the **Parties** and each of them a **Party**).

## WHEREAS:

(A) The Seller is active in the distribution of animal health products and is a member of the Covetrus, Inc. group of companies, a global distributor of healthcare products and services across the companion, equine, and large-animal health markets. The Seller's Guarantor is the ultimate parent company of the Seller.

(B) The Purchaser is active in developing, selling and servicing of advanced veterinary diagnostic and specialty healthcare products. The Purchaser's Guarantor is the ultimate parent company of the Purchaser.

(C) The Company, a wholly-owned subsidiary of the Seller, is active, together with its subsidiaries, in the field of distributing (leasing and selling) diagnostics, hardware and other finished products in the animal health care sector and related services (the **Business**).

(D) The Seller intends to sell and transfer to the Purchaser the sole share in the Company, and the Purchaser intends to purchase and acquire such share.

(E) The Parties will, in connection with the consummation of the contemplated transaction, enter into a master service agreement in relation to certain distribution, marketing, logistics, software integration, HR, accounting, compliance, management, general operations, IT and directory services provided by the Seller to the Purchaser.

It is agreed:

## 1. CORPORATE STRUCTURE

### 1.1 The Company

1.1.1 scil animal care company GmbH (the **Company**) is a limited liability company established under German Law with its registered business address at Dina-Weißmann-Allee 6, 68519 Viernheim, Germany, and its registered seat in Viernheim, Germany. It is registered with the commercial register of the lower court of Darmstadt, Germany, under registration no. HRB 61670.

1.1.2 The Seller is the sole shareholder of the Company. The registered share capital (*Stammkapital*) of the Company amounts to EUR 5,000,000 (in words: five million euro) and is represented by one share (*Geschäftsanteil*) with a par value (*Nennbetrag*) of EUR 5,000,000 (in words: five million euro) (the **Share**). The Seller is the legal and beneficial owner of the Share.

1.1.3 In this Agreement, the term "Share" shall cover all shares and other corporate participations in the Company that exist, regardless of whether number, nominal amounts and consecutive numbering of such shares or the registered share capital of the Company correspond to the details set out in Clause 1.1.2 above.

### 1.2 Subsidiaries and Participation of the Company

1.2.1 The Company directly holds all shares and interests in the wholly-owned subsidiaries listed in Schedule 1.2.1 (each of them a **Subsidiary** and collectively the **Subsidiaries**). The Company and its Subsidiaries are hereinafter collectively referred to as the **Scil Entities** or the **Scil Group**, and the shares and interests in the Subsidiaries are referred to as the **Subsidiary Shares**.

1.2.2 The Company directly holds a minority shareholding in the entity as specified in Schedule 1.2.2 (such entity, the **Participation**). The shares comprising the minority shareholding in the Participation are referred to as the **Minority Shares**.

### 1.3 No Affiliation Agreements

Neither any of the Scil Entities nor the Participation has entered into any affiliation agreements (*Unternehmensverträge*) within the meaning of sec. 291 et seq. of the German Stock Corporation Act (*Aktiengesetz - AktG*) or any comparable agreement pursuant to foreign applicable Law.

### 1.4 Financing

The Scil Entities have not received any loans from, or granted any loans to, the Seller and/or its Affiliates (other than the Scil Entities) which are outstanding as of the date of this Agreement. The Scil Entities are not a borrower under any external third party debt financing (other than as set forth in Schedule 6.2.5 (g)), and the Scil Entities have not guaranteed any security to their or the Seller's Group's funding sources other than under the Cash Pool Agreements.

## 2. SALE, PURCHASE AND TRANSFER

### 2.1 Sale and Purchase of the Share

The Seller hereby sells, and the Purchaser hereby purchases, the Share upon the terms and conditions of this Agreement.

## 2.2 Transfer of the Share

2.2.1 The transfer and assignment of the Share to the Purchaser shall not be effected by this Agreement, but by way of a separate share transfer and assignment agreement to be entered into between the Seller and the Purchaser at the Closing and recorded in a notarial deed (the **Share Transfer Deed**). The transfer and assignment of the Share with effect as of the Closing Date shall be subject to the following conditions precedent (sec. 158 para 1 German Civil Code (*Bürgerliches Gesetzbuch - BGB*)):

- (a) payment of the Estimated Purchase Price (as defined in Clause 3.4) less the Escrow Amount (as defined in Clause 3.3) to the Seller's Account by or on behalf of the Purchaser; and
- (b) payment of the Escrow Amount to the Escrow Account by or on behalf of the Purchaser.

2.2.2 The Seller as sole shareholder of the Company hereby waives all rights of pre-emption and similar rights (if any) to which it may be entitled under the constitutional documents of the Company or otherwise in relation to the sale and purchase of the Share pursuant to this Agreement.

## 2.3 Right to Profits

2.3.1 The sale and transfer of the Share shall include any and all rights associated with, or otherwise pertaining to, the Share as from the Closing Date. In particular, the Share shall be sold and transferred with all dividend rights pertaining thereto as from the Closing Date (including the right to receive any and all profits of the Company which have not been effectively distributed (*ausgeschüttet*) before the Closing Date).

## 2.4 Closing, Closing Date

2.4.1 Unless the Seller and the Purchaser agree on a different location and/or time, the consummation of the actions listed in Clause 4.4 (the **Closing**) shall take place at the offices of Morgan, Lewis & Bockius LLP in Frankfurt am Main at 10am CET on the Scheduled Closing Date. The obligation to carry out the Closing shall only be subject to the occurrence or waiver of the Closing Condition in accordance with Clause 4.1 and the non-occurrence or waiver of the Negative Closing Conditions in accordance with Clause 4.2.

2.4.2 **Scheduled Closing Date** shall mean the first day of the calendar following the month in which the Closing Condition has been fulfilled or validly waived by the relevant Party, provided, however, that (i) such day is later than the fifth (5<sup>th</sup>) Business Day which follows the day on which the Closing Condition has been fulfilled or validly waived and (ii) the Parties may mutually agree on any other date to be the Scheduled Closing Date. In case the first day of the relevant calendar month is not a Business Day, the Parties agree that the Scheduled Closing Date shall be the first Business Day following the day which would otherwise be the Scheduled Closing Date. **Closing Date** shall mean 00.01 CET of the day on which the Closing actually occurs.

2.4.3 The Parties shall confirm in a written statement, to be jointly executed (at least in duplicate), that and when Closing has occurred (the **Closing Memorandum**). Such Closing Memorandum shall constitute an irrefutable presumption (*unwiderlegliche Vermutung*) that (and when) Closing has occurred and the Share has been transferred to the Purchaser.

## 3. CONSIDERATION

### 3.1 Purchase Price

3.1.1 The purchase price for the Share shall be the amount determined as follows (excluding any form of double counting) as further to be set forth in the Purchase Price Determination Statement (as defined in Clause 5.1) (the **Purchase Price**):

- (a) a fixed amount of USD 125,000,000 (in words: one hundred twenty five million U.S. Dollars) (the **Enterprise Value**);
- (b) less the aggregate of the Financial Debt (as defined in Clause 3.2.1) of the Scil Group as of the Closing Date;
- (c) plus the aggregate of the Cash (as defined in Clause 3.2.2) of the Scil Group as of the Closing Date; and
- (d) less the amount by which the consolidated Net Working Capital of the Scil Group as of the Closing Date, falls short of EUR 9,000,000 (in words: nine million euros) (the **Target Net Working Capital**), or, as the case may be, plus the amount by which the consolidated Net Working Capital of the Scil Group as of the Closing Date exceeds the Target Net Working Capital (the resulting amount being the **Closing Date Working Capital Deviation**).

3.1.2 The Purchase Price shall finally be determined in EUR by applying the Conversion Rate as at the Closing Date to the Enterprise Value in order to convert those amounts to EUR amounts in accordance with Clause 17.3.3.

3.1.3 For the avoidance of doubt, the Purchase Price shall exclude the effects of any purchase accounting and any act, decision, payment or event made by the Purchaser (or at the Purchaser's direction) which occurs on or after the Closing, including any payments or cash contributions from the Purchaser or any of its Affiliates.

### 3.2 Definitions of Items for the Purchase Price Calculation

3.2.1 **Financial Debt** means the sum of the outstanding principal amount of, accrued and unpaid interest on, and other payment obligations (including prepayment penalties, premiums, breakage costs and costs for release of security, fees and other costs and expenses associated with repayment) arising under, any obligations consisting of

- (a) liabilities, borrowings and indebtedness in the nature of borrowing (including by way of acceptance credits, discounting or similar facilities, deposits, advances of any kind, loans, loan stocks, bonds, debentures, notes, checks, overdrafts or similar facilities) owed to any banking, financial, acceptance credit, lending or similar institution or other source of debt funding;
- (b) any obligations under employee incentive arrangements or arrangements with other third parties triggered by or in relation to the transactions contemplated in this Agreement, or any other transaction bonus, change in control bonus, retention, severance or (cash or non-cash) benefit becoming payable or due in connection with the transactions contemplated in this Agreement (including the employer portion of any payroll, social security, unemployment or similar Taxes) or any other Transaction Expenses. **Transaction Expenses** means any fees, costs and expenses payable or subject to reimbursement by the Scil Entities, whether accrued for or not, in each case in connection with the transactions contemplated by this Agreement and not paid prior to the Closing, including (a) any brokerage fees, commissions, finders' fees, financial

advisory fees, and, in each case, related costs and expenses, (b) any fees, costs and expenses of counsel, accountants or other advisors or service providers, (c) any travel expenses and costs for the data room and (d) any costs and expenses for the preparation of the Audited Financial Statements (including costs for the Retained Auditors), but excluding any such fees, costs and expenses incurred, payable or subject to reimbursement by the Scil Entities in connection with the cooperation provided by the Scil Entities in relation to the preparation and receipt of the Financing by the Purchaser pursuant to Clause 11.2.5 as requested by the Purchaser. It is being understood that Transaction Expenses includes any and all amounts paid or payable under or in connection with (including by way of reimbursement) (i) the Letter of Intent [\*\*\*] and any other arrangement by a Scil Entity or a member of the Seller's Group with [\*\*\*] made on or prior to the Closing Date, (ii) the Long Term Incentive Program (*LTIP*), (iii) arrangements with employees and managers as listed on Schedule 6.2.14 (but in the amount which is paid or payable) (together with the LTIP, the *Employee Incentive Payment Amount*), and (iv) the engagement(s) of PwC in connection with the Transaction (as shown in Schedule 6.2.14, but in the amount which is paid or payable), provided, however, that the amount of Transaction Expenses shall be adjusted by deducting 50% of the Employee Incentive Payment Amount;

- (c) liabilities (other than trade payables to the extent included in the calculation of the Net Working Capital) owed to any member of the Seller's Group (other than the Scil Entities), including any management, group, monitoring or similar fees or charges;
- (d) liabilities from bonds, profit-related, convertible, warrant-linked and other debt securities and profit participation certificates of any kind;
- (e) liabilities relating to bills of exchange;
- (f) any obligation for a lease classified as a capital or finance lease or required to be categorized as a capital or finance lease in accordance with US GAAP and consistent with US GAAP and the non-audited consolidated financial statements of the Scil Group attached in Schedule 6.2.5(a) (the *Capital Leases*) and any sale of receivables and any factoring;
- (g) market-to-market loss provisions for interest rate and currency swaps, including any termination costs;
- (h) liabilities relating to accrued or non-accrued severance obligations or provisions for severance (other than amounts under (i) below);
- (i) the following amounts:
  - (i) an amount of EUR 200,000 (in words: two hundred thousand Euros) (the *[\*\*\*] Amount*) in relation to [\*\*\*] (the *[\*\*\*]*) in connection with [\*\*\*] (including with respect to [\*\*\*] Taxes, legal fees and costs for litigation, arbitration and any other cost or liability of the Scil Entities) (together, the *[\*\*\*] Amounts*). It is being understood that the [\*\*\*] Amount shall be a lump sum. [\*\*\*];
  - (ii) an amount of EUR 800,000 (in words: eight hundred thousand) (the *[\*\*\*] Amount*) in relation to [\*\*\*] (the *[\*\*\*]*), in connection with any claims of, and proceedings, settlements and disputes with, the [\*\*\*] (including with respect to [\*\*\*] Taxes) (together, the *[\*\*\*] Amounts*). It is being understood that the [\*\*\*] Amount shall be a lump sum. [\*\*\*];
  - (iii) an amount of EUR 500,000 (in words: five hundred thousand Euros) (the *[\*\*\*] Amount*) in relation to [\*\*\*] (the *[\*\*\*]*), in connection with [\*\*\*] (including without limitation [\*\*\*] Taxes) (together, the *[\*\*\*] Amounts*). It being understood that the [\*\*\*] Amount shall be a lump sum. [\*\*\*].
- (j) any pension obligations and similar obligations (including in connection with early retirements (*Altersteilzeit*) or other early retirement arrangements), but excluding any payments made or to be made by the Scil Entities for German employees to direct insurances (*Direktversicherungen*) in accordance with past practice (the *Direct Insurance Amounts*);
- (k) (i) any amount, which shall not be less than zero, for any income Tax liabilities (excluding any amounts for deferred Tax liabilities or deferred Tax assets and any amounts in respect of speculative or contingent liabilities for income Taxes) net of any prepaid income Taxes, but only to the extent that such payments have the effect of reducing (not below zero) the particular income Tax liability in respect of which such payments were made, and (ii) any Tax liability with respect to Transaction Expenses (irrespective of whether the Transaction Expenses have been paid or are payable prior to, on the Closing Date or thereafter);
- (l) any obligation for deferred purchase price with respect to the acquisition of any business, asset, or securities in the context of M&A transactions, whether contingent or otherwise, including all Tax-related payments and amounts owed under any earn-out or similar performance payment, at the maximum value, whether contingent or not, or any seller notes or post-closing true-up obligations;
- (m) any liabilities for any drawn letters of credit, performance bonds, surety bonds and similar obligations; and
- (n) contingent liabilities and off balance sheet contingencies or similar obligations in accordance with US GAAP

in each case of (a) through (n) above excluding any amount or item to the extent included in the calculation of the Net Working Capital.

**3.2.2 Cash** means cash and cash equivalents, including bank balances and checks received, but not deposited (excluding outbound checks, drafts, wires and other outbound payments in transit), but excluding any Restricted Cash and any cash equivalents which is not convertible into cash within thirty (30) calendar days after the Closing Date.

**Restricted Cash** means any Cash to the extent it cannot, due to restrictions by applicable Law, be fully distributed or repatriated (including by way of share capital reductions, share buy-backs or upstream loans in accordance with applicable Law) directly or indirectly (via a Scil Entity) to the Purchaser, excluding, for the avoidance of doubt, any Taxes payable on distributions or repatriations.

**3.2.3 Net Working Capital** means the amount equal to (i) the book value of the inventory and trade receivables of the Scil Group and other current assets of the Scil Group (excluding Cash and any Restricted Cash) minus (ii) the book value of the advance payments received on orders, trade payables and other current liabilities of the Scil Group, including the Direct Insurance Amounts and operating leases, but excluding any Capital Leases and any deferred Tax assets or deferred Tax liabilities, in each case of this Clause 3.2.3 to be determined in accordance with U.S. GAAP.

### 3.3 Escrow

3.3.1 On or prior to the Closing Date, the Seller, the Purchaser and the acting notary (the *Escrow Agent*) shall enter into an escrow agreement (the *Escrow Agreement*) substantially in the form attached as Schedule 3.3.1. The Purchaser shall pay, on the Closing Date, an amount equal to EUR 9,000,000 (in words: nine million euro) (the *Escrow Amount*) of the Estimated Purchase Price to the escrow account set forth in the Escrow Agreement (the *Escrow Account*). The Escrow Amount, as may be increased from time to time by interest accruing thereon if applicable and as reduced from time to time by (i) any

amounts paid out to the Purchaser from the Escrow Amount, (ii) any potential negative interest on the Escrow Amount or (iii) any bank or other charges arising out of or in connection with the opening or maintaining of the Escrow Account, which shall, however, be compensated by the Seller in accordance with the Escrow Agreement, (the **Escrow Fund**), shall serve as collateral for any claims of the Purchaser based on a Breach of Guarantee(s), claims of the Purchaser under Clauses 3.5, 8 and 11.4 of this Agreement and/or other claims of the Purchaser under or in connection with this Agreement (the **Escrow Claims**) for an aggregate period of eighteen (18) months from the Closing Date in accordance with the terms and provisions of the Escrow Agreement. Each of the Seller and the Purchaser shall bear 50% of the fees and expenses of the Escrow Agent. The Escrow Fund and/or portions thereof, as applicable, shall be released in accordance with the terms and provisions of the Escrow Agreement.

3.3.2 The Purchaser's recourse against the Seller or the Seller's Guarantor shall first be pursued against the Escrow Fund, provided, however, that (i) if and to the extent the Escrow Fund is not sufficient to satisfy all claims of the Purchaser against the Seller, the Purchaser shall be entitled to seek direct recourse against the Seller and the Seller's Guarantor and (ii) the Seller shall be obligated to pay the amount of a Purchase Price Adjustment for the benefit of the Purchaser, if any, to the Purchaser in accordance with Clause 3.5 and the Purchaser shall not be obligated to pursue such claim first against the Escrow Fund.

### 3.4 Estimated Purchase Price

3.4.1 On the fifth (5th) Business Day prior to the Scheduled Closing Date, the Seller shall prepare and deliver to the Purchaser a written statement setting forth the Seller's good faith estimate of the Financial Debt of the Scil Group, the Cash of the Scil Group, the Net Working Capital of the Scil Group, in each case as at the Scheduled Closing Date, and, based on those estimates and by applying the rules set forth in Clause 3.1 and 3.2, the Estimated Closing Date Working Capital Deviation and the Estimated Purchase Price (together the **Estimated Purchase Price Determination Statement**). With respect to conversion of the Enterprise Value into an EUR amount, the Conversion Rate as at the sixth (6th) Business Day prior to the Scheduled Closing Date shall be applied.

3.4.2 The Purchaser shall be entitled to review the Estimated Purchase Price Determination Statement and to provide the Seller until the third (3rd) Business Day prior to the Scheduled Closing Date with its comments on the Estimated Purchase Price Determination Statement (if any); upon reasonable request of the Purchaser, the Seller and Purchaser shall discuss in good faith those comments and any adjustments of the Estimated Purchase Price Determination Statement (if any) and Seller, acting in good faith, shall take those comments into due account. The Seller may, in its reasonable discretion, provide the Purchaser with a revised Estimated Purchase Price Determination Statement until the Business Day immediately preceding the Scheduled Closing Date (such revised Estimated Purchase Price Determination Statement, if any, shall then be deemed to be the Estimated Purchase Price Determination Statement for purposes of this Agreement) subject to the written consent of the Purchaser. If the Seller does not revise the Estimated Purchase Price Determination Statement or the Purchaser does not give its written consent to the revised Estimated Purchase Price Determination Statement, the Purchaser shall pay the Estimated Purchase Price as set forth in the Estimated Purchase Price Determination Statement as submitted by the Seller in accordance with Clause 3.4.1.

3.4.3 **Estimated Purchase Price** means the EUR amount equal to (i) the Enterprise Value (converted into EUR as set forth above) less (ii) the estimated Financial Debt of the Scil Group plus (iii) the estimated Cash of the Scil Group less (iv) the amount by which the estimated consolidated Net Working Capital of the Scil Group falls short of the Target Net Working Capital or, as the case may be, plus the amount by which the estimated consolidated Net Working Capital of the Scil Group exceeds the Target Net Working Capital (the resulting amount being the **Estimated Closing Date Working Capital Deviation**).

3.4.4 Upon Closing, the Purchaser shall pay the Estimated Purchase Price less the Escrow Amount to the Seller in accordance with the provisions of this Agreement.

### 3.5 Purchase Price Adjustment

In the event that the final Purchase Price determined pursuant to Clauses 3.1 and 3.2 and as derived from the Purchase Price Determination Statement (i) exceeds or, as the case may be, (ii) falls short of, the Estimated Purchase Price, then the difference (each a **Purchase Price Adjustment**) must be paid within ten (10) Business Days after the Purchase Price Determination Statement becomes binding in accordance with Clause 5, in the event of (i) by the Purchaser to the Seller and in the event of (ii) by the Seller to the Purchaser. The Seller shall not be entitled to require the Purchaser to pursue the claim for a Purchase Price Adjustment for the benefit of the Purchaser (lit. (ii) of the preceding sentence) from the Escrow Fund but the Seller shall pay the amount of a Purchase Price Adjustment for the benefit of the Purchaser, if any, to the Purchaser.

### 3.6 Payment Procedures

3.6.1 Payments by the Purchaser to the Seller based on this Agreement must, except as otherwise provided in this Agreement, be paid by the Purchaser in euro via bank transfer, free of charges and fees (other than those levied by Seller's bank), with same day value to the following account of the Seller, or any other account to be nominated by the Seller to the Purchaser in writing at least five (5) Business Days prior to the Scheduled Closing Date (the **Seller's Account**):

Covetrus Animal Health Holdings Limited  
Bank: [\*\*\*]  
Bank Code: [\*\*\*]  
IBAN: [\*\*\*]  
Reference: [\*\*\*]

3.6.2 Payments by the Seller to the Purchaser based on this Agreement must, except as otherwise provided in this Agreement, be paid by the Seller in euro via bank transfer, free of charges and fees (other than those levied by Purchaser's bank), with same day value to the following account of the Purchaser, or any other account to be nominated by the Purchaser to the Seller in writing at least five (5) Business Days prior to the due date for the relevant payment (the **Purchasers' Account**):

Heska Corporation  
Account No.: [\*\*\*]  
Wire: [\*\*\*]  
ACH: [\*\*\*]

3.6.3 Any payments under or in connection with this Agreement shall be made in EUR.

### 3.7 No Set-Off

Any right of the Parties to set-off (*aufrechnen*) and/or to withhold (*zurückbehalten*) any payments due under this Agreement is hereby expressly waived and excluded except for claims which have been acknowledged (*anerkannt*) in writing by the respective Party or are confirmed by the competent arbitration tribunal in accordance with Clause 17.2.



### 3.8 Default Interest; Interest

3.8.1 If any Party fails to pay any amounts owed and due under this Agreement, it shall pay default interest (*Verzugszinsen*) at a rate of 900 basis points over the basic interest rate (*Basiszinssatz*) according to sec. 247 BGB *per annum*.

3.8.2 Interest shall be calculated on the basis of actual days elapsed and a calendar year of 360 days.

### 3.9 VAT

The sale and transfer of the Share qualify as VAT exempt under applicable Tax law. The Seller herewith agrees not to waive any VAT exemption with respect to such sale and transfer of the Share.

## 4. CLOSING CONDITION, NEGATIVE CLOSING CONDITIONS AND CLOSING ACTIONS

### 4.1 Closing Condition

4.1.1 The Parties are not obligated to carry out the Closing until the condition to Closing set forth in this Clause 4.1.1 (the **Closing Condition**) has occurred or been waived by the Purchaser alone at any time by delivery of a written notice to the Seller:

The Purchaser has received the Audited Financial Statements to satisfy the Purchaser's or the Purchaser's Guarantor's reporting obligations on Form 8-K of the Securities and Exchange Commission (or any amendments thereto) in connection with the transactions contemplated under this Agreement. **Audited Financial Statements** means the financial statements of the Scil Entities as required under Regulation S-X under the Securities Act of 1933, as amended, including audited, interim and pro forma statements as may be required in accordance with Regulation S-X and, in particular, the audited consolidated balance sheet of the Scil Group as of 31 December 2018 and as of 31 December 2019, in each case together with the audited consolidated statements of operations, shareholders' equity, cash flows and notes thereto for the fiscal years then ended.

4.1.2 As soon as any of the Parties learns of the satisfaction or final non-satisfaction of the Closing Condition, it must without undue delay inform the other Party hereof in writing.

4.1.3 The effect of a waiver shall be limited to eliminating the need that the Closing Condition shall be satisfied and shall not limit or prejudice any claim that the Purchaser may have with respect to any circumstances in relation to such Closing Condition not having been satisfied.

### 4.2 Additional Purchaser Closing Conditions

The Purchaser shall not be obliged to carry out the Closing if at least one of the following events set forth in Clause 4.2.1 through Clause 4.2.5 has occurred (the **Negative Closing Conditions**) until the Closing Date (inclusive):

4.2.1 An objection has been lodged against the list of shareholders recorded in the Company's commercial register prior to or on the Closing Date (it being understood that a transfer of the Share to a New Seller pursuant to Clause 14.2.1 shall not qualify as a Negative Closing Condition).

4.2.2 Circumstances materialize that trigger the obligation to apply for any bankruptcy, insolvency or equivalent proceedings in respect of any Scil Entity.

4.2.3 A Material Guarantee Breach has occurred (taking into account any curing prior to the Closing Date). The Seller shall deliver to the Purchaser on the Closing Date a written statement (duly executed by the legal representatives of the Seller) confirming that to the Seller's Knowledge no Material Guarantee Breach has occurred.

**Material Guarantee Breach** means either a breach or breaches of the Guarantee pursuant to Clauses 6.2.1 through 6.2.4 or a Material Other Guarantee Breach.

**Material Other Guarantee Breach** means a breach or breaches of any Guarantee (other than the Guarantees pursuant to Clauses 6.2.1 through 6.2.4), which would result, assuming Closing had occurred, in a Material Adverse Change (as defined in Clause 4.2.4), it being acknowledged, for the avoidance of doubt, by the Parties, that the Purchaser shall retain the ability to make a claim against the Seller following Closing in connection with any breach of the Guarantees.

4.2.4 A Material Adverse Change has occurred. **Material Adverse Change** means any event, occurrence, fact, condition or change that is individually or as a whole materially adverse to (a) the business, results of operations, financial condition or assets of the Scil Group, or (b) the ability of Seller to consummate the transactions contemplated hereby; provided, however, that Material Adverse Change shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions to the extent they do not have a disproportionate effect on the Scil Entities relative to similarly situated peer companies and competitors, (ii) conditions generally affecting the industries in which the Scil Entities operate to the extent they do not have a disproportionate effect on the Scil Entities relative to similarly situated peer companies and competitors, (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates, (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof, (v) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of the Purchaser, (vi) any changes in Applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof, (vii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, non-distributor customers, suppliers, distributor customers or others having relationships with the Scil Group due to the transactions contemplated by this Agreement, or (viii) any natural or man-made disaster or acts of God or (ix) any failure by the Scil Group to meet any internal or published projections, forecasts or revenue or earnings predictions.

The Parties agree that, notwithstanding anything to the contrary in this Agreement, this Clause 4.2.4 shall be construed in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

4.2.5 A breach of the financing cooperation covenant set forth in Clause 11.2.5 by the Seller has occurred which the Seller has not cured upon prior reasonable advance written notice of the Purchaser and which breach results in the Purchaser not obtaining the necessary equity or debt financing or at significantly different terms to pay the Estimated Purchase Price and the Escrow Amount at Closing as envisaged by the Purchaser on the date hereof.

4.2.6 As soon as the Seller learns of circumstances which could constitute a Negative Closing Condition, it must without undue delay inform the Purchaser hereof in writing, and with respect to a Material Guarantee Breach, providing reasonable details in relation to such Material Guarantee Breach.

4.2.7 In case a Negative Closing Condition occurs, the Seller and the Purchaser shall, without undue delay following a due notification pursuant to Clause 4.2.6, enter into good faith negotiations within 20 (twenty) Business Days to agree an adjustment of the terms of this Agreement taking the relevant effects fully into account. Should the Seller and the Purchaser fail to reach such agreement within the aforementioned timeline, the Purchaser shall not be obliged to carry out the Closing (with no obligation of the Purchaser to agree to any adjustment) and shall have the right to rescind from this Agreement subject to and in accordance with Clause 4.3.1.

### 4.3 Consequences of Non-Occurrence of the Closing

4.3.1 If the Closing has not occurred at the latest by 31 May 2020, either the Seller or the Purchaser may rescind this Agreement (*Rücktritt vom Vertrag*) by written notice to the respective other Party with a copy to the acting notary, provided that the Party which violated its obligations under this Agreement thereby causing (i) the Closing Condition not to occur or be satisfied, (ii) a Negative Closing Condition to occur or (iii) any Closing Action to be taken by such Party has neither been taken nor validly waived is in each case not entitled to rescind this Agreement. For the avoidance of doubt and subject to Clause 4.2.5, the Purchaser is not entitled to rescind this Agreement if it or its Affiliates do not obtain sufficient funds or any other form of financing to pay the Estimated Purchase Price and the Escrow Amount at the Closing.

4.3.2 If this Agreement is rescinded in accordance with Clause 4.2.7 and/or 4.3.1, this Agreement shall cease to have force and effect and shall not create any binding obligation between the Parties except for any claims for breaches of this Agreement which occurred prior to the rescission and provided that this Clause 4.3.2 and Clauses 12 (Purchaser's Guarantor; Seller's Guarantor), Clause 13 (Confidentiality and Press Releases), 15 (Transfer Taxes and Costs), 16 (Notices) and 17 (Miscellaneous) shall remain in full force and effect.

### 4.4 Closing Actions

4.4.1 At the Closing, the Seller and the Purchaser shall take the following actions in the sequence presented:

- (a) the Seller shall deliver to the Purchaser a board resolution of the Seller approving the consummation of this Agreement and the performance of the transactions contemplated hereunder;
- (b) the Seller, the Purchaser and the Escrow Agent shall enter into the Escrow Agreement substantially in the form as set out in Schedule 3.3.1;
- (c) the Seller and the Purchaser shall enter into a master services agreement, substantially in the form as set out in Schedule 4.4.1(c), with effect as of the Closing Date.
- (d) the Seller shall hand out to the Purchaser a copy of a shareholder's resolution of the Company according to which the managing directors (*Geschäftsführer*) of the Company are being granted discharge (*Entlastung*) for the time period up to the Closing Date;
- (e) the Seller and the Purchaser shall enter into the Restrictive Covenant Agreement;
- (f) the Seller shall deliver evidence to the Purchaser that the Scil Entities have ceased to participate in the Cash Pool as set forth in Clause 11.2.9;
- (g) the Seller shall confirm to the Purchaser in writing that to the Seller's Knowledge, no Negative Closing Condition has occurred and shall deliver to the Purchaser a written statement (duly executed by the legal representatives of the Seller) confirming that to the Seller's Knowledge no Material Guarantee Breach has occurred;
- (h) the Seller and the Purchaser shall enter into the Share Transfer Deed;
- (i) the Purchaser or an Affiliate acting on behalf of the Purchaser shall pay the Estimated Purchase Price less the Escrow Amount in accordance with Clause 3 to the Seller's Account;
- (j) the Purchaser or an Affiliate acting on behalf of the Purchaser shall pay the Escrow Amount to the Escrow Account in accordance with the Escrow Agreement; and
- (k) upon confirmation of receipt of the Estimated Purchase Price by the Seller and the Escrow Amount by the Escrow Agent, the Seller shall deliver to the Purchaser a power of attorney substantially in the form as attached in Schedule 4.4.1(k) granting the Purchaser the right to exercise the Seller's rights as shareholder of the Company after the Closing with respect to the Share.

4.4.2 The Seller and Purchaser may jointly waive the allocated sequence of the Closing Actions (in whole or in part). The Seller may unilaterally waive each of the Closing Actions under Clause 4.4.1(i) and 4.4.1(j) by delivery of a written notice to the Purchaser to such effect. The Purchaser may unilaterally waive each of the Closing Actions under Clause 4.4.1(a), **Fehler! Verweisquelle konnte nicht gefunden werden.**, 4.4.1(f), 4.4.1(g) and 4.4.1(k) by delivery of a written notice to the Seller to such effect. Each of the Closing Actions under Clause 4.4.1(b), 4.4.1(c), 4.4.1(e) and 4.4.1(h) may be waived jointly in writing by the Seller and the Purchaser. The effect of a waiver shall be limited to eliminating the need that the respective Closing Action is taken on the Closing Date and shall not limit or prejudice any claim that any Party may have with respect to any circumstances in relation to such Closing Action not being taken on the Closing Date in accordance with this Agreement. The Seller may elect to perform each of the Closing Actions under Clause 4.4.1(a), 4.4.1(f) and 4.4.1(g) prior to the Scheduled Closing Date. The Purchaser may elect to perform each of the Closing Actions under Clause 4.4.1(i) and 4.4.1(j) prior to the Scheduled Closing Date.

4.4.3 Immediately after all Closing Actions have been carried out, or validly waived, the Parties shall (i) execute the Closing Memorandum pursuant to Clause 2.4.3 and (ii) inform the acting notary about the in rem (*dinglich*) transfer of the Share to the Purchaser with the instruction to file an updated shareholders list reflecting the in rem (*dinglich*) transfer of the Share to the Purchaser with the competent commercial register.

## 5. PURCHASE PRICE DETERMINATION STATEMENT

### 5.1 Preparation of Purchase Price Determination Statement

5.1.1 The Purchaser shall procure that the Company shall draw up consolidated financial statements of the Scil Group as of the Closing Date in accordance with U.S. GAAP (the **Closing Accounts**). Based on the Closing Accounts, the Purchaser shall prepare a written statement setting forth the Purchaser's determination of the Financial Debt, the Cash, the Net Working Capital, the Closing Date Working Capital Deviation and the Purchase Price (together with the Closing Accounts the **Purchase Price Determination Statement**).

5.1.2 The Purchaser shall submit the Purchase Price Determination Statement (including the Closing Accounts) to the Seller for review within ninety (90) Business Days from the Closing Date.

5.1.3 In order to support and enable the review of the Purchase Price Determination Statement (including the Closing Accounts) by the Seller, the Purchaser shall, upon reasonably written request of the Seller, cause the Scil Entities to grant to the Seller and the Seller's professional advisors access to their senior employees responsible for the preparation of the Purchase Price Determination Statement within normal business hours and upon reasonable notice in advance and to make available to them without undue delay all documentation and other data available to the Scil Entities and as reasonably requested by the Seller in writing to review the Purchase Price Determination Statement.

5.1.4 Any objections of the Seller to the Purchase Price Determination Statement and the Closing Accounts must be raised within sixty (60) Business Days from receipt of the Purchase Price Determination Statement by providing the Purchaser with (i) a written statement of objections, specifying the items or entries that are objected, and (ii) a revised version of the Purchase Price Determination Statement (including revised Closing Accounts) (the **Revised Purchase Price Determination Statement**) taking such objections into account. The Revised Purchase Price Determination Statement shall also specify in reasonable detail the grounds, and submit the underlying documentation, for such objections and the proposed modifications. If and to the extent the Seller does not provide a Revised Purchase Price Determination Statement during such sixty (60) Business Days period and to the extent the Revised Purchase Price Determination Statement does not include any objections against the Purchase Price Determination Statement, the Purchase Price Determination Statement shall with the expiration of such period be final and binding upon the Parties.

5.1.5 Each Party shall bear its own costs in relation to the preparation and review of the Purchase Price Determination Statement.

## 5.2 Resolution of Disputes

5.2.1 In case the Seller timely submits a Revised Purchase Price Determination Statement, the Seller and the Purchaser shall attempt in good faith to settle the matters in dispute. If and to the extent the Seller and the Purchaser cannot settle the matters in dispute within twenty (20) Business Days after receipt by the Purchaser of the Seller's Revised Purchase Price Determination Statement (the **Settlement Period**), Seller and Purchaser shall jointly present the matter to a neutral auditing firm of international recognition (the **Neutral Auditor**). If the Seller and the Purchaser cannot agree on the Neutral Auditor within ten (10) Business Days after the Settlement Period, a suitable Neutral Auditor shall be appointed by the German Institute of Chartered Accountants (*Institut der Wirtschaftsprüfer in Deutschland e.V.*) at the written request of either Party after consideration of the proposals made by the Seller and the Purchaser.

5.2.2 The Seller and the Purchaser shall jointly instruct the Neutral Auditor to determine the matters in dispute in accordance with the provisions of this Agreement. To that end, the Seller and the Purchaser agree to use their commercially reasonable efforts to engage the Neutral Auditor as promptly as practicable. Each Party agrees to execute, if requested by the Neutral Auditor, an engagement letter with the Neutral Auditor reflecting the terms of this Agreement and otherwise containing reasonable terms.

5.2.3 Unless instructed otherwise by the Seller and the Purchaser jointly, the Neutral Auditor shall limit its decision to the matters in dispute, but shall on the basis of its decision and the undisputed parts of the Purchase Price Determination Statement (including the Closing Accounts) determine the Purchase Price Determination Statement (including the Closing Accounts) in its entirety. In respect of the matters in dispute, the decision of the Neutral Auditor shall remain within the boundaries of the positions (including the amounts) taken by the Seller and the Purchaser in the Purchase Price Determination Statement (including the Closing Accounts) and the Revised Purchase Price Determination Statement (including the revised Closing Accounts), respectively. To the extent necessary for the decision, the Neutral Auditor shall also be entitled to decide on the interpretation of the provisions in Clause 3.2. The Neutral Auditor shall act as an expert (*Schiedsgutachter*) and not as an arbitrator (*Schiedsrichter*).

5.2.4 The Seller and the Purchaser shall make available to the Neutral Auditor the Purchase Price Determination Statement (including the Closing Accounts), the Revised Purchase Price Determination Statement (including the revised Closing Accounts) and all other documentation and data reasonably requested by the Neutral Auditor. The Neutral Auditor shall make its decision solely on written presentations of the Purchaser and the Seller submitted to the Neutral Auditor and shall not undertake any independent investigation or review. The Neutral Auditor shall immediately submit copies of all documents and other data made available by the Seller or the Purchaser to the respective other Party as well. The Parties shall have a right to be present (together with their respective advisors) at any meeting of the Neutral Auditor with any person and at any visit or review of any of the Parties' or the Scil Entities' premises, systems or data. Before taking any decision the Neutral Auditor shall grant the Seller and the Purchaser the opportunity to present their positions, which shall include the opportunity of at least one oral hearing in the presence of the Seller and the Purchaser and their respective professional advisors.

5.2.5 The Neutral Auditor shall use best efforts to deliver its written opinion with reasons for the decision as soon as reasonably practical and shall endeavour to do so no later than thirty (30) Business Days after the matters in dispute have been referred to the Neutral Auditor.

5.2.6 The Neutral Auditor's decisions and the Purchase Price Determination Statement (including the Closing Accounts) as revised by the Neutral Auditor shall be final and binding upon the Parties absent manifest errors.

5.2.7 The costs and expenses of the Neutral Auditor shall be borne by the Seller and the Purchaser pro-rata in proportion to the amounts by which the Purchase Price, as determined by the Purchaser in the Purchase Price Determination Statement and by the Seller in the Revised Purchase Price Determination Statement, deviates from the Purchase Price determined by the Neutral Auditor.

## 6. SELLER'S GUARANTEES

### 6.1 Form and Scope of Seller's Guarantees

The Seller, and the Seller's Guarantor with respect to Clause 6.2.3 and 6.2.4 in relation to itself only, hereby guarantee to the Purchaser, subject to the limitations provided for in Clause 7 below, by way of an independent promise of guarantee (*selbständiges Garantieverprechen*) within the meaning of sec. 311 para. 1 BGB irrespective of fault that the following statements (each of them a **Guarantee** and all of them collectively the **Guarantees**) are complete and correct as of the date of this Agreement (the **Signing Date**) and will also be complete and correct as of the Closing Date, except that Guarantees which are expressly made as of a specific date or period are complete and correct only as of such date or period, respectively. Guarantees qualified by the Seller's Knowledge are complete and correct only as of the Signing Date. The Seller, the Seller's Guarantor and the Purchaser agree and explicitly confirm that the Guarantees shall be qualified and construed neither as quality guarantees concerning the object of the purchase (*Garantien für die Beschaffenheit der Sache*) within the meaning of sec. 443 and 444 (second alternative) BGB nor quality agreements (*Beschaffenheitsvereinbarungen*) within the meaning of sec. 434 para. 1 sentence 1 BGB.

### 6.2 Seller's Guarantees

#### 6.2.1 Corporate Matters

- (a) The statements in Clauses 1.1 through 1.3 (including the related Schedules) regarding the Scil Entities and the Participation are complete and correct. The Share is the sole share in the Company and represents 100% of the Company's share capital. With respect to each Subsidiary, the relevant Subsidiary Shares are the sole shares in such Subsidiary and represent 100% of such Subsidiary's share capital.
- (b) The Scil Entities were duly established in the legal form as set out in Schedule 1.2.1 and are validly existing under the Laws of their jurisdiction and have the corporate power to own their respective properties and to carry on its respective businesses as presently conducted. **Law** or **Laws** shall mean any law, statute, rule, treaty, regulation, ordinance (*Verwaltungsvorschrift*), code, judgment, constitution, principle of common law or case law, edict, ruling, directive or similar regulation of general applicability of any relevant country or state, province, county, city, municipality, government, governmental authority, regulatory authority or other body entrusted with governmental responsibilities (including, for the avoidance of doubt, any legislative body).
- (c) Schedule 6.2.1(c) contains copies of excerpts from the commercial register (or any other relevant public register) of most recent date available to the Seller of the Scil Entities and the Participation attached for information purposes. All facts required to be entered in the relevant registers have been entered therein and no resolutions or other measures have been taken which would require registration in such registers and no filings with such registers are currently pending.
- (d) None of the Scil Entities is, or has agreed to become, a party to any shareholder agreement, trust agreement, silent partnership agreement, sub-participation agreement, profit participation right agreement or any affiliation agreement (*Unternehmensvertrag*) within the meaning of sec. 291 et seq. AktG or any comparable agreement pursuant to foreign applicable Law, except as listed in Schedule 6.2.1(d).
- (e) The Company does not hold, either directly or indirectly (nor through an escrow agent (*Treuhänder*)), any shares, interests or participations in other corporations, partnerships, enterprises or other persons other than the Subsidiary Shares and the Minority Shares and has no legal obligation to acquire any such shares, interests or participations. The Subsidiaries do not hold, neither directly nor indirectly (nor through an escrow agent), shares, interests or participations in other corporations, partnerships, enterprises or other persons and have no legal obligation to acquire any such shares, interests or participations.
- (f) None of the Scil Entities has any branches or representative offices inside or outside of its jurisdiction of incorporation.

#### 6.2.2 Ownership of the Share and the Subsidiary Shares; Liquidation of Subsidiaries

- (a) The Seller is the sole and unrestricted legal and beneficial owner of the Share and the Company is the sole and unrestricted legal and beneficial owner of the Subsidiary Shares. The Seller is entitled to freely dispose of the Share and the Company is entitled to freely dispose of the Subsidiary Shares, in each case without such disposal infringing any rights of a third party.
- (b) The Share and the Subsidiary Shares have been validly issued, are fully paid up, either in cash or in kind, and have not been repaid, neither in whole nor in part, neither to the Seller nor to any of its Affiliates. Except as set out in Schedule 6.2.2(b), there is no shareholder obligation (actual or contingent) to make any additional payment or other contribution with respect to the Share or any of the Subsidiary Shares.
- (c) The Share and the Subsidiary Shares are free and clear from any liens, pledges, charges, security interests, encumbrances, other rights of third parties or other defects of title (*Rechtsmängel*) (together the **Liens**). There are no pre-emptive rights, rights of first refusal, options, subscription rights or other rights (actual or contingent) of any third party to purchase or acquire, or otherwise in respect of, any or all of the Share and the Subsidiary Shares.
- (d) The Seller is, with respect to the Share, not bound by any agreement (including voting trust agreements – *Stimmbindungsverträge*), restrictions or obligations relating to any rights under the Share. There are no trust agreements or silent partnerships in respect of the Company or any of the Subsidiaries and no third party owns any indirect participations (*Unterbeteiligungen*) in the Share or any of the Subsidiary Shares.
- (e) The liquidation of former subsidiaries of any member of the Scil Group has been implemented and finalized in accordance with applicable Law with no outstanding rights, obligations or liabilities in connection therewith for any member of the Scil Group. There are no outstanding rights, obligations or liabilities in connection with any member of the Scil Group (or any subsidiary of any member of the Scil Group) which is not operative (including scil animal care company Ltd., United Kingdom).

#### 6.2.3 Authority of the Seller and the Seller's Guarantor

- (a) The Seller is duly incorporated and validly existing under the Laws of the United Kingdom, the Seller's Guarantor is duly incorporated and validly existing under the Laws of Delaware and the Seller and the Seller's Guarantor have all requisite corporate power and authority to execute and consummate this Agreement and to perform their obligations hereunder.
- (b) This Agreement has been duly and validly executed by the Seller and the Seller's Guarantor and constitutes a legal, valid, and binding obligation of the Seller and the Seller's Guarantor, enforceable under German Law against the Seller and the Seller's Guarantor in accordance with its terms. The execution and consummation of this Agreement and the performance of the transactions contemplated hereunder do not violate any legal obligation of the Seller and the Seller's Guarantor, any judicial or governmental order to which any of the Seller and the Seller's Guarantor is bound or any provision of the Seller's and/or the Seller's Guarantor's articles of association or similar corporate documents.
- (c) The execution and performance by the Seller and the Seller's Guarantor of this Agreement have been validly authorized and the execution and performance of this Agreement by the Seller and the Seller's Guarantor require no approval, consent or permit by any corporate body of any member of the Seller's Group, governmental authority or other third party that would allow such corporate body, governmental authority or third party to prevent the consummation of this Agreement by legal means.

#### 6.2.4 No Insolvency or Illiquidity

- (a) (i) No bankruptcy or insolvency or equivalent proceedings concerning any of the Seller, the Seller's Guarantor, the Scil Entities have been applied for and (ii) no circumstances exist which would trigger the obligation to apply for any bankruptcy, insolvency or equivalent proceedings in any jurisdiction under applicable Law.
- (b) Neither the Seller or the Seller's Guarantor nor any of the Scil Entities have stopped or suspended payment of their debts, become unable to pay their debts or otherwise become insolvent, illiquid or over-indebted (*überschuldet*), except as provided for in Schedule 6.2.4(b). No assets of the Seller, the Seller's Guarantor or any of the Scil Entities have been seized by or on behalf of any third party nor are any foreclosure, forfeiture,

execution or enforcement proceedings pending or threatened in writing with respect to any of the Seller, the Seller's Guarantor or the Scil Entities or their respective assets.

#### 6.2.5 Financial Statements

- (a) The non-audited consolidated financial statements of the Scil Group and the audited or non-audited, as the case may be, individual financial statements of each of the Scil Entities for the fiscal years ending on 31 December 2017 and on 31 December 2018, including in each case the balance sheets, the income statements and the notes (collectively, the **Financial Statements**) are attached hereto for information purposes as Schedule 6.2.5(a).
- (b) With respect to the Financial Statements which were audited and certified (*geprüft und testiert*): The relevant auditor has issued an unqualified opinion and they were prepared in accordance with the statutory accounting provisions applicable in the relevant jurisdiction of the respective Scil Entity and the generally accepted accounting principles as applied in the respective jurisdictions (local GAAP), consistent with the principles used in the financial statements of the Scil Entities for the previous three years (*unter Wahrung formeller und materieller Bilanzkontinuität*) and applied on a consistent basis (*e.g.*, with respect to the use of discretionary rights (*Aktivierungs- und Passivierungswahlrechte*)) and they present a true and fair view of the assets and liabilities (*Vermögenslage*), financial condition (*Finanzlage*) and results of operation (*Ertragslage*) of the relevant Scil Entity as of, and with respect to, the fiscal year ending on 31 December 2017 and on 31 December 2018, respectively.
- (c) The non-audited consolidated financial statements of the Scil Group were prepared in accordance with U.S. GAAP consistent with the principles used in the non-audited consolidated financial statements of the Scil Group for the previous three years (*unter Wahrung formeller und materieller Bilanzkontinuität*) and applied on a consistent basis (*e.g.*, with respect to the use of discretionary rights (*Aktivierungs- und Passivierungswahlrechte*)) and present a true and fair view of, the assets and liabilities (*Vermögenslage*), financial condition (*Finanzlage*) and results of operation (*Ertragslage*) of the Scil Group as of, and with respect to, the fiscal year ending on 31 December 2017 and on 31 December 2018, respectively.
- (d) The non-audited Financial Statements of the Scil Entities were prepared in accordance with local GAAP consistent with the principles used in the non-audited Financial Statements of the Scil Entities for the previous three years (*unter Wahrung formeller und materieller Bilanzkontinuität*) and applied on a consistent basis (*e.g.*, with respect to the use of discretionary rights (*Aktivierungs- und Passivierungswahlrechte*)) and present a true and fair view of, the assets and liabilities (*Vermögenslage*), financial condition (*Finanzlage*) and results of operation (*Ertragslage*) of the relevant Scil Entity as of, and with respect to, the fiscal year ending on 31 December 2017 and on 31 December 2018, respectively.
- (e) With respect to the Audited Financial Statements as of the Closing Date only: The relevant auditor has issued an unqualified opinion and they were prepared in accordance with the statutory accounting provisions applicable in the relevant jurisdiction of the respective Scil Entity and the generally accepted accounting principles as applied in the respective jurisdictions (local GAAP), consistent with the principles used in the financial statements of the Scil Entities for the previous three years (*unter Wahrung formeller und materieller Bilanzkontinuität*) and applied on a consistent basis (*e.g.*, with respect to the use of discretionary rights (*Aktivierungs- und Passivierungswahlrechte*)) and they present a true and fair view of the assets and liabilities (*Vermögenslage*), financial condition (*Finanzlage*) and results of operation (*Ertragslage*) of the relevant Scil Entity as of, and with respect to, the fiscal year ending on 31 December 2018 and on 31 December 2019, respectively.
- (f) The consolidated management accounts of the Scil Group as of 30 November 2019 and for the period from 1 January 2019 through 30 November 2019 are attached hereto as Schedule 6.2.5(f) (the **Management Accounts**). The Management Accounts have been prepared in accordance with past accounting and consolidation practice as consistently applied for the preparation of the Financial Statements of the Scil Group in 2017 and 2018. They do not materially misstate the assets and liabilities (*Vermögenslage*) and the results of operations (*Ertragslage*) of the Scil Group as of 30 November 2019 and for the financial period then ended and, to the Seller's Knowledge, are correct in all material respects.
- (g) Except for the liabilities shown in Schedule 6.2.5(g), no Scil Entity has (i) any liability (including uncertain and contingent liabilities) not required to be included as liabilities in the Financial Statements in accordance with local GAAP or U.S. GAAP, as applicable and (ii) since 1 January 2019 incurred any liability (whether actual, uncertain or contingent) which would have to be shown or accrued for in the Financial Statements, or to be disclosed in the notes to any financial statements, of such Scil Entity prepared as of the Signing Date, except for (x) any liability incurred in the ordinary course of the Business and (y) liabilities specifically disclosed to the Purchaser through the Management Accounts.
- (h) The books and records (including accounting and Tax records) of the Scil Entities have been prepared with the diligence of a prudent businessman (*Sorgfalt eines ordentlichen Geschäftsmanns*) and in accordance with applicable Law in all material respects and adequately reflect all transactions that are required to be reflected therein pursuant to applicable Law.
- (i) Schedule 6.2.5(i) contains a complete and correct overview of the Scil Entities' outstanding debt towards banks and other financial institutions, specifying in each case the lender, the underlying loan or financial arrangement as well as the amount of outstanding principal and interest accrued. No Scil Entity is liable or has any financial obligation (whether actual or contingent) *vis-à-vis*, and/or for any liability or other obligation of the Seller's Group and has not granted or is liable in respect of guarantees, indemnities, sureties, payment guarantees (*Bürgschaften*), assumptions of debt (*Schuldübernahmen*), collateral promises (*Schuldbeitritte*), letters of comfort (*Patronatserklärungen*) or similar obligations or instruments) except as disclosed in Schedule 6.2.5(ii).

#### 6.2.6 Real Property

- (a) Schedule 6.2.6(a) contains a complete and correct list of all land parcels and of rights equivalent to real property (*Grundstücke und grundstücksgleiche Rechte*) to which the Scil Entities hold legal title (together with the buildings and other structures (*Aufbauten*) erected thereon, the **Owned Real Property**), including any details regarding location, land register and Liens. The Scil Entities named as owners in Schedule 6.2.6(a) hold unrestricted title to the Owned Real Property and the latter is not encumbered except as set forth in Schedule 6.2.6(a).
- (b) The Scil Entities which own the Owned Real Property are not subject to any third party rights to use or occupy or dispose of the Owned Real Property. No such third party rights have been notified to the Scil Entities in writing and no legal proceedings are pending (*rechtshängig*) in respect of such third party rights. The existing encumbrances of the Owned Real Property do not impede the current use of the Owned Real Property for the Business.
- (c) Schedule 6.2.6(c) contains a complete and correct list of all land parcels leased to the Scil Entities as lessee (the **Leased Real Property**, together

with the Owned Real Property, the **Real Property**). The Scil Entities have the right to use the Leased Real Property for the conduct of the Business. No Scil Entity has received, or given a written notice of termination in respect of a lease agreement regarding any Leased Real Property.

- (d) The Real Property comprises all real property necessary to conduct the Business from and after the Closing in the same manner as currently conducted.
- (e) All land parcels, buildings and structures located on the Real Property are in sound and useable condition and will allow the Scil Entities to continue the Business substantially in the same manner and scope as currently conducted.
- (f) No regulatory approval or other permit is missing with respect to the construction, installations and facilities located on the Owned Real Property, which is required by the Scil Entities to continue the Business substantially in the same manner and scope as currently conducted.
- (g) With regard to the Real Property, there are no proceedings under public Law (litigation, appellate proceedings or administrative proceedings reviewing an individual regulatory decision with a view to judicial review (*Widerspruchsverfahren*)) currently pending, including formally lodged neighbour disputes (*Nachbarwidersprüche*) and proceedings that aim to increase the requirements under the applicable construction and emission control legislation. There are currently no legal proceedings subject to civil or public Law with third parties relating to the Real Property.
- (h) To the Seller's Knowledge, no environmental remediation measures under applicable Law are required to be performed on any of the Owned Real Property and no Scil Entity has been notified in writing that any environmental remediation measures under applicable Law is required to be performed on any of the Owned Real Property. To the Seller's Knowledge, in the past no environmental pollution or contamination of the Owned Real Property by hazardous substance has occurred and no environmental remediation measures under applicable Law are required to be performed on any of the Owned Real Property.

#### 6.2.7 Other Assets

- (a) The fixed and current assets (*Gegenstände des Anlage- und Umlaufvermögens*) reflected in the respective Financial Statements (except for the assets sold in the ordinary course of business after the reference date of the respective Financial Statements) are legally and economically owned without restrictions by the relevant Scil Entity and such assets and the fixed and current assets lawfully used by the Scil Entities (together the **Assets**) are sufficient and in good working order (regular wear and tear excepted) to continue the Business substantially in the same manner as presently conducted. The Assets are not encumbered with any Liens other than those imposed in the ordinary course of business consistent with past practice.
- (b) The inventory of the Scil Entities is of a quantity and quality suitable for the use in the Business (including its sale) in the ordinary course of business.

#### 6.2.8 Compliance with Laws and Permits; Subsidies; Product Liability

- (a) The Scil Entities hold all permits, licenses, authorizations and consents which are required, if any, under applicable Laws in order to conduct the Business substantially in the form as presently conducted (the **Permits**). No Permit has been cancelled, revoked or restricted by any competent authority in writing. No such authority or other third party has notified any of the Scil Entities in writing that it will or may cancel, revoke or restrict any Permit, nor, to the Seller's Knowledge, are there any other circumstances which may reasonably be expected to result in any such cancellation, revocation or restriction.
- (b) To the Seller's Knowledge, the business of the Scil Entities is conducted and has been conducted during the last five (5) years, in all material respects, in compliance with all applicable Laws (including radiation safety and compliance policies) and in compliance with all Permits. No Scil Entity has received any still extant notice in writing of any failure to comply with such Laws or Permits and has not been notified in writing about any investigation with respect to any such failure.
- (c) None of the Scil Entities is or has during the last five (5) years prior to the Closing Date been a party to any agreement or arrangement, or involved in any business conduct, that infringes any Sanctions or Export Controls, antitrust, competition, anti-money laundering, anti-bribery, regulatory or similar legislation in any jurisdiction in which any of the Scil Entities has assets or carries out business and, to the Seller's Knowledge, there are no circumstances which could give rise to any liability of a Scil Entity or any of their former or current managing directors, officers, employees or agents, in connection with having acted on behalf of a Scil Entity, arising from willful criminal conduct under any applicable Law. All compliance policies of the Scil Entities are included in Schedule 6.2.8(c). To Seller's Knowledge, no person who performs or has performed services for or on behalf of any Scil Entity has bribed another person intending to obtain or retain business or an advantage in the conduct of business for the Scil Entities.

**"Sanctions or Export Controls"** means in each case of lit. (i) to (iv) the economic sanctions laws, regulations, embargoes, export controls, or restrictive measures administered, enacted, or enforced by: (i) the United States government, (ii) the United Nations, (iii) the European Union (and its member states), or (iv) the respective governmental authorities of any of the foregoing, including without limitation, the U.S. Office of Foreign Assets Control, the U.S. Department of State, Her Majesty's Treasury in the United Kingdom, the United Nations Security Council, or other sanctions authority.

- (d) Except as provided for in Schedule 6.2.8(d), no public aid, in particular subsidies, investment allowances (*Investitionszulagen*), investment subsidies (*Investitionszuschüsse*) or other government aids (*Beihilfen*) have been granted to any of the Scil Entities and no Scil Entity has applied for any of the foregoing. During the last twelve (12) months prior to the Signing Date, the respective Scil Entity has not received any written notice by any administrative authority claiming that any public aid granted will have to be repaid in part or in full or that such Scil Entity has breached obligations under the terms and conditions of any public aid.
- (e) Schedule 6.2.8(e) contains a complete and correct list of all (i) warranty claims (*Gewährleistungsansprüche*) pending or threatened in writing and (ii) all product liability claims (*Produkthaftungsansprüche*) asserted in the three (3) years preceding the Signing Date or the Closing Date, respectively, (irrespective of whether they are still pending), of customers of the Scil Group against any of the Scil Entities relating to products delivered by the Scil Entities and exceeding an amount of EUR 10,000 in each individual case or in a series of related cases. The Scil Entities have not produced, sold, imported, or supplied products which do not comply in all material respects (i) with applicable Laws and standards applicable to such products or (ii) are not fit for the purposes for which they are made, sold or supplied or (iii) are not free from contamination or other material defects or are otherwise unsafe, (iv) were the subject of any voluntary or mandatory recall or product warning or (v) did not comply with any warranties or representations made by the Scil Entities or on its behalf.

## 6.2.9 Material Agreements

Schedule 6.2.9 contains a complete and correct list of all material agreements (and all supplemental and amendment agreements relating thereto) as described below to which any of the Scil Entities is a party and of which the main obligations have not yet been completely fulfilled (the **Material Agreements**), indicating the date, the parties and the subject matter of each Material Agreement:

- (a) agreements relating to the acquisition or sale or disposal of shares or interests in other entities or businesses;
- (b) equity and non-equity joint venture, consortium, cooperation, collaboration, partnership and/or shareholder or comparable agreements;
- (c) agreements regarding the acquisition, sale or encumbrance of real property or rights equivalent to real property;
- (d) credit, loan agreements or similar instruments of debt extended by Scil Entities (other than consumer credits and/or deferred payment arrangements granted in the ordinary course of business consistent with past practice);
- (e) credit, loan agreements or similar instruments of debt granted to Scil Entities by any third party (other than the Scil Entities), in each case other than credits granted by suppliers or similar debt instruments granted to Scil Entities in the ordinary course of business consistent with past practice;
- (f) agreements relating to forward transactions, futures, finance options, swaps or other derivatives or hedging arrangements;
- (g) framework or master or other agreements with the top ten (10) non-distributor customers based on the aggregate annual revenue of the Scil Entities achieved with such customer in 2018;
- (h) framework or master or other agreements with the top ten (10) distributor customers based on the aggregate annual revenue of the Scil Entities achieved with such distributor customers in 2018;
- (i) framework, master or distribution or other agreements with the Key Suppliers;
- (j) guarantees, indemnities, sureties, payment guarantees (*Bürgschaften*), assumptions of debt (*Schuldübernahmen*), collateral promises (*Schuldbeitritte*), letters of comfort (*Patronatserklärungen*) or similar obligations or instruments under which any other security is granted (i) by which the debt of a third party (including any member of the Seller's Group) is assumed or secured by any of the Scil Entities or (ii) by which the debt of any of the Scil Entities is assumed or secured by any third party (including any member of the Seller's Group), other than any such security referenced in this paragraph granted by the Scil Entities to suppliers in the ordinary course of business consistent with past practice;
- (k) agreements with Key Suppliers and Key Customers which would terminate or be modified, or which would give the respective counterparty the right to terminate or modify such agreements, in each case upon the execution and/or the consummation of this Agreement or the transactions contemplated therein;

**Key Supplier(s)** means GE Healthcare, Fujifilm, [\*\*\*], Horiba ABX, Samsung, [\*\*\*], Siemens Healthcare, [\*\*\*], Anvajo, [\*\*\*] and Abaxis (in each case, including their Affiliates and subsidiaries).

**Key Customer(s)** means (i) the top ten (10) non-distributors customers and (ii) the top ten (10) distributor customers, in each case, of the Scil Entities based on the aggregate annual revenue of the Scil Entities achieved with such customer in 2018.

- (l) agreements with Key Suppliers imposing any exclusivity undertaking on any Scil Entity or providing for any other restriction of any Scil Entity's ability to compete in any geography, region or product market;
- (m) agreements with governmental authorities (including antitrust authorities) or any entities controlled by any governmental authority which relate to any regulatory matter or other matter governed by public Law; and
- (n) any continuing obligations (*Dauerschuldverhältnisse*) other than those described in Clauses 6.2.9(a) through 6.2.9(m) which cannot be terminated by the Scil Entities with effect as of or prior to 30 June 2020 and which, in any given case, have a volume of more than EUR 50,000 (in words: fifty thousand euro).

Each of the Material Agreements that is in writing is in full force and effect, provided, however, that with respect to the agreements with Key Suppliers disclosed in Schedule 6.2.9 the general term of the agreement ended and the relevant agreement provides for certain procurement rights of a Scil Entity during a so-called tail period. None of the Scil Entities has received (i) a written notice of termination or a written notice of the intention to terminate or (ii) a written letter from a lawyer alleging that a Material Agreement is void, invalid or unenforceable. None of the Scil Entities is (i) in any material breach or default of any of the Material Agreements with a contractual counterparty in Germany and (ii) to the Seller's Knowledge, in any material breach or default of any of the Material Agreements with a contractual counterparty in other countries than Germany. To the Seller's Knowledge, there are no grounds for termination, rescission, avoidance, repudiation or material change in the terms of any Material Agreement other than the announcement of the transactions contemplated by this Agreement. To the Seller's Knowledge, none of the Scil Entities is obligated to renew any of the Material Agreements.

To the Seller's Knowledge, there are no agreements with (i) non-distributor customers (with whom the Scil Entities generated revenues of more than EUR 50,000 (or the equivalent in a foreign currency) in the fiscal year 2019) (**Key Non-Distributor Customers**) and (ii) distributor customers (with whom the Scil Entities generated revenues of more than EUR 500,000 (or the equivalent in a foreign currency) in the fiscal year 2019) (**Key Distributor Customers**) where the relevant Scil Entity is not able to fulfil its obligations pursuant to the terms of the underlying agreement. To the Seller's Knowledge it is not reasonably expected or foreseeable that the relevant Scil Entity will not be able to supply any Key Non-Distributor Customer or any Key Distributor Customer pursuant to the terms of the relevant agreement as of the Closing Date. All transactions with the Key Customers have been entered into at fair market practices.

To the Seller's Knowledge, neither the Seller or any member of the Seller's Group nor any Scil Entity have been informed that any Key Supplier, Key Customer or any other material non-distributor customer, distributor customer or supplier of the Scil Entities in Germany has decided to cease, reduce or otherwise adversely modify, whether immediately or in the future, its commercial relationship with the Scil Entities for any reason, including as a result of this Agreement or the transactions contemplated hereunder.

No Breach of any of the Guarantees shall be deemed to exist or have occurred, if any Material Agreement or other agreements with customers, distributor customers or suppliers is terminated, rescinded, voided or otherwise repudiated by non-distributor customers, distributor customers or suppliers following the announcement of the transactions contemplated by this Agreement, unless any such termination, rescission, avoidance or repudiation is due to a

violation of the Material Agreements or other agreements by the Scil Entities or any non-compliance of any member of the Seller Group or the Scil Entities with the covenant pursuant to Clause 11.2.11.

#### 6.2.10 Employment Matters

- (a) Schedule 6.2.10(a)(i) contains a complete and correct list of all managing directors (*Geschäftsführer*), officers and employees of the Scil Entities (collectively, the **Employees**), prepared on an anonymous basis, indicating their functions, date of commencement of their employment, annual gross base salaries, contractual target bonus with respect to the current fiscal year, material benefits (company car), any special status under labour Law (e.g. severe disability (*Schwerbehinderung*), maternity protection (*Mutterschutz*), parental leave (*Elternzeit*)). Other than disclosed in Schedule 6.2.10(a)(ii), each Scil Entity has paid all salaries and other remuneration thereon as required to be paid under the Laws applicable to such Scil Entity, which were due prior to or on the Closing Date.
- (b) Schedule 6.2.10(b) contains a list of the names of the managing directors (*Geschäftsführer*), officers and other key Employees of the Scil Entities (the **Key Employees**), indicating the date of their employment agreement (and all supplemental and amendment agreements relating thereto). None of the Key Employees has given or received notice of termination of, or entered into a termination agreement regarding, his or her employment, and no Key Employee has expressed in writing the intention to terminate his or her employment with the Scil Entities. To the Seller's Knowledge, no party to the employment agreement of any Key Employee is in material breach of such agreement.
- (c) Each Employee is obligated, by contract or otherwise, to keep any know-how, business or trade secret and other information of confidential nature of the Scil Entities and/or pertaining to the Business confidential.
- (d) No Key Employee will be entitled to terminate his or her employment or service relationship with a Scil Entity as a result of the consummation of the transactions contemplated under this Agreement.
- (e) The Scil Entities are not bound by any collective bargaining agreements and other agreements with unions and similar organizational bodies. No works council (*Betriebsrat*), personnel committee (*Sprecherausschuss*) or similar employee representative body has been established at any Scil Entity other than the so called *représenant du personnel* in France. There are no material collective agreements (*i.e.*, agreements with a group of employees) binding upon a Scil Entity, except as disclosed in Schedule 6.2.10(e)(i). Other than disclosed in Schedule 6.2.10(e)(ii), no Scil Entity is subject to any pending (*rechtshängig*) litigation with Employees or any dispute with trade unions and no such dispute is threatened in writing.
- (f) Schedule 6.2.10(f) contains a complete and correct list of all bonus, profit-sharing or similar schemes (excluding commission) that are offered by any Scil Entity and all commission offered by the Company to all or a specific group of its or their Employees.
- (g) Except as set out in Schedule 6.2.10(g), none of the Scil Entities or any member of the Seller's Group has implemented, or is subject to liabilities (i) from a stock option, phantom stock or similar equity based or virtual incentive scheme or (ii) individual bonus agreements, long term incentive programs or similar incentive schemes for Employees.
- (h) No Scil Entity has pension obligations. No pension schemes with any Germany Employee whether of an individual or collective nature exist or have been made or promised by the Company except for obligations of the Company with respect to German employees in connection with direct insurances (*Direktversicherungen*) with an amount not exceeding EUR 2,000 per German Employee per annum. All obligations under, or in connection with, direct insurances have been duly fulfilled by the Company when due.
- (i) Except as set out in Schedule 6.2.10(i), no Scil Entity has granted any loan to any of the Employees or former managing directors, directors, officers or employees that are still outstanding.

#### 6.2.11 Litigation

There are no law suits, court actions or similar proceedings (i) before a court of justice, arbitration panel or an administrative authority pending (*rechtshängig*) or (ii) threatened in writing to be filed against any of the Scil Entities (excluding customer disputes in the ordinary course of business), in each case of (i) and (ii) involving an amount in dispute (*Streitwert*) exceeding EUR 25,000 (in words: twenty-five thousand euro) in each individual case, except those disclosed in Schedule 6.2.11.

#### 6.2.12 Intellectual Property Rights; IT

- (a) Schedule 6.2.12(a) contains a complete and correct list of all patents, trademarks, internet domains and other registered or registerable intellectual property rights owned by any of the Scil Entities (the **Owned Intellectual Property Rights**), in each case specifying (i) the nature of such Owned Intellectual Property Right, (ii) the owner of such Owned Intellectual Property Right, and (iii) the registration or application number, and (iv) the duration of the protection. The relevant Scil Entity named as owner in Schedule 6.2.12(a) is the sole legal and beneficial owner of all Owned Intellectual Property Rights. The Owned Intellectual Property Rights are free and clear of any Liens, claims or other rights of any third party. The use of the Owned Intellectual Property Rights by the Scil Entities is not subject to any restrictions, including the consent of any third party, and no third party has or no patent attorney has notified any Scil Entity in writing that it would have any rights in respect of the Owned Intellectual Property Rights.
- (b) Schedule 6.2.12(b) contains a complete and correct list of all license agreements (other than of the shelf software licenses granted to a Scil Entity for products which are bundled with imaging hardware) (the **IP License Agreements**) under which the Scil Entities are granted the right to use any intellectual property rights (the **Licensed Intellectual Property Rights**), in each case specifying (i) the licensor of such Licensed Intellectual Property Right, (ii) the nature of such Licensed Intellectual Property Right, (iii) the license fee payable by the licensee, and (iv) whether the license is exclusive or non-exclusive, except for any standard business software (such as Microsoft Office), which is not materially related to the Business. All IP License Agreements are legal, valid, binding and enforceable, have not been terminated, all requirements under such licenses have been fully complied with by the Scil Entities and, to the Seller's Knowledge, by the relevant contract partner thereto. To the Seller's Knowledge, none of the Scil Entities is in material breach of any license or sublicense in respect of any Licensed Intellectual Property Right.
- (c) Schedule 6.2.12(c) contains a complete and correct list of all software programs owned by or licensed to any of the Scil Entities that are part of the product offering of any of the Scil Entities (**Scil Software**) in each case specifying (i) whether owned or licensed, (ii) if owned, the name of the developer, details regarding the economic rights of the Scil Entities to the Scil Software, and reference to the underlying development agreement, and (iii) if licensed the reference to the corresponding listing in Schedule 6.2.12(b).
- (d) The Scil Entities are the unrestricted owners of, and have unrestricted access to the know-how pertaining to the Business and required to conduct the Business as presently conducted, and no intellectual property rights other than the Owned Intellectual Property Rights, the rights to the Scil



Software and the Licensed Intellectual Property Rights are required by the Scil Entities, to conduct the Business as presently conducted. No intellectual property right used or required by any Scil Entity to conduct the Business as presently conducted is owned or otherwise subject to rights by any Employee, except for compensation under mandatory employee invention rights provided by applicable Law.

- (e) The Owned Intellectual Property Rights, the Licensed Intellectual Property Rights and the Scil Software are not subject to any pending (*rechtshängig*) proceedings for opposition, cancellation, revocation or rectification nor have such proceedings been threatened in writing. All fees necessary to maintain the Owned Intellectual Property Rights have been paid, all necessary renewal applications have been timely filed and all other material steps necessary for their maintenance have been taken.
- (f) To the Seller's Knowledge, the Scil Entities and the Business as currently conducted have, in the three (3) years before the date of this Agreement, respectively, neither infringed any third party's intellectual property rights, nor has any third party, alleged the infringement of its intellectual property rights by any Scil Entity in writing, or sent an invitation to license to any Scil Entity, nor, to the Seller's Knowledge, are the Owned Intellectual Property Rights, the Licensed Intellectual Property Rights and the Scil Software materially infringed by third parties. None of the Scil Entities has sent a written notice alleging that a third party is infringing any Owned Intellectual Property Rights or any Scil Software.
- (g) After the Closing, the Seller and/or any member of the Seller's Group will not own any intellectual property rights or other intangible rights pertaining to the Business and used or required by the Scil Entities to continue to conduct the Business substantially as currently conducted.
- (h) None of the Scil Entities has licensed any intellectual property rights to any third party (other than the Scil Entities), except as disclosed in Schedule 6.2.12(h).
- (i) To the Seller's Knowledge, the Scil Software is free from any software defect or programming or documentation error which would (i) materially prevent the intended use or (ii) give rise to any product liability claims, and operates and runs in a reasonable and efficient business manner.
- (j) No intellectual property that contains or is derived from open source software has been incorporated by any Scil Entity into any products, or has otherwise been distributed or licensed by any Scil Entity to third parties, in a manner that renders any products subject to license terms that require such Scil Entity to (i) provide free access to the corresponding source code of any software contained in any product, or (ii) permit modification or free redistribution of any software contained in any product. No Scil Entity is in violation of any open source license. Open source software means software that is licensed pursuant to a license that upon distribution of such software (and modifications thereof), purports to require the distributing party to (y) provide free access to the corresponding source code, or (z) permit modification or free redistribution of such software.
- (k) The Scil Entities either own or hold valid leases and/or licenses to all computer hardware, software, networks and other information technology (collectively, **Information Technology**) which is necessary for the Scil Entities to conduct the Business substantially as currently conducted. The Information Technology owned or used by the Scil Entities has the capacity and performance necessary to meet the requirements of the Business. To the Seller's Knowledge, the Information Technology has not, in the three (3) years before the date of this Agreement failed to any material extent and the data that are processed by the Information Technology has not been corrupted or compromised to any material extent.
- (l) In the three (3) years prior to the Signing Date (i) to the Seller's Knowledge, each Scil Entity has, in all material respects, complied with all applicable Laws in connection with privacy and the processing, use and protection of personal data (including customer data), (ii) the Scil Entities have not received any third party notice in writing of any failure to comply with such Laws in connection with privacy and the processing, use and protection of personal data and have not been notified by a governmental authority in writing about any investigation with respect to any such failure and (iii) to the Seller's Knowledge, there has been no unauthorized access, use or disclosure of any personal data under the control of any Scil Entity or any of their data processors.

#### 6.2.13 Taxes

- (a) The Scil Entities have (taking into account any permitted extension) timely filed all Tax Returns required to be filed under applicable Law with the appropriate Tax Authority.
- (b) The Scil Entities have (taking into account any permitted extension) timely paid all Taxes shown as payable on any valid and enforceable Tax assessment notice issued by any Tax Authority or any Tax Return filed by them other than Taxes for which a suspension of enforcement of Tax payment obligation (*Aussetzung der Vollziehung*) has been granted.
- (c) As of the Closing Date the Scil Entities have access to documents, records and information relating to the period ending on the Closing Date that are (i) necessary for the filing of Tax Returns of the Scil Entities or (ii) required to be retained or preserved under applicable law. The Scil Entities have complied in all material aspects with all applicable documentation, retention and reporting requirements (in particular with their obligations under sections 90 paragraph 3, 146 and 147 of the General Tax Code (*Abgabenordnung*) and any applicable Law regarding the documentation of transfer prices.
- (d) No Tax Returns and Tax assessments of the Scil Entities are subject of any formal proceedings outside the ordinary assessment of any Tax (*e.g.*, no Tax assessments are subject to objections (*Einspruch*) or Tax court proceedings (*Finanzgerichtsverfahren*)).
- (e) None of the Scil Entities has received, or unsuccessfully applied for, any Tax ruling or entered into or is currently under negotiations to enter into any agreement with any Tax Authority.
- (f) As of the Signing Date, the Company is treated as a corporation for U.S. federal income tax purposes and has not filed an Internal Revenue Service Form 8832 election in the preceding 60 months. Each other Scil Entity is treated as an entity disregarded as separate from its owner for U.S. federal income tax purposes, except that (i) Vet Novations Canada Inc. is treated as a corporation for U.S. federal income tax purposes, and (ii) Lab Technologies Medizintechnik GmbH is treated as either a corporation or a partnership for U.S. federal income tax purposes. To Seller's Knowledge, the Company's minority interest in Lab Technologies Medizintechnik GmbH has a value not in excess of USD 100,000, as such value is determined for U.S. GAAP purposes.

#### 6.2.14 Certain Transaction-related Fees and Expenses

Except as set out in Schedule 6.2.14, the Scil Entities have no obligation or liability to pay any fees or commissions, costs and expenses, to reimburse any monies, or to grant any other benefits to any broker, finder, agent, advisor or other third party (including any member of Seller's Group) with respect to this

Agreement, the transactions contemplated hereby, the disposal process initiated by the Seller (or any member of the Seller's Group) with respect to the Scil Group or any other transaction involving a Scil Entity (including a refinancing).

#### 6.2.15 Ordinary Course of Business

Unless otherwise provided in Schedule 6.2.15, from 1 January 2019 until the Signing Date, the business operations of the Scil Entities have been conducted in the ordinary course of business consistent with past practices and substantially in the same manner as before. In particular the Scil Entities, from 1 January 2019 until the Signing Date or the Closing Date, respectively, have not:

- (a) been subject to any merger, spin-off or similar corporate reorganization, or any other material restructuring of the business organization (whether or not requiring any corporate action);
- (b) increased or decreased their respective share capital or redeemed any shares;
- (c) issued any share capital or similar ownership interests or rights thereto to any third party;
- (d) adopted, terminated or amended any affiliation agreements (*Unternehmensverträge*) within the meaning of sec. 291 *et seq.* AktG or any comparable agreement pursuant to foreign applicable Law;
- (e) acquired, encumbered, transferred or divested of a shareholding in any legal entity or a business;
- (f) made or declared any dividends or other distributions to the Seller or any member of the Seller's Group;
- (g) made any capital expenditure, acquisition or disposal (including the creation of any Lien) of any assets with a value exceeding EUR 200,000 (in words: two hundred thousand euro) in each individual case or a series of related cases;
- (h) entered into any material contract, agreement or commitment (i.e. involving obligations in excess of EUR 200,000 (in words: two hundred thousand euro) per annum in each individual case or a series of related cases) outside the ordinary course of business;
- (i) terminated or materially amended any Material Agreement;
- (j) incurred any indebtedness for borrowed money;
- (k) extended any guarantees, indemnities, suretyships, letters of comfort, performance or warranty bonds or similar instruments securing any indebtedness or other obligations of any third party (other than Scil Entities) or incurred any other off-balance sheet liabilities;
- (l) made any advance or extended any loan (other than consumer credits and/or deferred payment arrangements granted in the ordinary course of business consistent with past practice) to any third party (other than Scil Entities) outside the ordinary course of business;
- (m) cancelled or waived any claims or rights of a value in excess of EUR 50,000 (in words: fifty thousand euro) in each individual case or a series of related cases except for discounts or boni granted to customers in the ordinary course of business;
- (n) changed the terms of employment (including compensation) of any of the Key Employees;
- (o) granted any increase in salaries, bonus or other remuneration of any Employee outside the ordinary course of business consistent with past practice or changed the current or introduced a new benefit plan;
- (p) laid off a significant part of its workforce or initiated any employee-related reorganization materially affecting the workforce or entered into any collective bargaining agreement or other collective agreement;
- (q) materially changed any method of accounting or accounting practice or policy, other than as required by a concurrent change of general accounting principles; and
- (r) agreed, whether in writing or otherwise, to do any of the foregoing.

#### 6.2.16 Insurance

The Business is covered by insurance which is legally required or otherwise material for this type of business; the Scil Entities have the insurance policies listed in Schedule 6.2.16 (the **Insurance Policies**). The Insurance Policies are valid and in full force. All premiums due on the Insurance Policies have been duly paid and no Scil Entity has been notified by the relevant insurers in writing that the Insurance Policies might be voidable.

#### 6.2.17 Relations with the Seller's Group

- (a) Except as set out in Schedule 6.2.17(a) and except as specifically provided otherwise in this Agreement, none of the Scil Entities is, or has committed to become, a party to, or has any outstanding rights or obligations or liabilities under, any agreement with the Seller or any of its Affiliates other than the Scil Entities (collectively, the **Seller's Group**) or any of their directors or officers.
- (b) Except as listed in Schedule 6.2.17(b) and except as specifically provided otherwise in this Agreement, (i) no contractual relationships exist (A) between any Scil Entity, on the one hand, and any member of the Seller's Group or any of its directors or officers, on the other hand, (B) between any Scil Entity, any member of Seller's Group and third persons (including joint contractual relationships) and (C) to which a Scil Entity is a party and which are for the benefit of the Seller's Group as third party beneficiary and (ii) neither any member of the Seller's Group nor any of its directors or officers holds any assets or rights, which any of the Scil Entities currently uses for conducting its Business.
- (c) The (i) Seller and any other member of the Seller's Group as well as (ii) [\*\*\*], [\*\*\*], and [\*\*\*] including their respective Related Party, in each case, do not own, or have any other right to, any property or other tangible or intangible asset (including customer, end user and/or supplier data) pertaining to the Business and which is presently used by a Scil Entity and/or is required by such Scil Entity to continue the Business substantially in the same manner as presently conducted.

#### 6.2.18 Participation

- (a) The Seller owns the Minority Shares thereby holding 25% in the share capital of the Participation. The Minority Shares have been validly issued, are fully paid up, either in cash or in kind, and have not been repaid, neither in whole nor in part, neither to the Company nor to any of its Affiliates. There is no shareholder obligation (actual or contingent) to make any additional payment or other contribution with respect to the Minority Shares. The Minority Shares are free and clear from any Liens and there are no pre-emptive rights, rights of first refusal, options, subscription rights or other rights (actual or contingent) of any third party to purchase or acquire, or otherwise in respect of, any or all of the Minority Shares other than as provided for in the articles of association of the Participation.
- (b) All agreements between the Company and other shareholders of the Participation and their Affiliates and related family members (including shareholders' agreements and agreements on exclusivity, non-compete and non-solicitation of customers and suppliers) are listed on Schedule 6.2.18(b). No option of any third party exists to sell shares in the Participation to a Scil Entity.
- (c) No Scil Entity is liable for any (contingent or actual) liability or obligation owed by the Participation to any person under a guarantee, letter of comfort or otherwise.

### 6.3 No other Seller's Guarantees

6.3.1 The Seller makes no express or implied representations, warranties or guarantees of any nature, except for the Guarantees expressly provided for by the Seller under this Agreement.

6.3.2 Without limiting the generality of the foregoing, the Purchaser acknowledges that the Seller gives no representation, warranty or guarantee with respect to

- (a) any projections, estimates or budgets delivered or made available to the Purchaser of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) or the future business operations of the Scil Entities;
- (b) any other information or documents that were delivered or made available to the Purchaser or its counsel, accountants or advisors with respect to the Business or the Scil Entities except as expressly set forth in this Agreement or otherwise agreed.

### 6.4 Seller's Knowledge

**Seller's Knowledge**, within the meaning of this Agreement, shall mean the actual knowledge (*positive Kenntnis*) of any of the individuals listed in Schedule 6.4(i) as well as the knowledge such individuals should have had if they had acted with due care by making due inquiry with the individuals listed in Schedule 6.4(ii) with respect to the relevant matter.

## 7. REMEDIES FOR BREACH OF SELLER'S GUARANTEES

### 7.1 General/Recoverable Damages

7.1.1 In the event that any of the Guarantees pursuant to Clause 6 is not correct (a **Breach**), the Seller shall put the Purchaser or, at the request of the Purchaser, the Scil Entities into the position the Purchaser and/or the Scil Entities would have been in had the Guarantee been correct (restitution in kind - *Naturalrestitution*). If the Seller is unable to achieve this position within one month after having been notified by the Purchaser of the Breach, if restitution in kind is impossible due to the nature of the Breach, or if the Seller rejects in writing to provide restitution in kind, then the Purchaser may claim from the Seller monetary damages (*kleiner Schadensersatz in Geld*). The following damages shall, however, not be indemnifiable (*ersatzfähig*):

- (a) internal administration or overhead costs;
- (b) damages based on the argument that the Purchase Price was calculated based upon incorrect assumptions (such as earnings or other multiples on the basis of which the Purchase Price or a component thereof has been calculated or agreed);
- (c) consequential damages (other than loss of profits); and
- (d) loss of profits (*entgangener Gewinn*), except if and to the extent that such loss of profits (*entgangener Gewinn*) has been incurred at the level of any Scil Entity.

7.1.2 If and to the extent that the Seller has actually paid to the Purchaser the corresponding damages regarding a claim against the Seller under or in connection with this Agreement which damages are covered by claims of the Purchaser or Scil Entities against a third party, e.g. under an insurance policy, the Purchaser shall, upon written request of the Seller and to the extent legally possible, without undue delay assign and transfer, and shall procure that the relevant Scil Entity assigns and transfers, as applicable, any such claims up to the amount of relevant compensated damages to the Seller. The Purchaser shall use commercially reasonable efforts to cooperate with the Seller and make accessible all documentation and information necessary for notifying, lodging and eventually enforcing such claim against the third party. Any other benefits actually received or realized by the Purchaser in connection with or as a result of a damage incurred (including avoided losses, tax benefits and savings) shall be deducted for purposes of computing the damages (*Vorteilsausgleichung*).

7.1.3 The Seller shall not be liable for, and the Purchaser shall not be entitled to claim for, any damages, if and to the extent the matter to which the claim relates is specifically accrued for (*zurückgestellt*) in the Closing Accounts and has reduced the Purchase Price (other than the Enterprise Value) pursuant to Clauses 3.1 and 3.2.

### 7.2 Thresholds for claims regarding Breaches

The Purchaser shall only be entitled to any indemnification pursuant to Clause 7.1 if each individual claim or a series of related claims exceeds an amount of EUR 25,000 (in words: twenty-five thousand euro) (the **De Minimis Amount**) and the aggregate amount of all such individual claims exceeds the threshold amount of EUR 500,000 (in words: five hundred thousand euro) (the **Threshold**). In case the sum of the individual claims exceeding the De Minimis Amount exceeds the Threshold, the Purchaser may not only claim the amount exceeding the Threshold, but the entire amount of the damage incurred. Where a series of individual claims arise from the same set of facts (*gleicher Lebenssachverhalt*), for the purposes of this Clause 7.2, such claims shall be added up and count as one individual claim. The limitations set forth in this Clause 7.2 shall not apply (i) to a Breach of any Fundamental Guarantee or (ii) in cases of a willful act (*vorsätzliche Handlung*) or fraudulent misrepresentation (*arglistige Täuschung*).

**Fundamental Guarantee(s)** shall mean the Guarantees set forth in Clauses 6.2.1 through 6.2.4, 6.2.13, 6.2.14 and 6.2.17.

### 7.3 Overall Scope of Seller's Liability pursuant to this Agreement

7.3.1 The Seller's aggregate liability for a Breach of any of the Guarantees pursuant to Clause 6 shall be limited to EUR 20,000,000 (in words: twenty million euro) (the **Liability Cap**), provided, however, that such Liability Cap shall not apply to a Breach of any of the Fundamental Guarantees.

7.3.2 In any event, the maximum overall liability of the Seller under this Agreement (including, for the avoidance of doubt, any liability under Clause 8 or Clause 11.4) shall in no event exceed the amount of the Purchase Price received by Seller plus the Escrow Amount paid into the Escrow Account.

### 7.4 Exclusion of Claims due to Purchaser's Knowledge

7.4.1 Sec. 442 of the BGB and Sec. 377 of the German Commercial Code (*Handelsgesetzbuch*) shall be excluded and the legal principles contained in these statutory provisions shall be replaced by what is set forth in this Clause 7.4.

7.4.2 The Purchaser shall not be entitled to bring any claim for breach of a Guarantee if the underlying facts or circumstances to which the claim relates

- (a) are Disclosed in this Agreement (including the Exhibits and Schedules thereto which form an integral part of this Agreement), provided, however, that a disclosure with respect to a specific Guarantee shall only be Disclosed with respect to the Guarantee it explicitly relates to but not with respect to any other Guarantee (no cross-disclosure); or
- (b) are actually known, as of the Signing Date, by the individual listed in Schedule 7.4.2(b) (the **Purchaser's Representatives**); provided that the existence of such knowledge can be shown by any kind of document, e-mail, note or other documentation in writing, electronic form (sec. 126 a BGB) or text form (sec. 126 b BGB) that was Disclosed by the Seller to any of the Purchaser's Representatives. The documents made available in a virtual data room shall not be deemed to be actually known by the Purchaser or the Purchaser's Representatives.

**Disclosed** shall mean disclosed in sufficient detail to enable a prudent professional with the relevant expertise to discover and make a reasonably informed assessment of the nature and the scope of the matter being disclosed; any agreement, contract or similar document referred to in this Agreement or the Schedules thereto shall be deemed to have been disclosed (with the exception of any agreements, contracts or documents referred to in the documents attached to the list contained in page 1 of Schedule 6.2.8(e)). If any information, facts or circumstances in whatever form have been provided to or made accessible by a Purchaser's Representative later than on January 10, 2020 outside of this Agreement, the relevant information, facts or circumstances in whatever form shall not be deemed to have been Disclosed.

This Clause 7.4.2 does not apply to a Breach of the Fundamental Guarantees where the Purchaser's rights shall remain unaffected.

7.4.3 The Parties are in agreement that the Schedules relating to the Guarantees or providing information in respect of the Guarantees (the **Disclosure Schedules**) have been prepared by the Seller as of the Signing Date. There is no obligation for the Seller to update the Disclosure Schedules as of the Closing Date. The Parties are in agreement that the Guarantees and other provisions of this Agreement serve to allocate certain risks of any changes of facts and circumstances between the Signing Date and the Closing Date as among the Parties in accordance with the statement made in the Guarantees and pursuant to Clause 6.1 and subject to the limitations made in this Clause 7.

7.4.4 Nothing in the Disclosure Schedules is intended to broaden the scope of any Guarantee or to create any covenant on the part of the Seller or the Scil Group. Inclusion of any item in the Disclosure Schedules does not represent a determination that such item is material nor shall it be deemed to establish a standard of materiality. The information contained in the Disclosure Schedules is disclosed solely for the purposes of this Agreement, and the inclusion of any item herein shall not be deemed an admission of any obligation or liability to any third party, nor an admission to any third party against the Seller.

### 7.5 Notification of Seller; Third Party Claims

7.5.1 In the event of an actual or potential Breach of a Guarantee pursuant to Clause 6 above, the Purchaser shall within twenty (20) Business Days from becoming aware of the matter notify the Seller of such alleged Breach in writing, describing the potential claim in reasonable detail and, to the extent reasonably possible, state the estimated amount of such claim and give the Seller the opportunity to remedy the Breach within the period of time indicated in Clause 7.1. If the Purchaser fails to notify the Seller of an actual or potential Breach of a Guarantee pursuant to Clause 6 in the way set out in sentence 1 above within twenty (20) Business Days from becoming aware of the matter, the Seller shall not be liable for any additional and incremental damage incurred by the Purchaser and/or any of the Scil Entities as a result of the delayed notification.

7.5.2 In case the Purchaser or, following Closing, any of the Scil Entities receives a written notice that a claim is asserted or threatened by a third party against the Purchaser or any of the Scil Entities for which the Seller may be liable under this Agreement (a **Third Party Claim**), then the Purchaser shall:

- (a) promptly (and in any event within twenty (20) Business Days of becoming aware of it) give notice of the Third Party Claim to the Seller and, at the expense of the Seller, ensure that the Seller and its representatives are given all reasonably required and requested information available to the Purchaser or any of the Scil Entities to investigate it;
- (b) not (and ensure that any Scil Entity shall not) admit liability or make any agreement or compromise in relation to the Third Party Claim without the prior written approval of the Seller (not to be unreasonably withheld or delayed and such approval shall be deemed to be granted if not refused in Textform within five (5) Business Days following receipt of the respective approval request); and
- (c) (subject to Seller's prior confirmation in writing of its liability under this Agreement on the merits (*dem Grunde nach*) and, subject to any limitations applicable hereunder, in the amount (*der Höhe nach*) finally determined as being payable in respect of the relevant Third Party Claim and to indemnify the Purchaser or the relevant Scil Entity against all reasonable out-of-pocket costs and expenses incurred in respect of that Third Party Claim) ensure that it and each relevant Scil Entity shall:
  - (i) take such action as the Seller may reasonably request to avoid, resist, dispute, appeal, compromise or defend the Third Party Claim (excluding the making of counter-claims or other claims against third parties);
  - (ii) allow the Seller (if it elects to do so) to take over the conduct of all proceedings and/or negotiations arising in connection with the Third Party Claim; and
  - (iii) provide such information and assistance as the Seller may reasonably require in connection with the preparation for and conduct of any proceedings and/or negotiations relating to the Third Party Claim;

provided, however, that the reasonable business interests of the Purchaser and/or the Scil Entities shall be taken into account in respect of the measures set forth under (i) and (ii).

Unless expressly set forth otherwise under this Agreement, the failure of the Purchaser or of the Scil Entities to fully comply with their obligations under this Clause 7.5.2 shall release the Seller from its respective obligations under Clauses 6 and 7, if and to the extent the Seller can demonstrate that such failure has increased the Seller's liability under this Agreement or has caused a new Seller's liability under this Agreement.

7.5.3 In case the Seller or any of its Affiliates receives a written notice that a claim is asserted or threatened by a third party which may become a claim against the Purchaser or any of the Scil Entities, the Seller shall promptly (and in any event within twenty (20) Business Days of becoming aware of it) give notice of such claim to the Purchaser and ensure that the Purchaser and its representatives are given all reasonably required and requested information available to the Seller or any of its Affiliates to investigate it.

## 7.6 Mitigation

Sec. 254 of the BGB shall remain unaffected.

## 7.7 Limitation Periods

7.7.1 All claims for any Breach of Guarantees of the Seller pursuant to Clause 6 shall become time-barred (*verjähren*) eighteen (18) months after the Closing Date, except for claims based on a Breach of the Fundamental Guarantees (other than Guarantees relating to Taxes) which shall become time-barred five (5) years after the Closing Date and claims based on a Breach of Guarantees of the Seller pursuant to Clause 6.2.13 which shall become time-barred in accordance with Clause 8.6. Claims with respect to Taxes pursuant to Clause 8 shall become time-barred in accordance with Clause 8.6. Claims with respect to specific indemnities pursuant to Clause 11.4 shall become time-barred in accordance with Clause 11.4.

7.7.2 Sec. 203 BGB shall not apply unless the Parties agree in writing that the expiry period shall be tolled (*gehemmt*) on the basis of pending settlement negotiations. For the avoidance of doubt, Section 204 of the German Civil Code shall apply for all claims under this Agreement; it being agreed by the Parties that the submission of the request for arbitration to the German Institution of Arbitration (DIS) within the applicable limitation period is sufficient to effect the tolling.

## 7.8 Exclusion of Further Remedies; no Double Counting

7.8.1 The Purchaser's rights arising out of a Breach of any of the Guarantees under Clause 6 or pursuant to Clause 8 or pursuant to Clause 11.4 shall be exclusively governed by the terms of this Agreement. To the extent permitted by Law, any further claims and remedies arising out of a Breach of the Guarantees under Clause 6 or pursuant to Clause 8 or pursuant to Clause 11.4, other than explicitly provided for under Clauses 6 through 8 or pursuant to Clause 11.4.4 or otherwise in this Agreement, irrespective of which nature, amount or legal basis, are hereby expressly waived and excluded, in particular, without limitation, claims under pre-contractual fault (sec. 311 para. 2 and 3, 241 para. 2 of the BGB), for breach of contract (*Pflichtverletzung aus dem Schuldverhältnis*), on the basis of statutory warranty provisions (*gesetzlicher Gewährleistungsbestimmungen*) or tort (*unerlaubter Handlung*) as well as any and all other claims, which could, due to a withdrawal (*Rücktritt*), challenging (*Anfechtung*), reduction of the purchase price (*Minderung*) or any other reasons result in the termination (*Beendigung*), invalidity (*Unwirksamkeit*) or winding up (*Rückabwicklung*) of this Agreement, an amendment of its content or a repayment or reduction of the Purchase Price, unless such claim is based on willful act (*vorsätzliche Handlung*) or fraudulent misrepresentation (*arglistige Täuschung*).

7.8.2 The Parties are in agreement that no damage can be recovered more than once (no double recovery).

## 7.9 Treatment of Payments

Any payment by or on behalf of any Party made under this Agreement (other than the payment of the Estimated Purchase Price (including the Escrow Amount) and a Purchase Price Adjustment) as well as any restitution in kind provided under this Agreement shall be treated by the Parties as an adjustment of the Purchase Price in the relationship between the Seller and the Purchaser and, in case of a payment to any Scil Entity, as a contribution by the Purchaser to the relevant Scil Entity.

# 8. TAX

## 8.1 Definitions

The Parties agree upon the following definitions:

8.1.1 **Tax or Taxes** shall mean (a) all taxes within the meaning of Section 3 of the German General Tax Code (*Abgabenordnung*) and all other forms of taxes under the laws of any other relevant jurisdiction, in particular, but not limited to, all taxes, levies, duties, customs, imposts, charges and withholdings of any fiscal nature imposed by federal or local state laws, including any tax on income, profits and gains, excise, property, value added, sales, transfer, franchise and payroll or wage taxes together with all fines, penalties, charges and interest thereon within the meaning of Section 3 para. 4 of the German General Tax Code or similar laws of any other relevant jurisdiction and relating to any of the foregoing or to any late or incorrect return of any of them but excluding, for the avoidance of doubt, any deferred Taxes, (b) social security contributions and similar contributions and payments to any social security system including any interest, fines, penalties, surcharge and additions thereon, and (c) repayment obligations in connection with subsidies, grants and state aid including any interest, fines penalties surcharge and additions thereon and (d) any secondary liabilities (*Haftungsschulden*) for items listed under (a) to (c).

8.1.2 **Pre-Closing Date Period** shall mean any Tax assessment period (*steuerlicher Veranlagungs- und Erhebungszeitraum*) or a portion thereof ending on or before the Closing Date.

8.1.3 **Pre-Closing Date Tax** shall mean (i) any Tax related to the Pre-Closing Date Period (including, for the avoidance of doubt, any interest and/or penalties on Taxes relating to the Pre-Closing Date Period but such interest and/or penalties are assessed for periods after the Closing Date) and (ii) shall be – if the end of the Pre-Closing Date Period deviates from the end of a taxable period (*steuerlicher Veranlagungs- und Erhebungszeitraum*) – calculated as if both (x) the last business and fiscal year (*Geschäftsjahr und Wirtschaftsjahr*) and (y) the last taxable period (*steuerlicher Veranlagungs- und Erhebungszeitraum*) starting prior to the end of the Pre-Closing Date Period ceased at the end of the Pre-Closing Date Period.

8.1.4 **Tax Authority** shall mean any federal, state or local tax authority.

8.1.5 **Tax Refund** shall mean any repayment of any Tax (including – but not limited to – by way of set-off or deduction) and any claim for a Tax repayment.

8.1.6 **Tax Return** shall mean any return, filing, declaration or similar document relating to any Tax and to be submitted to any Tax Authority, including any Schedule or attachment thereto.

8.1.7 **Tax Proceeding** shall mean any administrative and judicial proceeding or action relating to Taxes including preparatory measures, e.g. preparation of Tax Returns, Tax assessments, Tax audits, objections, appeals, meeting and correspondence with any Tax Authority and courts.

8.1.8 **Relevant Tax Proceeding** shall mean any Tax Proceeding relating fully or partly to Pre-Closing Date Taxes or Pre-Closing Date Periods.

8.1.9 **Tax Asset** shall mean any Tax Refund, and any Tax item that can be carried forward or back (including Tax losses and interest carry forward), regardless of whether actual, accrued, contingent or included into an account or financial statement.

8.1.10 **Textform** shall mean text form (*Textform*) in the meaning of Sec. 126b of the BGB.

8.1.11 **Mandatory Tax Law** shall mean any law (*Gesetz*), any Tax Guidelines (*Steuerrichtlinien*), any letter of the German Federal Tax Authorities (*BMF-Schreiben*) and any coordinated letter of the German State Tax Authorities (*koordinierter Ländererlass*), in each case only if officially published and not revoked, and any similar officially published decrees of any foreign Tax Authority.

## 8.2 Tax Indemnification by Seller

8.2.1 The Seller agrees to indemnify the Purchaser or at Purchaser's election the relevant Scil Entity from any Pre-Closing Date Tax due and payable by such Scil Entity after the Closing Date (the **Tax Indemnification Claim**), unless and to the extent such Pre-Closing Date Tax

- (a) does not exceed the Tax liabilities as shown in the Closing Accounts (to the extent such Tax liabilities have reduced the Purchase Price (other than the Enterprise Value) pursuant to Clause 3.1 and 3.2); for the avoidance of doubt, Tax provisions shall not reduce or exclude any Tax Indemnification Claim; or
- (b) is the result of (i) an amendment of a Tax Return for the Pre-Closing Date Period, (ii) an exercise of an election right with legal effect for the Pre-Closing Date Period, (iii) a deviation from past practice (where such past practice is in compliance with Mandatory Tax Law) of the Scil Entities in respect of accounting, valuation, transfer pricing or taxation principles introduced after the Closing Date for the Pre-Closing Date Period, (iv) a reorganization initiated by the Purchaser or – after the Closing Date – one or more of the Scil Entities with legal effect for the Pre-Closing Date Period, (v) an elapse of a deadline to contest a Tax assessment (*Einspruch erheben*) or to file a law suit in Tax court against the Tax Authorities (*Klage vor den Finanzgerichten erheben*) due to a non-compliance with a notification to be made by the Purchaser in accordance with Clause 8.4.1, (vi) a non-compliance with an instruction in compliance with Mandatory Tax Law given by the Seller in accordance with Clauses 8.3.2 and 8.4.2, (vii) a settlement of a Tax audit (*Betriebsprüfung*), contest of a Tax assessment (*Einspruchsverfahren*) or law suit in Tax Court (*Klage vor dem Finanzgericht*) without the prior consent in Textform of the Seller (not to be unreasonably withheld or delayed and such consent shall be deemed to be granted if not refused in Textform within fifteen (15) Business Days following receipt of the respective consent request) unless and to the extent such non-compliance under (v) to (vii) has not caused or increased the Tax Indemnification Claim. It is expressly understood that the exceptions from the Tax Indemnification Claim listed above under numbers (i) through (vii) do not apply if (A) the action or omission is required to comply with Mandatory Tax Law and (B) the Seller has been notified by the Purchaser at least fifteen (15) Business Days before such an action is taken (and if a circumstance occurs in which Mandatory Tax Law requires such action to be taken in less than fifteen (15) Business Days, the time for the notification of the Seller is reduced in a reasonable manner reflecting the specific situation); or
- (c) does correspond to or can be offset against any Tax Assets of the Scil Entities, the Purchaser or any of its affiliated companies arising or increasing out of reciprocal effects (*Wechselwirkungen*) triggered by a circumstance causing the specific Tax Indemnification Claim in question, e.g. resulting from the extension of depreciation periods or higher depreciation allowances (*Phasenverschiebung*) or from the transfer of an item relevant for Tax into another calendar year. It is understood that the value of such Tax Asset shall reduce a Tax Indemnification Claim (i) by its face value if and to the extent that the respective Tax Asset stems from a Tax other than Taxes on income (e.g. corporate income taxes, solidarity surcharge and trade taxes) or (ii) by the net present value of the respective Tax Asset if and to the extent the Tax Asset stems from Taxes on income (e.g. corporate income taxes, solidarity surcharge and trade taxes), whereby the net present value of such Tax Asset shall be calculated as of the day of the Tax Indemnification Claim becomes due and payable by discounting such respective Tax Asset by five (5) per cent per annum, applying a Tax rate applicable by Law in the relevant taxable period and the expected time period in which such respective Tax Asset can be realized (especially by way of refund, credit or set-off) but for a maximum of five (5) years after the Closing Date and under the assumption that the relevant entity is and will remain in a Tax paying position.

8.2.2 After Seller has satisfied any specific claims under this Clause 8, Purchaser shall procure that undisputed and disputed Tax Refund or indemnification claims or provisions dealing with the same subject matter of such specific claim of the Purchaser or the Scil Entities against a third party are assigned to the Seller. It is understood, for clarification purposes, that the Tax indemnification under Clause 8.2 is not restricted by any other provision outside Clause 8 of this Agreement unless other Clauses are explicitly restricting Clause 8.

8.2.3 The Seller agrees to indemnify the Scil Entities for reasonable advisor costs and external expenses incurred for the preparation of Tax documentation and filings (including transfer pricing documentation) required under Mandatory Tax Law and relating to Pre-Closing Date Periods up to a total amount of EUR 200,000 (two hundred thousand euro) (including any applicable VAT) for all Scil Entities together, provided that the respective Scil Entity submits a copy of the relevant invoice of the respective advisor and – in case of transfer pricing - a copy of the transfer pricing documentation to the Seller. The Seller shall be notified before major cost for work on transfer pricing documentation is incurred.

8.2.4 Any payment due by the Seller or the Purchaser under this Clause 8.2 shall be made within ten (10) Business Days following the receipt of a written notice by the Purchaser or the Seller, detailing the payment obligation and including, to the extent issued by the competent Tax Authority, a copy of the underlying Tax assessment or payment order together with Schedules related thereto. The Seller and the Purchaser shall not be required to make payments in relation to Taxes earlier than two (2) Business Days before the respective Tax is due for payment to the Tax Authority. On request of the Seller or the Purchaser, the Purchaser or the Seller shall procure that the Scil Entities or the Seller make(s) commercially reasonable efforts to achieve a suspension of payment (*Aussetzung der Vollziehung*) of Taxes provided that the Seller indemnifies the Purchaser or the respective Scil Entity from and against all costs (including interest charges) which are caused by such deferred payment. If the final amount of the Tax indemnification to be paid by the Seller or the Purchaser under this Clause 8 is lower than an advance indemnification payment made by the Seller or the Purchaser, the difference shall be reimbursed by the Purchaser or the Seller, as the case may be, including all interest actually earned thereon, if any is earned and reduced by any Taxes imposed thereon and unless such amount has not been assigned in accordance with Clause 8.2.2.

8.2.5 The Seller shall indemnify the relevant Scil Entities against any Taxes payable in connection with the Transaction Expenses to the extent that such Taxes have not reduced the Purchase Price (other than the Enterprise Value) pursuant to Clause 3.1 and 3.2.

## 8.3 Tax Returns

8.3.1 In the period between the Signing Date and the Closing Date, the Seller shall procure that (i) Tax Returns of the Scil Entities relating to Tax periods between the Signing Date and the Closing Date shall be prepared and timely filed in accordance with past practice and (ii) all Taxes due and payable under such Tax Returns are timely paid, in each case taking into account time extensions granted by a competent Tax Authority.

8.3.2 After the Closing Date, the Purchaser shall procure that the Scil Entities prepare and file when due all Tax Returns relevant for Pre-Closing Date Periods of the Scil Entities in line with past practice unless Mandatory Tax Law requires deviation from past practice. Any Tax Returns relating to any Relevant Tax Proceeding shall be subject to the review by and consent in Textform of the Seller that may not be unreasonably withheld. The Purchaser shall ensure that any Tax Return to be reviewed and approved by the Seller will be sent to the Seller (in accordance with Section 16.2 of this Agreement) not later than twenty (20) Business Days prior to the due filing date of the relevant Tax Return and that all Taxes payable under such Tax Returns shall be paid in a timely manner. The Seller shall be deemed to have given its full and unqualified consent to any Tax Return so submitted to Seller for Seller's review if Seller has not provided meaningful and precise comments or instructions with respect to the respective Tax Return (in accordance with Section 16.3 of this Agreement) to the Purchaser or the Company within twenty (20) Business Days following the receipt (*Zugang*) of the respective Tax Return. The Purchaser shall procure that the Tax Return is prepared and filed in accordance with Seller's comments and instructions, unless and to the extent such comments or instructions are not in compliance with Mandatory Tax Law. If a circumstance occurs which causes the obligation to file a Tax Return in less than twenty (20) Business Days the time for the review of the Tax Return by the Seller is reduced in a reasonable manner reflecting the specific situation.

#### **8.4 Tax Proceedings**

8.4.1 The Purchaser shall notify the Seller of any announcement and commencement of any Relevant Tax Proceeding. The notification shall be made in writing as soon as reasonable practicable after the Purchaser or the Scil Entities became aware of such event and shall contain full factual information available to the Purchaser describing the object of the Relevant Tax Proceeding to a reasonable level of detail and shall include copies of any relevant assessment, notice or other document received from any Tax Authority related to the respective Tax.

8.4.2 The Purchaser shall, and shall procure that the Scil Entities, (i) give the Seller the opportunity to participate in respect of any material action, event or other situation of or in connection with a Relevant Tax Proceeding from their commencement onwards, (ii) upon the Seller's request challenge and litigate any Tax assessment or other decision of any Tax Authority or court if and to the extent it is related to a Tax to be indemnified under this Agreement and (iii) comply with instructions in compliance with Mandatory Tax Law given by the Seller in relation to the conduct of the Tax Proceedings referred in (i) and (ii) above (in accordance with Section 16.3 of this Agreement). In any case the Purchaser shall procure that after the Closing Date no Relevant Tax Proceeding is settled without the prior consent in Textform of the Seller (not to be unreasonably withheld or delayed and such consent shall be deemed to be granted if not refused in Textform within fifteen (15) Business Days following receipt of the respective consent request).

8.4.3 The Purchaser and the Scil Entities shall bear their own costs connected with any Tax Proceeding. If the Seller requests the Purchaser in accordance with Clause 8.4.2 (ii) to challenge and litigate, then the Seller shall bear all court costs and the reasonable costs of external advisers of the Scil Entities connected with such challenge and litigation.

8.4.4 The Purchaser shall fully cooperate, and shall cause the Scil Entities and their representatives (including advisors) to fully cooperate with the Seller with respect to all Relevant Tax Proceedings and likewise shall the Seller fully cooperate. On request of the Seller, the Purchaser shall, and on request of the Purchaser the Seller shall, in particular procure that the respective other Party obtains documents or information which can reasonably be expected to be useful for such other Party to avoid or mitigate any liability under this Clause 8, to protect a Tax Asset of the other Party or to enforce a claim under this Clause 8, in each case provided that the respective document or information is accessible for the Scil Entities or the Purchaser as of the Closing Date or the Seller or can be procured by them. The Seller, the Purchaser or the Scil Entities shall store all their records, documents and information relating to Relevant Tax Proceedings until the expiration of any applicable statute of limitations.

#### **8.5 Tax Refunds**

If and to the extent a Scil Entity receives a Tax Refund after the Closing Date relating to any Pre-Closing Date Period and such Tax Refund exceeds the amount of Tax receivables as shown in the Closing Accounts to the extent such Tax receivables have increased the Purchase Price (other than the Enterprise Value) and such Tax Refund has not reduced the Tax Indemnification Claim, the amount of the respective Tax Refund shall be paid by the Purchaser to the Seller not later than twenty (20) Business Days after the receipt of the respective Tax Refund. Such amounts shall bear interest at a rate as defined in Clause 3.8.1 after the date when the payment to the Seller would have to be made. The Purchaser shall promptly notify the Seller of any such Tax Refund. The Purchaser shall – at request of the Seller and at Seller's expense – reasonably cooperate such that the Seller receives access to information and documents for Seller's reasonable review whether a Scil Entity has received a Tax Refund.

#### **8.6 Tax Limitation Periods**

Claims of the Parties under this Clause 8 regarding a specific Tax shall become time-barred upon expiration of a period of six (6) calendar months after the later of (i) the respective Tax has become un-appealable and finally binding (*formell und materiell bestandskräftig und nicht unter dem Vorbehalt der Nachprüfung oder einem Vorläufigkeitsvermerk stehend*), (ii) the respective Party has been notified of its claim by the other Party and (iii) the Tax Threshold has been exceeded.

#### **8.7 Tax Threshold**

In respect to claims under this Clause 8 the Seller or the Purchaser, as the case may be, shall only be liable if and to the extent that the aggregate amount, including penalties and interest, to be paid under this Clause 8 (irrespective of the kind of Tax or Tax year in question) exceeds an amount of EUR 60,000 (sixty thousand euro) (the **Tax Threshold**) (in which case the entire amount shall be indemnified from the first Euro). For the avoidance of doubt, there is no threshold per event (no itemization). The liability cap pursuant to Clause 7.3.2 applies for any liability of the Seller under this Clause 8; for the avoidance of doubt, the provisions of Clause 7 shall otherwise not apply.

#### **8.8 United States Tax Covenants**

8.8.1 Notwithstanding anything to the contrary in this Agreement, all United States federal, state, and local tax returns (including information returns or reports) of the Scil Entities in respect of tax periods in those jurisdictions that end on or prior to or that include the Closing Date shall be prepared by the Seller, and all decisions involving the Scil Entities related to United States federal, state, and local tax matters (including decisions related to the conduct or settlement or tax audits or proceedings, information reporting, or the manner in which transactions are characterized for tax purposes) in respect of such tax periods shall be made by the Seller. No United States federal, state, or local tax return (including information returns or reports) of any Scil Entity in respect of any such period may be amended or otherwise modified without the prior written consent of the Seller.

8.8.2 The Parties to this Agreement intend that the acquisition of the Scil Entities be accomplished through the purchase and sale of the Share in light of, *inter alia*, German legal and commercial considerations, but that such acquisition shall be treated for United States federal income tax purposes as the purchase and sale of the assets of the Company. The Parties shall reasonably cooperate with each other in order to achieve such United States federal income tax treatment. The Seller, in its sole discretion, may determine that such treatment will be achieved either (i) by causing the Company to make an entity

classification election on Internal Revenue Service Form 8832 to be treated as an entity disregarded as separate from its owner for United States federal income tax purposes, which election shall be effective prior to the Closing Date, or (ii) by means of an election under Section 338(g) of the United States Internal Revenue Code of 1986, as amended (the **IRC**).

8.8.3 If the Seller determines that an entity classification election shall be made for the Company and if the Internal Revenue Service Form 8832 on which such election will be made has not been filed prior to the Closing Date, the Seller shall so notify the Purchaser within twenty (20) days following the Closing Date and the Purchaser shall cooperate with the Seller to cause such election to be timely made. All reasonable, out-of-pocket costs and expenses incurred by the Purchaser in connection with the preparation and filing of the Internal Revenue Service Form 8832 necessary to make such election shall be paid or reimbursed by the Seller.

8.8.4 If the Seller determines that an election under IRC Section 338(g) shall be made with respect to the acquisition of the Share, the Seller shall so notify the Purchaser within twenty (20) days following the Closing Date and the Purchaser shall cooperate with the Seller to cause such election to be timely made. All reasonable, out-of-pocket costs and expenses incurred by the Purchaser in connection with the preparation and filing of tax returns and other documents necessary to make such election shall be paid or reimbursed by the Seller.

8.8.5 The Parties to this Agreement acknowledge that the Purchaser shall make an election under IRC Section 338(g) with respect to the acquisition of Vet Novations Canada Inc. All reasonable, out-of-pocket costs and expenses incurred by the Purchaser in connection with the preparation and filing of tax returns and other documents necessary to make such election shall be paid or reimbursed by the Seller.

## 9. PURCHASER'S GUARANTEES

### 9.1 Guarantees

The Purchaser and the Purchaser's Guarantor hereby guarantee separately, i.e. only with respect to itself, by way of an independent promise of guarantee (*selbständiges Garantieversprechen*) pursuant to sec. 311 para. 1 of the BGB that the following statements are true and correct on the Signing Date and will be true and correct on the Closing Date:

9.1.1 The Purchaser is duly incorporated and validly existing under the Laws of Germany, the Purchaser's Guarantor is duly incorporated and validly existing under the Laws of Delaware and the Purchaser and the Purchaser's Guarantor have all requisite corporate power and authority to own their respective assets and to carry out their respective business.

9.1.2 The execution and performance by the Purchaser and the Purchaser's Guarantor of this Agreement and the consummation of the transactions contemplated herein are within the corporate powers of the Purchaser and the Purchaser's Guarantor and have been duly authorized by all necessary corporate action on part of the Purchaser and the Purchaser's Guarantor.

9.1.3 The Purchaser will have sufficient immediately available funds or binding financing commitments to pay the Purchase Price (including the Escrow Amount) when due at Closing.

9.1.4 The execution and performance by the Purchaser and the Purchaser's Guarantor require no approval or consent by any governmental authority or other third party that would allow such governmental authority or third party to prevent the consummation of this Agreement by legal means.

### 9.2 Indemnification

In the event that the Purchaser or the Purchaser's Guarantor is in breach of any guarantee pursuant to Clause 9.1, the Purchaser and the Purchaser's Guarantor shall put the Seller into the position the Seller would have been in had the guarantee not been breached and indemnify the Seller and its Affiliates from any and all damages, losses, liabilities, claims and costs and expenses incurred by the breach. All claims of the Seller arising under this Clause 9.2 shall become time-barred twelve (12) months after the Closing Date.

## 10. INTENTIONALLY LEFT BLANK

## 11. ADDITIONAL OBLIGATIONS OF THE PARTIES

### 11.1 Access to Financial Information

The Purchaser shall procure that after the Closing Date the Seller and its representatives are given access to, and are allowed (against indemnification by the Seller against reasonable out-of-pocket costs and expenses incurred by the Purchaser or a Scil Entity) to make copies of,

- (a) the annual books of accounts of the Scil Entities for the fiscal year 2019 as well as any other financial information required in connection with the Closing Accounts and the Purchase Price Determination Statement. Clause 5.1.3 remains unaffected;
- (b) the annual books of accounts of the Scil Entities for the fiscal year 2019 as well as any other financial information required in connection with the preparation of the Seller's group accounts for the fiscal year 2019; and
- (c) any and all information the Seller requires to prepare the Tax filings according to Clause 8.

This Clause 11.1 shall apply *mutatis mutandis* for the benefit of the Purchaser in relation to the Seller and its Affiliates.

### 11.2 Obligations between Signing Date and Closing Date

11.2.1 To the extent permitted under applicable Law and unless expressly otherwise set forth in this Agreement, the Seller shall procure that between the Signing Date and the Closing Date the Scil Entities conduct the Business in the ordinary course of business consistent with past practice, substantially in the same manner as before and in compliance with all applicable Laws, judgments and Permits.

11.2.2 Without prejudice to Clause 11.2.1, to the extent permitted under applicable Law and unless expressly otherwise set forth in this Agreement, the Seller shall procure that between the Signing Date and the Closing Date none of the Scil Entities will take, or commit to take, any of the following actions without the Purchaser's prior written approval which may be granted in the Purchaser's sole discretion:



- (a) become subject to any merger, spin-off or similar corporate reorganization, or any other material restructuring of the business organization (whether or not requiring any corporate action);
- (b) increase or decrease their respective share capital or redeem any shares;
- (c) issue any share capital or similar ownership interests or rights thereto to any third party;
- (d) adopt, terminate or amend any affiliation agreements (*Unternehmensverträge*) within the meaning of sec. 291 *et seq.* AktG or any comparable agreement pursuant to foreign applicable Law;
- (e) acquire, encumber, transfer or divest of a shareholding in any legal entity or a business);
- (f) make or declare any dividends or other distributions to the Seller or any member of the Seller's Group;
- (g) make any capital expenditure, acquisition or disposal (including the creation of any Lien) of any assets with a value exceeding EUR 200,000 (in words: two hundred thousand euro) in each individual case or a series of related cases;
- (h) enter into any material contract, agreement or commitment (i.e. involving obligations in excess of EUR 200,000 (in words: two hundred thousand euro) per annum in each individual case or a series of related cases) outside the ordinary course of business;
- (i) terminate or materially amend any Material Agreement;
- (j) incur any indebtedness for borrowed money;
- (k) extend any guarantees, indemnities, suretyships, letters of comfort, performance or warranty bonds or similar instruments securing any indebtedness or other obligations of any third party (other than Scil Entities but including any member of the Seller's Group) or incur any other off-balance sheet liabilities;
- (l) make any advance or extend any loan (other than consumer credits and/or deferred payment arrangements granted in the ordinary course of business consistent with past practice) to any third party (other than Scil Entities) outside the ordinary course of business;
- (m) cancel or waive any claims or rights of a value in excess of EUR 50,000 (in words: fifty thousand euro) in each individual case or a series of related cases except for discounts or boni granted to customers in the ordinary course of business;
- (n) change the terms of employment (including compensation) of any of the Key Employees;
- (o) grant any increase in salaries, bonus or other remuneration of any Employee outside the ordinary course of business consistent with past practice or change the current or introduce a new benefit plan;
- (p) lay off a significant part of its workforce or initiate any employee-related reorganization materially affecting the workforce or enter into any collective bargaining agreement or other collective agreement;
- (q) materially change any method of accounting or accounting practice or policy, other than as required by a concurrent change of general accounting principles;
- (r) grant any licenses to any third party (including Seller's Group);
- (s) enter into any agreement with any member of the Seller's Group or any of its directors, officers or shareholders; and
- (t) agree, whether in writing or otherwise, to do any of the foregoing.

11.2.3 Between the Signing Date and the Closing Date, Seller shall, subject to applicable Law, keep the Purchaser informed, on a continuing basis, of all material business contracts that will be entered into or renewed in the ordinary course of business prior to the Closing Date.

11.2.4 The Seller shall use reasonable endeavors to ensure that the stock options and other incentive schemes referenced in Schedule 6.2.10(g) and any other incentive schemes in connection with the transactions contemplated under this Agreements are terminated and fully settled until the Closing (but prior to the expiry of the Closing Date) with no remaining payment obligations or liabilities (including any Taxes or social security contributions) on the part of the Scil Entities and the Seller shall indemnify the Scil Entities for any such amounts not fully settled prior to the Closing (including Taxes if such Taxes are to be paid after the Closing Date and to the extent they are not borne by the respective employee).

11.2.5 Between the Signing Date and the Closing Date, subject to applicable Law, Seller shall, and shall procure that the Scil Entities will provide the Purchaser with such information and reasonable cooperation as is reasonably requested by the Purchaser in connection with (i) the preparation of the Closing, (ii) the preparation or ascertainment (the modalities of) (A) any equity financing (including an equity offering) and/or (B) debt financing and/or (C) the transactions contemplated under this Agreement, with respect to lit. (ii)(A) and (C) against indemnification by the Purchaser against reasonable out-of-pocket costs and expenses incurred by the Scil Entities and paid prior to the Closing Date or reflected in the Net Working Capital of the final Closing Accounts.

In particular, Seller shall use its reasonable best efforts to provide, and shall use its reasonable best efforts to cause each of the Scil Entities to provide, Purchaser and any of its actual or anticipated debt financing sources (the **Financing Sources**) with such reasonable cooperation and assistance as is necessary, or reasonably requested by Purchaser in connection with (i) the arrangement, marketing, syndication or consummation of any equity financing (including an equity offering) and/or debt financing in connection with the transactions contemplated by this Agreement (the **Financing**) and (ii) any filings of Purchaser pursuant to the Securities Act of 1933, Securities Exchange Act of 1934 and all applicable rules and regulations of the SEC (the **SEC Filings**), including using reasonable best efforts in:

1. furnishing Purchaser with the Audited Financial Statements and such other financial and other financial and other pertinent information of the type that would typically be included in bank information memoranda and other syndication materials or similar documents customarily required in connection with the credit facilities obtained for the purpose of providing financing for the transactions contemplated by this Agreement, or otherwise as reasonably requested by Purchaser and that is customarily needed in connection with the arrangement of any Financing in connection with transactions similar to the transactions contemplated by this Agreement;

2. upon reasonable prior notice and in reasonably convenient locations (or via teleconference), participating (including by making members of senior management with appropriate seniority and expertise available) in a reasonable number of meetings, presentations, due diligence sessions, meetings with prospective lenders and sessions with rating agencies at times to be mutually and reasonably agreed;
3. providing reasonable and customary assistance in the preparation of materials for rating agency presentations, bank information memoranda (including, to the extent necessary, an additional bank information memorandum that does not contain material non-public information), and similar documents customarily required in connection with the Financing or the SEC Filings, including executing customary authorization letters in connection with the distribution of such materials authorizing the distribution of information containing a customary representation to the Financing sources that the public side versions of marketing materials, if any, do not include material non-public information about the business of the Company for purposes of U.S. federal and state securities laws;
4. providing reasonable and customary assistance in the preparation, execution and delivery of definitive documentation with respect to the Financing or the SEC Filings, the delivery of collateral required to be provided thereunder and the perfection of security interests required to be granted thereunder;
5. taking all corporate and other actions, reasonably necessary to permit the consummation of the Financing or the SEC Filings.

11.2.6 The Seller shall procure that the Closing Condition will be satisfied by April 30, 2020. The Seller shall procure that the Scil Entities will, (i) retain PwC (with respect to the drawing up of the Audited Financial Statements) and BDO (with respect to the auditing of the financial statements) (each a **Retained Auditor** and together, the **Retained Auditors**) to provide to the Purchaser the relevant financial statements of the Scil Entities (including the Audited Financial Statements and other audited, interim and pro forma statements as may be required in accordance with Regulation S-X) in accordance with the Closing Condition, (ii) provide the Retained Auditors with such information and cooperation as is requested by the Retained Auditors in connection with the preparation of such financial statements of the Scil Entities and (iii) use its reasonable best efforts to cause the Retained Auditors to consent to the inclusion of such financial statements in the Purchaser's or the Purchaser's Guarantor filings on Form 8-K (or any amendments thereto), including by providing such Retained Auditors with a reasonable and customary representation letter in connection therewith.

11.2.7 Except otherwise agreed in writing between the Purchaser and the Seller or otherwise set forth in this Agreement, the Seller shall, and shall procure that all members of Seller's Group will, at the written request of the Purchaser terminate all agreements between any of the Scil Entities, on the one hand, and any member of the Seller's Group or any of its directors, officers or direct or indirect shareholders, on the other hand, with full settlement of all obligations and without remaining or incurring any liability for any Scil Entity no later than with effect as of the Closing (but prior to the expiry of the Closing Date).

11.2.8 As of the Closing and except as expressly otherwise agreed between the Seller and the Purchaser, the Seller and any other member of the Seller's Group shall cease and discontinue, and shall procure that any member of the Seller's Group will cease and discontinue, all use of all trademarks, domain names, marks, logos or name containing "Scil", "VET ABC" or "Dogility" or any confusingly similar designations, provided however, that the Seller and each other member of the Seller's Group are entitled to sell "Scil", "VET ABC" or "Dogility" products if they are entitled to do so in accordance with the master services agreement entered into on the Closing Date pursuant to Clause 4.4.1(c) or as otherwise provided in the Restrictive Covenant Agreement.

11.2.9 The Scil Entities participate in a cash-pool of the Covetrus group which provides that the Scil Entities have accounts with Bank Mendes Gans N.V. (the **Cash Pool**) under the cash pool agreement dated November 19, 2018 between, *inter alia*, the Seller and Bank Mendes Gans N.V. to which (A) the Company acceded by way of the accession agreement dated December 19, 2018 between the Company and the Seller on the one hand and Bank Mendes Gans N.V. on the other hand and (B) Vet Novations Canada Inc. acceded by way of accession agreement dated December 19, 2018 between Vet Novations Canada Inc. and the Seller on the one hand and Bank Mendes Gans N.V. on the other hand (the **Cash Pool Agreements**). No other cash-pooling arrangements or similar arrangements with respect to the Scil Entities are in place. The Seller shall ensure (*dafür einstehen*) that (i) the Scil Entities will cease to participate in the Cash Pool, (ii) the Scil Entities cease to be a party to the Cash Pool Agreements with full settlement of all obligations and without remaining or incurring any liability for any Scil Entity and (iii) any balances on such cash pool accounts of the Scil Entities with Bank Mendes Gans N.V. outstanding upon the Scil Entities leaving the Cash Pool are settled, in each case of (i) through (iii), with effect prior to the Closing Date.

11.2.10 The Seller hereby assigns to the Purchaser subject to occurrence of the Closing all rights which it may have under the agreement regarding the sale and transfer of all shares in scil animal care company GmbH between, *inter alia*, BioNet Holding GmbH and the Seller (former Henry Schein Animal Health Holdings Ltd) dated January 15, 2015 (notarial deed no. 21/2015-SF of the notary Dr. [\*\*\*], with office in Frankfurt am Main, Germany) (**2015 SPA**), *i.e.* the agreement by which today's Seller acquired the Company. If and to the extent such rights are not assignable as a matter of law or the 2015 SPA, the Seller hereby grants an irrevocable power of attorney to the Purchaser to exercise the rights of the Seller under the 2015 SPA. Upon request of the Purchaser, the Seller shall confirm such power of attorney in writing in a separate document.

11.2.11 Following the date hereof, the Seller shall inform (including by e-mail) the Purchaser as soon as reasonably practical about any reactions of the non-distributor customers, distributor customers and suppliers of any Scil Entity in connection with the announcement of the transactions contemplated by this Agreement or otherwise in connection with the potential future shareholding of the Purchaser in the Company. The Seller agrees to cooperate and to coordinate in good faith with the Purchaser (and its Affiliates) and to apply good faith efforts in order to transition the business of the Scil Group to the Purchaser with respect to the non-distributor customers, distributor customers and suppliers of any Scil Entity. Without undue delay following the date hereof, the Seller shall introduce the Purchaser (and its Affiliates and its and their representatives) to non-distributor customers, distributor customers and suppliers of the Company upon request of the Purchaser. It is being understood that the risk that the non-distributor customers, distributor customers and suppliers of any Scil Entity end their contractual relationship with the relevant Scil Entity because of the change of ownership shall not shift to the Seller on the basis of this Clause 11.2.11. The Purchaser and its Affiliates shall be entitled to approach the non-distributor customers, distributor customers and suppliers of any Scil Entity directly to transition the business of the Scil Group and to establish or to deepen a good and stable relationship with them. The Parties agree, that the actions and measures provided for in this Clause 11.2.11 shall be permitted for the Purchaser (and its Affiliates) and shall exempt them from the obligations they may have under the non-disclosure agreement dated 1 December 2019 between the Seller's Guarantor and the Purchaser's Guarantor.

### 11.3 Domains

The Seller shall, and shall ensure (*dafür einstehen*) that all members of the Seller's Group and other parties that may have any rights in the domains (i) "scilvet.com", (ii) "scildiagnosics.com" and (iii) "scilvet-academy.com" as well as any other domains containing the term scil owned by the Seller's Group (together the **Company Domains**), at the Seller's cost, (y) transfer and assign all rights, title and interest in and to the Company Domains to the Company no later than with effect as of the Closing (but prior to the expiry of the Closing Date), and (z) promptly provide the Company with all reasonable cooperation and assistance, including the execution and delivery of all necessary or helpful declarations, forms, documentation, and explanation, to effect, make valid and register the transfer and assignment of the Company Domains.

### 11.4 Specific Indemnities by the Seller

11.4.1 The Seller shall indemnify and hold harmless the Purchaser and, at the request of the Purchaser, the Scil Entities from and against all damages, losses, liabilities, costs and expenses (including reasonable legal and advisory fees, litigation costs and expenses and Taxes), which may be suffered or incurred by and claims against the Purchaser or any Scil Entity (irrespective who the claimant is, the legal basis of a claim (including under sale and purchase agreements) and the nature of the liability) in connection with:

1. any and all claims of the [\*\*\*] if and to the extent these exceed the [\*\*\*] Amount and have not been deducted from the Purchase Price as Financial Debt;
2. any and all claims of the [\*\*\*] if and to the extent these exceed the [\*\*\*] Amount and have not been deducted from the Purchase Price as Financial Debt;
3. any and all claims of the [\*\*\*] if and to the extent these exceed the [\*\*\*] Amount and have not been deducted from the Purchase Price as Financial Debt;
4. (i) any and all former subsidiaries or other Affiliates of the Company (whether controlled or not), irrespective whether such subsidiary or other Affiliate has been sold, liquidated or otherwise disposed (including in the USA, the Netherlands, the United Kingdom and Singapore (including Harold PTE Ltd., Singapore, and Scil Animal Care Company, USA) and (ii) scil animal care company Ltd., United Kingdom, or other subsidiaries of the Company which are not operative any more as of the Closing Date (including costs for winding up/liquidation).

11.4.2 Notwithstanding the occurrence of Closing, the Seller shall be entitled to and responsible for, the reasonable conduct of any claims, proceedings or disputes or settlement thereof pursuant to Clause 11.4.1 provided however, that the reasonable business interests of the Purchaser and/or the Scil Entities shall be taken into account by the Seller.

11.4.3 Clauses 7.3.2, 7.6 and 7.8.2 shall apply *mutatis mutandis*, but for the avoidance of doubt Clause 7 shall otherwise not apply to the indemnities set forth in this Clause 11.4. The Purchaser shall not be entitled to any indemnity claims pursuant to Clause 11.4, if and to the extent the underlying amounts have reduced the Purchase Price (other than the Enterprise Value) pursuant to Clauses 3.1 and 3.2 (no double counting).

11.4.4 Claims of the Purchaser under this Clause 11.4 shall become time barred (*verjährt*) six (6) years after the Closing Date. In case a claim of the Purchaser under this Clause 11.4 relates to a claim of a third party (including a governmental authority) against a Scil Entity is pending in litigation or arbitration such time limitation period of six (6) years shall be automatically extended until a final and binding (*rechtskräftiges*) court ruling or arbitral award with respect to the relevant matter has been issued (or a definitive settlement agreement has been signed by the relevant Scil Entity and such settlement agreement became effective) plus a period of three (3) months thereafter.

11.4.5 The Seller and the Purchaser agree on the following adjustment mechanism:

1. If the [\*\*\*] Amount deducted from the Purchase Price as Financial Debt exceeds the [\*\*\*] Amount as finally determined, the Purchaser shall inform the Seller and shall pay to the Seller the amount by which the [\*\*\*] Amount as deducted from the Purchase Price exceeds the [\*\*\*] Amount.
2. If the [\*\*\*] Amount deducted from the Purchase Price as Financial Debt exceeds the [\*\*\*] Amount as finally determined, the Purchaser shall inform the Seller and shall pay to the Seller the amount by which the [\*\*\*] Amount as deducted from the Purchase Price exceeds the [\*\*\*] Amount.
3. If the [\*\*\*] Amount deducted from the Purchase Price as Financial Debt exceeds the [\*\*\*] Amount as finally determined, the Purchaser shall inform the Seller and shall pay to the Seller the amount by which the [\*\*\*] Amount as deducted from the Purchase Price exceeds the [\*\*\*] Amount.

## 11.5 Restrictive Covenants

The Seller and the Purchaser shall execute the agreement attached as Schedule 11.5 on the Closing Date (the **Restrictive Covenant Agreement**).

## 12. PURCHASER'S GUARANTOR; SELLER'S GUARANTOR

### 12.1 Purchaser's Guarantor

The Purchaser's Guarantor hereby guarantees to the Seller by way of an independent promise of guarantee irrespective of fault pursuant to sec. 311 para. 1 BGB the proper satisfaction of the payment of the Purchase Price (including the Escrow Amount). There shall not be, and the Purchaser's Guarantor hereby waives, any rights which it may have to require the Seller to first proceed against, or claim payment of the Purchase Price (including the Escrow Amount) or fulfillment of any other payment claim under Clause 9.2 from, the Purchaser with the consequence that the Purchaser and the Purchaser's Guarantor shall be liable jointly and severally under this Agreement. A payment of the Purchase Price or fulfillment of any other payment claim under Clause 9.2 made by the Purchaser's Guarantor shall have debt discharging effect for the Purchaser against the Seller. If and to the extent that this Agreement provides for a consent of the Parties or their approval, the consent of the Purchaser's Guarantor shall not be required in addition to the consent or approval of the Purchaser, in each case unless otherwise expressly provided.

### 12.2 Seller's Guarantor

The Seller's Guarantor hereby guarantees to the Purchaser by way of an independent promise of guarantee irrespective of fault pursuant to sec. 311 para. 1 BGB the proper satisfaction of all current and future obligations of the Seller (or the New Seller) towards the Purchaser pursuant to this Agreement, and the accurate performance of any and all obligations that the Seller (or the New Seller) has or will have in relation to the Purchaser under or in connection with this Agreement. There shall not be, and the Seller's Guarantor hereby waives, any rights which it may have to require the Purchaser to first proceed against, or claim payment from, the Seller (or the New Seller) with the consequence that the Seller (or the New Seller) and the Seller's Guarantor shall be liable jointly and severally under this Agreement. A payment made by the Seller's Guarantor shall have debt discharging effect for the Seller (or the New Seller) against the Purchaser. If and to the extent that this Agreement provides for a consent of the Parties or their approval, the consent of the Seller's Guarantor shall not be required in addition to the consent or approval of the Seller (or the New Seller), in each case unless otherwise expressly provided.

## 13. CONFIDENTIALITY AND PRESS RELEASES

### 13.1 Confidentiality; Press Releases; Public Disclosure

The Parties mutually undertake to keep the contents of this Agreement secret and confidential in relation to any third party except to the extent that (i) the relevant facts are publicly known or (ii) disclosure is made to advisors, Affiliates, lenders, bondholders, financing institutions or other providers of finance

of a Party or its Affiliates and its and their respective directors, officers, employees, agents or professional advisors, in each case provided that any recipient is bound by law or agreement to substantially the same confidentiality obligation or (iii) disclosure is made in the context of pursuing rights or defending itself against obligations under or in connection with this Agreement or (iv) disclosure is required by Law, including the rules of any stock exchange, or required or requested by any court or any other competent authority, including the U.S. Securities and Exchange Commission (the **SEC**). No press release or other public announcement concerning the transactions contemplated by this Agreement shall be made by either Party unless the form and text of such announcement shall first have been approved by the other Parties except that, if a Party is required by Law or by applicable stock exchange regulations or by SEC to make an announcement, it may do so after first consulting with the other Parties. If any Party is required by Law or by applicable stock exchange regulations or by the SEC to a disclosure of the contents of this Agreement and/or to make an announcement, it shall to the extent legally permitted limit any disclosure or announcement to the minimum required by statute or the authorities and cooperate with the respective other Parties (upon request) with respect to all reasonable steps to resist or avoid such disclosure or announcement. The Parties shall make a joint press release regarding the transaction contemplated by this Agreement, the content of which shall be agreed between the Parties in due course and in good faith.

### **13.2 Seller's Confidentiality**

In the event that this Agreement is terminated, the Seller undertakes to keep confidential all information received from the Purchaser and the Purchaser's Guarantor in accordance with the terms and conditions of the confidentiality agreement between the Seller's Guarantor and the Purchaser's Guarantor dated 1 December 2019 and to comply with its obligations thereunder.

### **13.3 Purchaser's Confidentiality**

In the event that this Agreement is terminated, the Purchaser undertakes to keep confidential all information received from the Seller in accordance with the terms and conditions of the confidentiality agreement between the Seller and Purchaser dated 1 December 2019 and to comply with its obligations thereunder.

## **14. ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

This Agreement and any rights and obligations hereunder may not be assigned and transferred, in whole or in part, without the prior written consent of the other parties hereto except as provided for hereinafter:

### **14.1 Assignment by Purchaser**

The Purchaser shall be entitled to assign this Agreement and any or all rights under this Agreement to an Affiliate (including the right to designate a new purchasing entity wholly-owned by the Purchaser or the Purchaser's Guarantor) by written notice to the Seller prior to the Scheduled Closing Date) and the Purchaser shall be entitled to assign or otherwise dispose of any claims and rights it may have under this Agreement to the lenders, bondholders, financing institutions or other providers of finance of the Purchaser and/or any agent or trustee acting on their behalf. Notwithstanding the preceding sentences, Purchaser may assign the benefit of this Agreement and/or of any other transaction document to which it is a party, in whole or in part, to, and it may be enforced by any Affiliate of the Seller or the Seller's Guarantor which is or becomes the legal owner (including by way of acquisition, merger, contribution, spin-off, dissolution) from time to time of any or all of the securities or the assets of Purchaser or Purchaser's Guarantor, as if such person was the Purchaser under this Agreement.

### **14.2 Assignment by Seller**

14.2.1 The Seller shall be entitled to assign this Agreement and any or all rights under this Agreement to an Affiliate (including the right to designate a new selling entity, directly or indirectly, wholly-owned by the Seller's Guarantor, such entity the **New Seller**) by written notice to the Purchaser and to transfer and assign the Share to the New Seller, prior to the Scheduled Closing Date. In case of the assignment of this Agreement to the New Seller and the transfer of the Share to the New Seller prior to the Scheduled Closing Date, the New Seller shall become the legal successor of the Seller, but the Seller shall remain liable for all obligations of the Seller under this Agreement and the New Seller shall become liable for all obligations of the Seller under this Agreement. To effect the assignment of this Agreement to the New Seller, the Parties shall enter into a notarized contract assignment and assumption agreement prior to the Scheduled Closing Date.

14.2.2 Notwithstanding the preceding sentences, the Seller may assign the benefit of this Agreement and/or of any other transaction document to which it is a party, in whole or in part, to, and it may be enforced by any Affiliate of the Seller or the Seller's Guarantor which is or becomes the legal owner (including by way of acquisition, merger, contribution, spin-off, dissolution) from time to time of any or all of the securities or the assets of the Seller or Seller's Guarantor, as if such person was the Seller under this Agreement.

## **15. TRANSFER TAXES AND COSTS**

### **15.1 Transfer Taxes and Costs**

Between the Parties and except as set forth in Clauses 3.3 (and the Escrow Agreement) and 14.2, all transfer taxes, including real estate transfer taxes (*Grunderwerbsteuer*), costs for the notarization of this Agreement, costs in connection with declarations and registrations towards the commercial register or the land register as well as all costs in conjunction with requisite merger filings shall be borne by the Purchaser, except that the notarial fees for the notarization of the Share Transfer Deed shall be borne by the Seller.

### **15.2 Costs of Advisors**

Each Party shall bear its own costs and expenses incurred in connection with the preparation, execution and consummation of this Agreement, including, without limitation, any professional fees, charges and expenses of its advisors.

## **16. NOTICES**

### **16.1 Form of Notices**

Any legal statements and other notices in connection with this Agreement (collectively the **Notices**) shall be made in writing whereby Textform shall suffice, unless notarization or any other specific form is required by mandatory Law.

### **16.2 Notices to the Seller and the Seller's Guarantor**

- a) Any Notices to be delivered to the Seller hereunder shall be addressed as follows:

Covetrus Animal Health Holdings Limited  
Attn.: [\*\*\*]  
[\*\*\*]  
Email: [\*\*\*]

- b) Any Notices to be delivered to the Seller's Guarantor hereunder shall be addressed as follows:

Covetrus Inc.  
Attn.: [\*\*\*]  
7 Custom House Street  
Portland Maine 04101 USA  
Email: [\*\*\*]

in each case a) and b) with a copy to its advisor (for information purposes only):

Morgan Lewis, Bockius LLP  
Attn.: [\*\*\*]  
Operturm, Bockenheimer Landstraße 4, 60306 Frankfurt am Main  
Fax: [\*\*\*]  
Email: [\*\*\*]

### 16.3 Notices to the Purchaser and the Purchaser's Guarantor

- a) Any Notices to be delivered to any of the Purchasers hereunder shall be addressed as follows:

Heska GmbH  
Attn.: [\*\*\*]  
c/o Heussen Rechtsanwaltsgesellschaft mbH, Seidenstrasse 19  
70174 Stuttgart, Germany  
Fax: [\*\*\*]  
Email: [\*\*\*]

- b) Any Notices to be delivered to the Purchaser's Guarantor hereunder shall be addressed as follows:

Heska Corporation  
Attn.: Legal Department  
3760 Rocky Mountain Ave  
Loveland, CO 80538  
Fax: [\*\*\*]  
Email: [\*\*\*]

in each case a) and b) with a copy to its advisors (for information purposes only):

Gibson, Dunn & Crutcher LLP  
Attn.: [\*\*\*]  
Taunusturm, Taunustor 1, 60310 Frankfurt am Main, Germany  
Fax: [\*\*\*]  
Email: [\*\*\*]

### 16.4 Change of Address

The Parties shall communicate in writing changes in any of the addresses set forth in Clauses 16.2 through 16.3 as soon as possible to the other parties. In the absence of such communication, the address stated above shall remain in place.

### 16.5 Copies to Advisors

The receipt of copies of Notices hereunder by the Parties' advisors shall not constitute or substitute the receipt of such communication by the Parties themselves, irrespective of whether the delivery of such copy was mandated by this Agreement.

## 17. MISCELLANEOUS

### 17.1 Governing Law

This Agreement shall be governed by, and construed in accordance with, the Laws of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (*CISG*), except however that Clause 4.2.4 shall be construed in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

### 17.2 Place of Jurisdiction

All disputes arising in connection with this Agreement or its validity, shall be finally settled in accordance with the arbitration rules of the German Institution of Arbitration (*DIS*) as applicable at the time of the arbitral proceedings without recourse to the ordinary courts of law. The arbitral tribunal shall consist of three (3) arbitrators. The place of arbitration is Frankfurt am Main, Germany. The language of the arbitral proceedings shall be English, provided that evidence may also be submitted in the German language.

### 17.3 Certain Definitions

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

17.3.2 **Business Day** means a day (other than a Saturday or Sunday) on which banks are open for business in Frankfurt am Main, Germany, Denver, Colorado, U.S.A. and New York City, NY, U.S.A.

17.3.3 **Conversion Rate** means the mid closing spot rate for a transaction between the two currencies in question on the relevant date set forth in this Agreement as quoted by the Financial Times or, if no such rate is quoted on that date, on the preceding date on which such rates are quoted.

17.3.4 **Person** is an individual or legal person (such as corporation, partnership, limited liability company) or other entity.

17.3.5 **Related Party** as used in relation to any Person means any Affiliate of such Person from time to time and any other Person, from time to time, related to such first Person (i) being an individual person, in a way as described in sec. 138 para. 1 German Insolvency Code (**InsO**) and (ii) being a legal person, in a way as described in sec. 138 para. 2 InsO.

17.3.6 **U.S. GAAP** means United States generally accepted accounting principles and practices.

#### 17.4 Amendments; Supplements; Termination

Any amendment, supplement (*Ergänzung*) or termination (*Aufhebung*) of this Agreement, including this provision, shall be valid only if made in writing, except where notarization or any other stricter form is required by Law.

#### 17.5 Headings; References to German Legal Terms; Interpretation; References to Clauses

17.5.1 The headings and sub-headings of the clauses and paragraphs contained in this Agreement are for convenience and reference purposes only. They shall be disregarded for purposes of interpretation of this Agreement.

17.5.2 Where a set of facts is to be analysed by reference to the Laws of a foreign jurisdiction, any reference in this Agreement to any German legal term shall be deemed to include a reference to the equivalent (*funktionsgleich*) legal term under the Laws of such jurisdiction. Where foreign Law does not provide for any corresponding legal term, such legal term as functionally comes closest to the German legal term shall be used instead.

17.5.3 Where the English wording of this Agreement is followed by a German legal term set in parenthesis and in italics, the German legal term shall prevail.

17.5.4 (i) Unless the context requires otherwise, the phrases "including", "including, in particular" and "in particular" shall be interpreted to be non-restrictive and without limitation, (ii) in case of defined terms, any reference to the singular includes a reference to the plural and *vice versa*, unless expressly otherwise provided in this Agreement and (iii) the usage of "or" shall always be inclusive and be construed as "and/or"; the incidental usage of "and/or" shall not be construed as an exception to this rule.

17.5.5 Any reference made in this Agreement to any clauses without further indication of a Law or an agreement shall mean clauses of this Agreement.

#### 17.6 Schedules

All Schedules to this Agreement form an integral part of this Agreement.

#### 17.7 Entire Agreement

This Agreement, including its Schedules, constitutes the entire agreement between the Parties with respect to the subject matter covered thereby and supersedes all previous agreements and understandings, whether written or verbal, between the Parties with respect to the subject matter of this Agreement or parts thereof but excluding the mutual non-disclosure agreement dated 1 December 2019 between the Seller's Guarantor and the Purchaser's Guarantor and its addendum dated 17 December 2019. There are no side agreements to this Agreement.

The Seller's Guarantor and the Purchaser's Guarantor hereby terminate with effect as of the date hereof the addendum to mutual non-disclosure agreement dated 17 December 2019 between the Seller's Guarantor and the Purchaser's Guarantor with respect to, *inter alia*, establishing a so-called clean team.

The Seller's Guarantor and the Purchaser's Guarantor hereby terminate with effect as of the Closing Date the mutual non-disclosure agreement dated 1 December 2019 between the Seller's Guarantor and the Purchaser's Guarantor subject to occurrence of the Closing.

#### 17.8 Rights of Third Parties

Except as expressly otherwise provided in this Agreement, this Agreement shall only grant rights to the Parties and shall not constitute a contract for the benefit of third parties or a contract with protective effect for third parties.

#### 17.9 Severability

Should any provision of this Agreement be or become, in whole or in part, void (*nichtig*), ineffective (*unwirksam*) or unenforceable (*undurchsetzbar*), the validity, effectiveness and enforceability of the remaining provisions of this Agreement shall not be affected. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards the subject-matter, extent (*Maß*), time, place and scope (*Geltungsbereich*) of the relevant provision. The aforesaid shall apply *mutatis mutandis* to any gap (*Lücke*) that may be found to exist in this Agreement. It is the express intention of the Parties that this Clause 17.9 shall not be construed as a mere reversal of the burden of proof (*Beweislastumkehr*) but rather as a contractual exclusion of section 139 of the German Civil Code (*BGB*) in its entirety.

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**HESKA CORPORATION  
DESCRIPTION OF SECURITIES**

**DESCRIPTION OF COMMON STOCK**

**General**

The following description summarizes important terms of our common stock. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description of the matters set forth herein, you should refer to our Certificate of Incorporation and our bylaws, both of which are filed as exhibits to our Annual Report on Form 10-K, and to the applicable provisions of Delaware law.

On May 4, 2010, our stockholders approved an amendment to our Certificate of Incorporation (the “NOL Protective Amendment”). The NOL Protective Amendment places restrictions on the transfer of our common stock that could adversely affect our ability to use our domestic Federal Net Operating Loss carryforward (“NOL”). The NOL Protective Amendment reclassified our capital stock into shares of Traditional common stock and common stock, which together we refer to as our “common stock.” These restrictions on transfer prohibit certain future transfers our capital stock that could adversely affect our ability to utilize our NOL and certain income tax credits to reduce our federal income taxes, which we refer to as the “Tax Benefits.” Pursuant to the NOL Protective Amendment, each share of Traditional common stock was automatically reclassified into one share of common stock.

After giving effect to the amendments to our Certificate of Incorporation adopted subsequent to the NOL Protective Amendment, our authorized capital stock consists of 23,000,000 shares of capital stock, par value \$0.01 per share, of which:

- 10,250,000 shares of original common stock are designated as Traditional common stock;
- 10,250,000 shares of NOL restricted common stock are designated as Public common stock; and
- 2,500,000 shares are designated as preferred stock.

All outstanding shares of common stock are validly issued, fully paid, and nonassessable.

**Voting rights**

Each holder of common stock is entitled to one vote for each share of common stock held of record on the applicable record date on all matters submitted to a vote of stockholders. There are no cumulative voting rights for the election of directors in our Certificate of Incorporation. Until our 2020 annual meeting of stockholders, our Certificate of Incorporation provides for a

classified board of directors consisting of two classes of approximately equal size, and subsequent to that our board of directors will cease to be classified, and the directors elected at the 2020 annual meeting of stockholders and each annual meeting thereafter shall be elected for a term of office expiring at the next annual meeting of stockholders.

### **Dividend rights; rights upon liquidation**

The holders of common stock are entitled to receive dividends out of assets legally available for dividends at times and in amounts as our board of directors may determine. These dividend rights are subject to any preferential dividend rights that may be granted to holders of outstanding preferred stock.

In the event of our liquidation, dissolution or winding up, each share of common stock is entitled to share pro rata in any distribution of our assets after payment or providing for the payment of liabilities and the liquidation preference of any then outstanding preferred stock.

### **Preemptive and other rights**

Other than as set forth under the caption “Conversion” below, holders of common stock have no preemptive or other rights to purchase, subscribe for or otherwise acquire any unissued or treasury shares or other of our securities. There are no redemption or sinking fund provisions applicable to the common stock securities.

### **Conversion**

Each share of Public common stock will automatically be converted into the equivalent number of shares of Traditional common stock on the earliest of January 1, 2026, the date our board of directors determines that the transfer restrictions described below are no longer necessary or advisable to preserve the Tax Benefits due to changes in tax laws, or the date our board of directors determines in good faith that it is in the best interests of the Company and our stockholders to terminate the transfer restrictions.

### **NOL transfer restrictions**

As a result of the NOL Protective Amendment, the shares of common stock are subject to transfer restrictions such that holders of common stock are restricted from attempting to transfer (which includes any direct or indirect acquisition, sale, transfer, assignment, conveyance, pledge or other disposition) any of the shares of common stock (or options, warrants or other rights to acquire common stock, or securities convertible or exchangeable into common stock), to the extent that such transfer would (i) create or result in an individual or entity becoming a five-percent stockholder of the common stock for purposes of Section 382 of the Internal Revenue Code of 1986, as amended, and the related Treasury Regulations, which individual or entity is referred to as a “five-percent stockholder,” or (ii) increase the stock ownership percentage of any existing five-percent stockholder.



Transfers that violate the provisions of the NOL Protective Amendment shall be null and void *ab initio* and shall not be effective to transfer any record, legal, beneficial or any other ownership of the number of shares which result in the violation of the NOL Protective Amendment, which shares are referred to as “Excess Securities.” The purported transferee shall not be entitled to any rights as a Company stockholder with respect to the Excess Securities. Instead, the purported transferee would be required, upon demand by us, to transfer the Excess Securities to an agent designated by us for the limited purpose of consummating an orderly arm’s-length sale of such Excess Securities. The net proceeds of the sale will be distributed first to reimburse the agent for any costs associated with the sale, second to the purported transferee to the extent of the price it paid, and finally to the purported transferor to the extent there is any additional amount, or, if the purported transferor cannot readily be identified to us, to cover the costs incurred by us as a result of such prohibited transfer, with the remainder, if any, to be donated to a charity designated by our board of directors.

With respect to any transfer that does not involve a transfer of our “securities” within the meaning of Delaware law but which would cause any five-percent stockholder to violate the transfer restrictions, the following procedure would apply in lieu of those described above. In such case, no such five-percent stockholder would be required to dispose of any interest that is not a security of the Company, but such five-percent stockholder and/or any person whose ownership of our securities is attributed to such five-percent stockholder, would be deemed to have disposed of (and would be required to dispose of) sufficient securities (which securities shall be disposed of in the inverse order in which they were acquired), simultaneously with the transfer, to cause such five-percent stockholder not to be in violation of the transfer restrictions, and such securities would be treated as Excess Securities to be disposed of through the agent under the provisions summarized above, with the maximum amount payable to such five-percent stockholder or such other person that was the direct holder of such Excess Securities from the proceeds of sale by the agent being the fair market value of such Excess Securities at the time of the prohibited transfer.

The NOL Protective Amendment also provides us with various remedies to prevent or respond to a purported transfer that violates its provisions, including that any person who knowingly violates it, together with any persons in the same control group with such person, are jointly and severally liable to us for such amounts as will put us in the same financial position as it would have been in had such violation not occurred.

The foregoing transfer restriction provisions may only be amended or repealed by the affirmative vote of the holders of at least two-thirds of the shares entitled to vote thereon. This summary description of the NOL Protective Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the NOL Protective Amendment.

#### **Anti-takeover provisions in Delaware law and our certificate of incorporation**

The NOL Protective Amendment may have an “anti-takeover” effect because, among other things, the common stock restricts the ability of a person, entity or group to accumulate more than five percent of the common stock and the ability of persons, entities or groups now

owning more than five percent of the outstanding shares of common stock from acquiring additional shares of common stock without the approval of our board of directors.

We are subject to Section 203 of the Delaware General Corporation Law, an anti-takeover law. In general, the statute prohibits a publicly held Delaware corporation from engaging in a business combination with an “interested stockholder” for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. A “business combination” includes a merger, asset sale or other transaction resulting in financial benefit to the stockholder. An “interested stockholder” is a person who, together with affiliates and associates, owns (or within three years prior, did own) 15% or more of the corporation’s voting stock.

Until the termination of the classification of our board of directors beginning with our 2020 annual meeting of stockholders, our Certificate of Incorporation provides for a classified board of directors. Until the 2020 annual meeting of stockholders, the provisions establishing the classified board may only be amended or repealed by the holders of at least two-thirds of the voting power of all the then outstanding shares of capital stock entitled to vote generally for the election of directors, voting together as a single class. The Certificate of Incorporation provides that special meetings of stockholders may be called only at the request of our chairman of the board of directors, our chief executive officer or president, or by a resolution adopted by a majority of our board of directors.

The provisions described above, together with the ability of our board of directors to issue preferred stock without stockholder approval, could have the effect of delaying, deferring or preventing a change in control, delaying, deferring or preventing the removal of existing management, deterring potential acquirers from making an offer to our stockholders, and limiting any opportunity of our stockholders to realize premiums over prevailing market prices of our common stock in connection with offers by potential acquirers.

The above-described effects could occur even if a majority of our stockholders might benefit from such a change in control or offer.

## **Listing**

Our common stock is listed on The Nasdaq Capital Market under the symbol “HSKA”.

## HESKA CORPORATION

## DIRECTOR COMPENSATION POLICY

Non-employee directors of Heska Corporation, a Delaware corporation (the "Company") shall receive the following compensation for their service as a member of the Board of Directors (the "Board") of the Company:

**Cash Compensation***Annual Retainer for General Board Service*

Effective April 1, 2020, each non-employee director shall be entitled to an annual cash retainer in the amount of \$55,000 (the "Annual Retainer"). The Company shall pay the Annual Retainer on a quarterly basis in advance on the first day of the calendar quarter, subject to the non-employee director's continued service to the Company as a non-employee director on such date.

*Annual Retainer for Chair of the Board*

Commencing April 1, 2020, the chair of the Board shall be entitled to an annual cash retainer in the amount of \$50,000 (the "Service Retainer"). The Company shall pay the Service Retainer on a quarterly basis in advance on the first day of the calendar quarter, subject to the applicable non-employee director's continued service to the Company in the chair of the Board role on such date.

**Equity Compensation***Annual Award*

Commencing with the 2020 Annual Meeting of Stockholders, each non-employee director elected to the Board and each other continuing non-employee director shall automatically receive an annual grant (the "Annual Grant") of stock valued at \$125,000 (the "Equity Value") based on the fair market value of the Company's common stock at the end of the day of grant which shall be the date of each Company Annual Meeting of Stockholders, subject to such grant covering a maximum of 5,000 shares (the "Share Cap"). Each Annual Grant shall vest (the "Vesting Time") in full on the latter of (i) the one year anniversary of the date of grant and (ii) the Company's Annual Meeting of Stockholders for the year following the year of grant for the award (the "Vesting Meeting"), subject to (i) the non-employee director's continued service to the Company through the Vesting Time, unless the non-employee director's current term expires at the Vesting Meeting in which case vesting is subject to the non-employee director's service to the Vesting Meeting and (ii) the non-employee director not engaging in "competition", as defined in a restricted stock agreement to be executed by the non-employee director, to

the Vesting Time. An Annual Grant may vest early in certain circumstances related to the death or disability of a non-employee director.

#### Initial Award

Any non-employee directors appointed or elected to our Board between Annual Meetings of Stockholders shall automatically receive a grant of stock (the "Initial Grant") valued at the Equity Value based on the fair market value of the Company's common stock at the end of the day of grant, adjusted pro rata for the time until the next Annual Meeting of Stockholders, subject to the Share Cap adjusted pro rata for the time until the next Annual Meeting of Stockholders. The Initial Grant shall vest (the "Initial Time") in full on the latter of (i) the one year anniversary of the date of grant and (ii) the Company's next Annual Meeting of Stockholders (the "Initial Meeting"), subject to (i) the non-employee director's continued service to the Company through the Initial Time, unless the non-employee director's current term expires at the Initial Meeting in which case vesting is subject to the non-employee director's service to the Initial Meeting and (ii) the non-employee director not engaging in "competition", as defined in a restricted stock agreement to be executed by the non-employee director, to the Initial Time. An Initial Grant may vest early in certain circumstances related to the death or disability of a non-employee director.

#### Provisions Applicable to All Non-Employee Director Option Grants

All grants shall be subject to the terms and conditions of the Company's 1997 Stock Incentive Plan or 2003 Equity Incentive Plan, as applicable, and the terms of the Stock Option Agreement issued thereunder.

For purposes of this Director Compensation Policy, the "value" for Initial Grants and Annual Grants to non-employee directors shall be determined in accordance with the Company's option valuation policy in place at the time of grant for financial reporting purposes.

#### Expense Reimbursement

All non-employee directors shall be entitled to a set reimbursement from the Company for their reasonable travel (including airfare and ground transportation), lodging and meal expenses incident to meetings of the Board or committees thereof or in connection with other Board related business. The Company shall also reimburse directors for attendance at director continuing education programs that are relevant to their service on the Board and which attendance is pre-approved by the Chair of the Corporate Governance Committee and Chairman of the Board.

*Amended and Restated February 19, 2020*

**SEPARATION AND RELEASE AGREEMENT**

This Separation and Release Agreement (the “Agreement”) is made between (i) Jason Napolitano (“Employee”) and (ii) Heska Corporation (the “Company”). Employee and the Company are referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, Employee was employed at the Company’s Loveland facility;

WHEREAS, Employee’s employment with the Company terminated effective January 20<sup>th</sup>, 2020 (the “Termination Date”);

WHEREAS, Employee’s termination is without “Cause” under Section 6(a), entitling Employee to certain payments and benefits under Section 6(b) of the Employment Agreement;

WHEREAS, Employee resigns all board seats, observation rights and actual, titles and appointments that are conditioned upon continued employment with the Company;

WHEREAS, the Parties wish to resolve fully and finally any potential disputes regarding Employee’s employment with the Company and any other potential disputes between the Parties, and

WHEREAS, in order to accomplish this end, the Parties are willing to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, the sufficiency of which is acknowledged by the Parties, the Parties to this Agreement agree as follows:

TERMS

1. Effective Date. This Agreement shall become effective on the eighth day after Employee signs this Agreement (the “Effective Date”), so long as Employee does not revoke this Agreement pursuant to Paragraph 10 below. Employee’s Termination Date will not change regardless of whether this Agreement becomes effective on the “Effective Date.”
2. Consideration for Release and Payment Terms.
  - a. Pursuant to this Agreement, the Company shall, as consideration for Employee’s release and promises set forth in this Agreement, pay Employee additional compensation that Employee would not be entitled to otherwise.
  - b. After the Effective Date and on the express condition that Employee has not revoked this Agreement, the Company will pay Employee a severance payment in the total sum of five

hundred thousand dollars **(\$500,000.00)**, less applicable deductions and withholdings, to be paid within three business days of the Effective Date, so long as Employee does not revoke this Agreement pursuant to Paragraph 10 below. This payment is inclusive of the severance pay described under Section 6(b)(ii) of the Employment Agreement and this Agreement supercedes the Company's obligations under the Employment Agreement. Notwithstanding the Employment Agreement, under this Agreement, Employee agrees to receive entire six months' payment in one lump sum, to be paid in accordance with the terms herein. Payment will be mailed to Employee's residence address payable to "Jason Napolitano" or directly deposited to the Employee's financial institution as soon as is administratively feasible.

- c. Medical and Dental Benefits. From the Termination Date through the earlier of (i) the six month anniversary of the Termination Date or (ii) the date on which Employee is provided or obtains medical or dental insurance coverage from another employer or entity, the Company shall reimburse Employee for the difference between the cost of any COBRA premiums paid by Employee for continued medical and dental coverage under the Company's group health plans for himself and his dependents and the active employee rates for coverage under such plans. The foregoing is subject to Employee's timely enrollment in COBRA and payment of applicable premiums.
- d. Reporting and Withholding. Reporting of and withholding on any payment under this Agreement for tax purposes shall be at the discretion of the Company in conformance with applicable tax laws. If a claim is made against the Company for any additional tax or withholding in connection with or arising out of any payment pursuant to this Agreement, Employee shall pay any such claim within thirty (30) days of being notified by the Company and agrees to indemnify the Company and hold it harmless against such claims, including, but not limited to, any taxes, attorneys' fees, penalties, and/or interest, which are or become due from the Company.

3. General Release.

- a. Employee, for Employee, and for Employee's affiliates, successors, heirs, subrogees, assigns, principals, agents, partners, employees, associates, attorneys, and representatives, voluntarily, knowingly, unequivocally, unconditionally and intentionally releases and discharges (i) the Company and its predecessors, successors, parents, subsidiaries, affiliates, and assigns, and (ii) each of their respective officers, directors, principals, shareholders, agents, attorneys, board members, and employees (the "Released Parties") from any and all claims, actions, liabilities, demands, rights, damages, costs, expenses, and attorneys' fees (including, but not limited to, any claim of entitlement for attorneys' fees under any contract, statute, or rule of law allowing a prevailing party or plaintiff to recover attorneys' fees), of every kind and description from the beginning of time through the Effective Date (the "Released Claims").
- b. The Released Claims include, but are not limited to, those which arise out of, relate to, or are based upon: (i) Employee's employment with the Company or the termination thereof; (ii) statements, acts, or omissions by the Released Parties whether in their individual or representative capacities; (iii) express or implied agreements between the Parties and claims

under any severance plan (except as provided herein); (iv) any stock or stock option grant, agreement, or plan; (v) all federal, state, and municipal statutes, ordinances, and regulations, including, but not limited to, claims of discrimination based on race, color, national origin, age, sex, sexual orientation, religion, disability, veteran status, whistleblower status, public policy, or any other characteristic of Employee under the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans with Disabilities Act, the Equal Pay Act, Title VII of the Civil Rights Act of 1964 (as amended), the Employee Retirement Income Security Act of 1974, the Rehabilitation Act of 1973, the Family and Medical Leave Act, the Worker Adjustment and Retraining Notification Act, the Colorado Anti-Discrimination in Employment Act, or any other federal, state, or municipal law prohibiting discrimination or termination for any reason; (vi) state and federal common law; (vii) the failure of this Agreement, or of any other employment, severance, profit sharing, bonus, equity incentive or other compensatory plan to which Employee and the Company are or were parties, to comply with, or to be operated in compliance with, Section 409A of the Internal Revenue Code of 1986, as amended (“Section 409A”), or any similar provision of state or local income tax law; and (viii) any claim which was or could have been raised by Employee.

Employee understands that nothing contained in this Agreement limits Employee’s ability to file a charge or complaint with any federal, state or local governmental agency or commission (each a “Government Agency”). Employee further understands that this Release does not limit Employee’s ability to communicate with any Government Agency or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. However, to the maximum extent permitted by law, Employee agrees that if such a charge or complaint is made, Employee shall not be entitled to recover any individual monetary relief or other individual remedies. This Release does not limit or prohibit Employee’s right to receive an award for information provided to any Government Agency to the extent that such limitation or prohibition is a violation of law.

- c. The General Release in this Agreement does not apply to claims under federal, state, or local law (statutory, regulatory, or otherwise) that may not be lawfully waived and released, including but not limited to vested retirement benefits (if any), COBRA rights, unemployment compensation, and workers’ compensation.

#### 4. Confidential Information.

- a. For the purposes of this Agreement, “Confidential Information” shall include, without limitation, any non-public information relating to or pertaining to the Company, such as the whole or any portion or phase of (i) any proprietary information or Trade Secrets (defined below); (ii) any scientific, technical, business, or financial information; (iii) any marketing information, business development information, prospect information, or marketing analysis or plans; (iv) any customer information, lists, contacts, or needs; (v) any contracts, agreements, or leases; (vi) any discoveries, inventions, products, designs, methods, know-how, techniques, systems, processes, software programs, works of authorship, projects, or

plans; (vii) any proposals, strategies, concepts, analyses, surveys, ideas, research, data, databases, reports, manuals, manuscripts, articles, or records; and (viii) any other business or corporate documents related to Company Business. The Company's "Trade Secrets" include, without limitation, the Company's non-public marketing strategies, financial information, customer and client information, projects, plans, proposals, business strategies (including potential new business opportunities and divisions). All Confidential Information identified above shall be treated as Confidential Information regardless of whether it pertains to the Company, its affiliates, subsidiaries, or parents, or their customers. The list set forth above is not intended by the Company to be a comprehensive list of Confidential Information.

- b. Employee acknowledges the success of the Company depends in large part on the protection of the Company's Confidential Information. Employee further acknowledges that, in the course of Employee's employment with the Company, Employee became familiar with the Company's Confidential Information. Employee recognizes and acknowledges that the Company's Confidential Information is a valuable, special, and unique asset of the Company's business, access to and knowledge of which were essential to the performance of Employee's duties. Employee acknowledges use or disclosure of the Confidential Information outside the performance of Employee's job duties for the Company would cause harm and/or damage to the Company.
- c. Employee agrees that Employee will not, directly or indirectly, disclose any Confidential Information to any person, firm, business, company, corporation, association, or any other entity for any reason or purpose whatsoever. Employee also agrees that Employee has not and will not use, directly or indirectly, any Confidential Information for Employee's own purposes or for the benefit of any person, firm, business, company, corporation, or any other entity (except the Company) under any circumstances. Employee has considered and treated and shall consider and treat as confidential all Confidential Information in any way relating to the Company's business and affairs, whether created by Employee or otherwise coming into Employee's possession before, during, or after the Termination Date. Employee shall not use or attempt to use any Confidential Information in any manner which has the possibility of injuring or causing loss, whether directly or indirectly, to the Company, its affiliates, subsidiaries, parents, or customers. Employee agrees all such Confidential Information shall be and remain the sole and exclusive property of the Company.

5. Remedies.

- a. Injunctive Relief. Employee acknowledges that any breach of Paragraph 4 or the surviving provisions of the Employment Agreement referenced in Paragraphs 6, 8, 12 and 13 below will cause the Company to suffer immediate and irreparable harm and damage for which money alone cannot fully compensate the Company. Employee agrees that upon breach or threat of imminent breach of any obligation under Paragraphs 4, 6, 8, 12, and/or 13 of this Agreement, the Company shall be entitled to a temporary restraining order, preliminary injunction, permanent injunction, or other injunctive relief without posting any bond or other security, and that Employee shall not oppose entry of any of these measures. This Paragraph shall not be construed as an election of any remedy, or as a waiver of any right available to



the Company under this Agreement or the Colorado law governing this Agreement, including the right to seek damages from Employee.

- b. Attorneys' Fees. In the event of any controversy, claim, or dispute between the parties affecting or relating to Paragraphs 4, 6, 8, 12, and/or 13 of this Agreement, if the Company is required to defend its actions or seek enforcement of the Agreement, the Company shall be entitled to recover all of its attorneys' fees and costs if the Company is successful in its defense or enforcement action.
- c. Separate Provisions. Employee agrees the provisions of Paragraphs 4, 6, 8, 12, and 13 of this Agreement are separate from and independent of the remainder of this Agreement and that these provisions are specifically enforceable by the Company notwithstanding any claim by Employee that the Company has violated or breached this Agreement.

6. Return of Company Property. Employee represents and warrants that Employee returned all Company property to the designated Company representative on or before Employee's Termination Date, unless otherwise agreed upon. This property includes, but is not limited to, Company documents and files (in any recorded media, such as papers, computer disks, copies, transparencies, and microfiche), materials, keys, credit cards, laptops, cellular phone(s), computer disks, and badges. Employee agrees that, to the extent that Employee possesses any files, data, or information relating in any way to the Company or the Company's business on any personal computer, Employee will delete the data, files, or information (and will retain no copies in any form).

7. Unknown Facts. The releases in this Agreement include, but are not limited to, claims of every nature and kind, known or unknown, suspected or unsuspected. Employee hereby acknowledges that Employee may hereafter discover facts different from, or in addition to, those which Employee now knows to be or believes to be true with respect to this Agreement, and Employee agrees that this Agreement and the releases contained herein shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery thereof.

8. Confidentiality of Agreement. Employee agrees to keep this Agreement confidential and will not disclose the existence or the terms of this Agreement to anyone except to Employee's immediate family, accountants, legal or financial advisors, as part of an investigation or proceeding conducted by any Government Agency, or as otherwise appropriate or necessary as required by law or court order. To the extent that Employee discloses the existence or terms of this Agreement to Employee's immediate family, accountants, or legal or financial advisors, Employee must advise them that they must not disclose the existence or terms of this Agreement to any person or entity. However, nothing contained herein precludes any individual from communicating with any Government Agency. If compulsory disclosure is required by a Government Agency, Employee shall provide the Company immediate notice of the compulsory process and affording the Company the opportunity to obtain any necessary or appropriate protective orders. Otherwise, in response to inquiries about Employee's employment and this matter, Employee shall state, "My employment with the Company has ended" and nothing more.

The Company agrees to keep this Agreement confidential and will not disclose the existence or the terms of this Agreement to anyone except the Company's Human Resources Department, Legal Department, Executive Management Team and Board of Directors, or as otherwise appropriate or necessary as required by law or court order. To the extent that Company chooses to disclose the existence or terms of this Agreement to the Company's Human Resources Department, Legal Department, Executive Management Team and Board of Directors, the Company must advise them that they must not disclose the existence or terms of this Agreement to any person or entity. However, nothing contained herein precludes any individual from communicating with any Government Agency. If compulsory disclosure is required by a Government Agency, Company shall provide the Employee immediate notice of the compulsory process and affording the Employee the opportunity to obtain any necessary or appropriate protective orders.

9. No Admission of Liability. The Parties agree that nothing contained herein, and no action taken by any Party hereto with regard to this Agreement, shall be construed as an admission by any Party of liability or of any fact that might give rise to liability for any purpose whatsoever.

10. ADEA and Older Workers Benefit Protection Act Release

In addition to the General Release contained in Section 3, Employee knowingly, voluntarily, and irrevocably discharges and releases Releasees from any claims arising under the Age Discrimination in Employment Act (ADEA). Employee acknowledges that Employee has been informed pursuant to the federal Older Workers Benefit Protection Act of 1990 as follows:

**You are advised to consult with an attorney before signing this Agreement.**

You do not waive rights or claims under the federal Age Discrimination in Employment Act that may arise after the date this Agreement is executed.

You have twenty-one (21) days from the date of receipt of this Agreement to consider this Agreement. You acknowledge that if you sign this Agreement before the end of the twenty-one-(21)-day period, it will be your personal, voluntary decision to do so and that you have not been pressured to make a decision sooner.

You have seven (7) days after signing this Agreement to revoke the Agreement, and the Agreement will not be effective until that revocation period has expired. If mailed, the rescission must be postmarked within the seven-day period, properly addressed to:

Heska Corporation  
Attn: Human Resources Department  
3760 Rocky Mountain Avenue  
Loveland, CO 80538

This agreement shall not be effective or enforceable, and no payments or benefits under this Agreement shall be provided to you, until after the seven (7) day revocation period has expired.

You understand that you will not receive any settlement payment if you void your signature or revoke this Agreement.

11. Representations and Warranties. Employee represents and warrants as follows:
- a. Employee has read this Agreement and agrees to the conditions and obligations set forth in it;
  - b. Employee voluntarily executes this Agreement (i) after having been advised to consult with legal counsel, (ii) after having had opportunity to consult with legal counsel, and (iii) without being pressured or influenced by any statement or representation or omission of any person acting on behalf of the Company including, without limitation, the officers, directors, board members, committee members, employees, agents, and attorneys for the Company;
  - c. Employee has no knowledge of the existence of any lawsuit, charge, or proceeding against the Company or any of its officers, directors, board members, committee members, employees, or agents arising out of or otherwise connected with any of the matters herein released. In the event that any such lawsuit, charge, or proceeding has been filed, Employee immediately will take all actions necessary to withdraw or terminate that lawsuit, charge, or proceeding;
  - d. Employee has not previously disclosed any information which would be a violation of the confidentiality provisions set forth herein if such disclosure were to be made after the execution of this Agreement;
  - e. Employee has full and complete legal capacity to enter into this Agreement;
  - f. Employee admits, acknowledges, and agrees that Employee is not otherwise entitled to the amounts and other consideration set forth in Paragraph 2, which are good and valuable consideration for this Agreement; and
  - g. Employee further admits, acknowledges, and agrees that Employee has been fully and finally paid all wages, compensation, vacation, bonuses, stock, stock options, or other benefits from the Company which are or could be due to Employee under the terms of Employee's employment with the Company or otherwise.
12. Non-Disparagement. Employee agrees not to make to any person any statement that disparages the Company or reflects negatively upon the Company, including, without limitation, statements regarding the Company's financial condition, business practices, employment practices, or its predecessors, successors, parents, subsidiaries, officers, directors, employees, affiliates, agents, or representatives. Company agrees not to make to any person any statement that disparages Employee or reflects negatively upon the Employee.
13. Cooperation. Employee agrees to cooperate with and assist the Company with any investigation, lawsuit, arbitration, or other proceeding to which the Company is subjected. Employee will be

available for preparation for, and attendance of, hearings, proceedings, or trial, including pretrial discovery and trial preparation. Employee further agrees to perform all acts and execute any documents that may be necessary to carry out the provisions of this Paragraph.

14. Section 409A. This Agreement is intended to comply with Section 409A of the Internal Revenue Code and shall be construed accordingly. It is the intention of the Parties that payments or benefits payable under this Agreement not be subject to the additional tax or interest imposed pursuant to Section 409A. To the extent such potential payments or benefits are or could become subject to Section 409A, the Parties shall cooperate to amend this Agreement with the goal of giving Employee the economic benefits described herein in a manner that does not result in such tax or interest being imposed. Employee shall, at the request of the Company, take any reasonable action (or refrain from taking any action), required to comply with any correction procedure promulgated pursuant to Section 409A.
15. Severability. If any provision of this Agreement is held illegal, invalid, or unenforceable, such holding shall not affect any other provisions hereof. In the event any provision is held illegal, invalid or unenforceable, such provision shall be limited so as to effect the intent of the parties to the fullest extent permitted by applicable law. Any claim by Employee against the Company shall not constitute a defense to enforcement by the Company of this Agreement.
16. Enforcement. The Release contained herein does not release any claims for enforcement of the terms, conditions, or warranties contained in this Agreement. The Parties shall be free to pursue any remedies available to them to enforce this Agreement.
17. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes and modifies any and all prior agreements. This Agreement cannot be modified except in a writing signed by all Parties.
18. Venue, Applicable Law, and Submission to Jurisdiction. This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado, without regard to its conflicts of law provisions. Venue and jurisdiction will be in the Colorado state or federal courts.
19. Interpretation. The determination of the terms, and the drafting, of this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties. Accordingly, the Parties agree that rules relating to the interpretation of contracts against the drafter of any particular clause shall not apply in the case of this Agreement. The term "Paragraph" shall refer to the enumerated paragraphs of this Agreement. The headings contained in this Agreement are for convenience of reference only and are not intended to limit the scope or affect the interpretation of any provision of this Agreement.
20. Assignment. The Company may assign its rights under this Agreement. Employee cannot assign Employee's rights under this Agreement without the written consent of the Company. No other assignment is permitted except by written permission of the Parties.

Counterparts. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this Separation and Release Agreement on the dates written below.

Employee has carefully read the above and executes it voluntarily, fully understanding and accepting the provisions of this Agreement in its entirety and without reservation after having had sufficient time and opportunity to consult with legal advisors prior to executing this Agreement. Employee has been advised to consult with an attorney prior to executing this Agreement. In agreeing to sign this Agreement, Employee has not relied on any statements or explanation made by the Company. Employee has had at least twenty-one (21) days to consider this Agreement. Employee understands that if she does not return this Agreement signed by her to the Company upon the expiration of the twenty-one-day consideration period, this offer will expire. Employee understands that she may revoke and cancel the Agreement within seven (7) days after signing it by serving written notice upon Company as set forth in Paragraph 10 above.

EMPLOYEE

HESKA CORPORATION

/s/ Jason Napolitano

Jason Napolitano

/s/ Christopher Sveen

Christopher Sveen

Vice President, General Counsel

1/23/2020

Date

1/23/2020

Date

**SEPARATION AND RELEASE AGREEMENT**

This Separation and Release Agreement (the “Agreement”) is made between (i) **Steve Asakowicz** (“Employee”) and (ii) Heska Corporation (the “Company”). Employee and the Company are referred to collectively as the “Parties” and individually as a “Party.”

**RECITALS**

WHEREAS, Employee was employed at the Company’s Loveland facility;

WHEREAS, Employee’s employment with the Company terminated effective February 3<sup>rd</sup>, 2020 (the “Termination Date”);

WHEREAS, Employee’s termination is without “Cause” under Section 6(a), entitling Employee to certain payments and benefits under Section 6(b) of the Employment Agreement;

WHEREAS, the Parties wish to resolve fully and finally any potential disputes regarding Employee’s employment with the Company and any other potential disputes between the Parties, and

WHEREAS, in order to accomplish this end, the Parties are willing to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, the sufficiency of which is acknowledged by the Parties, the Parties to this Agreement agree as follows:

**TERMS**

1. **Effective Date.** This Agreement shall become effective on the eighth day after Employee signs this Agreement (the “Effective Date”), so long as Employee does not revoke this Agreement pursuant to Paragraph 10 below. Employee’s Termination Date will not change regardless of whether this Agreement becomes effective on the “Effective Date.”
2. **Consideration for Release and Payment Terms.**
  - a. Pursuant to this Agreement, the Company shall, as consideration for Employee’s release and promises set forth in this Agreement, pay Employee additional compensation that Employee would not be entitled to otherwise.
  - b. After the Effective Date and on the express condition that Employee has not revoked this Agreement, the Company will pay Employee a severance payment in the total sum of three hundred fifty thousand dollars (**\$350,000.00**), less applicable deductions and withholdings, to be paid within three business days of the Effective Date, so long as Employee does not revoke this Agreement pursuant to Paragraph 10 below. This payment is inclusive of the severance pay

described under Section 6(b)(ii) of the Employment Agreement and this Agreement supercedes the Company's obligations under the Employment Agreement. Notwithstanding the Employment Agreement, under this Agreement, Employee agrees to receive entire six months' payment in one lump sum, to be paid in accordance with the terms herein. Payment will be mailed to Employee's residence address payable to "Steve Asakowicz" or directly deposited to the Employee's financial institution as soon as is administratively feasible.

- c. Medical and Dental Benefits. From the Termination Date through the earlier of (i) the six month anniversary of the Termination Date or (ii) the date on which Employee is provided or obtains medical or dental insurance coverage from another employer or entity, the Company shall reimburse Employee for the difference between the cost of any COBRA premiums paid by Employee for continued medical and dental coverage under the Company's group health plans for himself and his dependents and the active employee rates for coverage under such plans. The foregoing is subject to Employee's timely enrollment in COBRA and payment of applicable premiums.
- d. Reporting and Withholding. Reporting of and withholding on any payment under this Agreement for tax purposes shall be at the discretion of the Company in conformance with applicable tax laws. If a claim is made against the Company for any additional tax or withholding in connection with or arising out of any payment pursuant to this Agreement, Employee shall pay any such claim within thirty (30) days of being notified by the Company and agrees to indemnify the Company and hold it harmless against such claims, including, but not limited to, any taxes, attorneys' fees, penalties, and/or interest, which are or become due from the Company.

### 3. General Release.

- a. Employee, for Employee, and for Employee's affiliates, successors, heirs, subrogees, assigns, principals, agents, partners, employees, associates, attorneys, and representatives, voluntarily, knowingly, unequivocally, unconditionally and intentionally releases and discharges (i) the Company and its predecessors, successors, parents, subsidiaries, affiliates, and assigns, and (ii) each of their respective officers, directors, principals, shareholders, agents, attorneys, board members, and employees (the "Released Parties") from any and all claims, actions, liabilities, demands, rights, damages, costs, expenses, and attorneys' fees (including, but not limited to, any claim of entitlement for attorneys' fees under any contract, statute, or rule of law allowing a prevailing party or plaintiff to recover attorneys' fees), of every kind and description from the beginning of time through the Effective Date (the "Released Claims").
- b. The Released Claims include, but are not limited to, those which arise out of, relate to, or are based upon: (i) Employee's employment with the Company or the termination thereof; (ii) statements, acts, or omissions by the Released Parties whether in their individual or representative capacities; (iii) express or implied agreements between the Parties and claims under any severance plan (except as provided herein); (iv) any stock or stock option grant, agreement, or plan; (v) all federal, state, and municipal statutes, ordinances, and regulations, including, but not limited to, claims of discrimination based on race, color, national origin,

age, sex, sexual orientation, religion, disability, veteran status, whistleblower status, public policy, or any other characteristic of Employee under the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans with Disabilities Act, the Equal Pay Act, Title VII of the Civil Rights Act of 1964 (as amended), the Employee Retirement Income Security Act of 1974, the Rehabilitation Act of 1973, the Family and Medical Leave Act, the Worker Adjustment and Retraining Notification Act, the Colorado Anti-Discrimination in Employment Act, or any other federal, state, or municipal law prohibiting discrimination or termination for any reason; (vi) state and federal common law; (vii) the failure of this Agreement, or of any other employment, severance, profit sharing, bonus, equity incentive or other compensatory plan to which Employee and the Company are or were parties, to comply with, or to be operated in compliance with, Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), or any similar provision of state or local income tax law; and (viii) any claim which was or could have been raised by Employee.

Employee understands that nothing contained in this Agreement limits Employee's ability to file a charge or complaint with any federal, state or local governmental agency or commission (each a "Government Agency"). Employee further understands that this Release does not limit Employee's ability to communicate with any Government Agency or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. However, to the maximum extent permitted by law, Employee agrees that if such a charge or complaint is made, Employee shall not be entitled to recover any individual monetary relief or other individual remedies. This Release does not limit or prohibit Employee's right to receive an award for information provided to any Government Agency to the extent that such limitation or prohibition is a violation of law.

- c. The General Release in this Agreement does not apply to claims under federal, state, or local law (statutory, regulatory, or otherwise) that may not be lawfully waived and released, including but not limited to vested retirement benefits (if any), COBRA rights, unemployment compensation, and workers' compensation.

#### 4. Confidential Information.

- a. For the purposes of this Agreement, "Confidential Information" shall include, without limitation, any non-public information relating to or pertaining to the Company, such as the whole or any portion or phase of (i) any proprietary information or Trade Secrets (defined below); (ii) any scientific, technical, business, or financial information; (iii) any marketing information, business development information, prospect information, or marketing analysis or plans; (iv) any customer information, lists, contacts, or needs; (v) any contracts, agreements, or leases; (vi) any discoveries, inventions, products, designs, methods, know-how, techniques, systems, processes, software programs, works of authorship, projects, or plans; (vii) any proposals, strategies, concepts, analyses, surveys, ideas, research, data, databases, reports, manuals, manuscripts, articles, or records; and (viii) any other business or corporate documents related to Company Business. The Company's "Trade Secrets"



include, without limitation, the Company's non-public marketing strategies, financial information, customer and client information, projects, plans, proposals, business strategies (including potential new business opportunities and divisions). All Confidential Information identified above shall be treated as Confidential Information regardless of whether it pertains to the Company, its affiliates, subsidiaries, or parents, or their customers. The list set forth above is not intended by the Company to be a comprehensive list of Confidential Information.

- b. Employee acknowledges the success of the Company depends in large part on the protection of the Company's Confidential Information. Employee further acknowledges that, in the course of Employee's employment with the Company, Employee became familiar with the Company's Confidential Information. Employee recognizes and acknowledges that the Company's Confidential Information is a valuable, special, and unique asset of the Company's business, access to and knowledge of which were essential to the performance of Employee's duties. Employee acknowledges use or disclosure of the Confidential Information outside the performance of Employee's job duties for the Company would cause harm and/or damage to the Company.
- c. Employee agrees that Employee will not, directly or indirectly, disclose any Confidential Information to any person, firm, business, company, corporation, association, or any other entity for any reason or purpose whatsoever. Employee also agrees that Employee has not and will not use, directly or indirectly, any Confidential Information for Employee's own purposes or for the benefit of any person, firm, business, company, corporation, or any other entity (except the Company) under any circumstances. Employee has considered and treated and shall consider and treat as confidential all Confidential Information in any way relating to the Company's business and affairs, whether created by Employee or otherwise coming into Employee's possession before, during, or after the Termination Date. Employee shall not use or attempt to use any Confidential Information in any manner which has the possibility of injuring or causing loss, whether directly or indirectly, to the Company, its affiliates, subsidiaries, parents, or customers. Employee agrees all such Confidential Information shall be and remain the sole and exclusive property of the Company.

5. Remedies.

- a. Injunctive Relief. Employee acknowledges that any breach of Paragraph 4 or the surviving provisions of the Employment Agreement referenced in Paragraphs 6, 8, 12 and 13 below will cause the Company to suffer immediate and irreparable harm and damage for which money alone cannot fully compensate the Company. Employee agrees that upon breach or threat of imminent breach of any obligation under Paragraphs 4, 6, 8, 12, and/or 13 of this Agreement, the Company shall be entitled to a temporary restraining order, preliminary injunction, permanent injunction, or other injunctive relief without posting any bond or other security, and that Employee shall not oppose entry of any of these measures. This Paragraph shall not be construed as an election of any remedy, or as a waiver of any right available to the Company under this Agreement or the Colorado law governing this Agreement, including the right to seek damages from Employee.

- b. Attorneys' Fees. In the event of any controversy, claim, or dispute between the parties affecting or relating to Paragraphs 4, 6, 8, 12, and/or 13 of this Agreement, if the Company is required to defend its actions or seek enforcement of the Agreement, the Company shall be entitled to recover all of its attorneys' fees and costs if the Company is successful in its defense or enforcement action.
- c. Separate Provisions. Employee agrees the provisions of Paragraphs 4, 6, 8, 12, and 13 of this Agreement are separate from and independent of the remainder of this Agreement and that these provisions are specifically enforceable by the Company notwithstanding any claim by Employee that the Company has violated or breached this Agreement.
6. Return of Company Property. Employee represents and warrants that Employee returned all Company property to the designated Company representative on or before Employee's Termination Date, unless otherwise agreed upon. This property includes, but is not limited to, Company documents and files (in any recorded media, such as papers, computer disks, copies, transparencies, and microfiche), materials, keys, credit cards, laptops, cellular phone(s), computer disks, and badges. Employee agrees that, to the extent that Employee possesses any files, data, or information relating in any way to the Company or the Company's business on any personal computer, Employee will delete the data, files, or information (and will retain no copies in any form).
7. Unknown Facts. The releases in this Agreement include, but are not limited to, claims of every nature and kind, known or unknown, suspected or unsuspected. Employee hereby acknowledges that Employee may hereafter discover facts different from, or in addition to, those which Employee now knows to be or believes to be true with respect to this Agreement, and Employee agrees that this Agreement and the releases contained herein shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery thereof.
8. Confidentiality of Agreement. Employee agrees to keep this Agreement confidential and will not disclose the existence or the terms of this Agreement to anyone except to Employee's immediate family, accountants, legal or financial advisors, as part of an investigation or proceeding conducted by any Government Agency, or as otherwise appropriate or necessary as required by law or court order. To the extent that Employee discloses the existence or terms of this Agreement to Employee's immediate family, accountants, or legal or financial advisors, Employee must advise them that they must not disclose the existence or terms of this Agreement to any person or entity. However, nothing contained herein precludes any individual from communicating with any Government Agency. If compulsory disclosure is required by a Government Agency, Employee shall provide the Company immediate notice of the compulsory process and affording the Company the opportunity to obtain any necessary or appropriate protective orders. Otherwise, in response to inquiries about Employee's employment and this matter, Employee shall state, "My employment with the Company has ended" and nothing more.

The Company agrees to keep this Agreement confidential and will not disclose the existence or the terms of this Agreement to anyone except the Company's Human Resources Department, Legal Department, Executive Management Team and Board of Directors, or as otherwise appropriate or necessary as required by law or court order. To the extent that Company chooses to disclose the

existence or terms of this Agreement to the Company's Human Resources Department, Legal Department, Executive Management Team and Board of Directors, the Company must advise them that they must not disclose the existence or terms of this Agreement to any person or entity. However, nothing contained herein precludes any individual from communicating with any Government Agency. If compulsory disclosure is required by a Government Agency, Company shall provide the Employee immediate notice of the compulsory process and affording the Employee the opportunity to obtain any necessary or appropriate protective orders.

9. No Admission of Liability. The Parties agree that nothing contained herein, and no action taken by any Party hereto with regard to this Agreement, shall be construed as an admission by any Party of liability or of any fact that might give rise to liability for any purpose whatsoever.

10. ADEA and Older Workers Benefit Protection Act Release

In addition to the General Release contained in Section 3, Employee knowingly, voluntarily, and irrevocably discharges and releases Releasees from any claims arising under the Age Discrimination in Employment Act (ADEA). Employee acknowledges that Employee has been informed pursuant to the federal Older Workers Benefit Protection Act of 1990 as follows:

**You are advised to consult with an attorney before signing this Agreement.**

You do not waive rights or claims under the federal Age Discrimination in Employment Act that may arise after the date this Agreement is executed.

You have twenty-one (21) days from the date of receipt of this Agreement to consider this Agreement. You acknowledge that if you sign this Agreement before the end of the twenty-one-(21)-day period, it will be your personal, voluntary decision to do so and that you have not been pressured to make a decision sooner.

You have seven (7) days after signing this Agreement to revoke the Agreement, and the Agreement will not be effective until that revocation period has expired. If mailed, the rescission must be postmarked within the seven-day period, properly addressed to:

Heska Corporation  
Attn: Human Resources Department  
3760 Rocky Mountain Avenue  
Loveland, CO 80538

This agreement shall not be effective or enforceable, and no payments or benefits under this Agreement shall be provided to you, until after the seven (7) day revocation period has expired. You understand that you will not receive any settlement payment if you void your signature or revoke this Agreement.

11. Representations and Warranties. Employee represents and warrants as follows:

- a. Employee has read this Agreement and agrees to the conditions and obligations set forth in it;
  - b. Employee voluntarily executes this Agreement (i) after having been advised to consult with legal counsel, (ii) after having had opportunity to consult with legal counsel, and (iii) without being pressured or influenced by any statement or representation or omission of any person acting on behalf of the Company including, without limitation, the officers, directors, board members, committee members, employees, agents, and attorneys for the Company;
  - c. Employee has no knowledge of the existence of any lawsuit, charge, or proceeding against the Company or any of its officers, directors, board members, committee members, employees, or agents arising out of or otherwise connected with any of the matters herein released. In the event that any such lawsuit, charge, or proceeding has been filed, Employee immediately will take all actions necessary to withdraw or terminate that lawsuit, charge, or proceeding;
  - d. Employee has not previously disclosed any information which would be a violation of the confidentiality provisions set forth herein if such disclosure were to be made after the execution of this Agreement;
  - e. Employee has full and complete legal capacity to enter into this Agreement;
  - f. Employee admits, acknowledges, and agrees that Employee is not otherwise entitled to the amounts and other consideration set forth in Paragraph 2, which are good and valuable consideration for this Agreement; and
  - g. Employee further admits, acknowledges, and agrees that Employee has been fully and finally paid all wages, compensation, vacation, bonuses, stock, stock options, or other benefits from the Company which are or could be due to Employee under the terms of Employee's employment with the Company or otherwise. This Agreement explicitly excludes vested, exercised stock and stock options currently owned by the Employee and does not prevent Employee from exercising vested stock options in accordance with Employee's Stock Option Agreement. This Agreement further acknowledges that expenses submitted and approved before the Effective Date may be reimbursed after the Effective Date, in accordance with internal Company policies and procedures.
12. Non-Disparagement. Employee agrees not to make to any person any statement that disparages the Company or reflects negatively upon the Company, including, without limitation, statements regarding the Company's financial condition, business practices, employment practices, or its predecessors, successors, parents, subsidiaries, officers, directors, employees, affiliates, agents, or representatives. Company agrees not to make to any person any statement that disparages Employee or reflects negatively upon the Employee.
13. Cooperation. Employee agrees to cooperate with and assist the Company with any investigation, lawsuit, arbitration, or other proceeding to which the Company is subjected. Employee will be

available for preparation for, and attendance of, hearings, proceedings, or trial, including pretrial discovery and trial preparation. Employee further agrees to perform all acts and execute any documents that may be necessary to carry out the provisions of this Paragraph.

14. Section 409A. This Agreement is intended to comply with Section 409A of the Internal Revenue Code and shall be construed accordingly. It is the intention of the Parties that payments or benefits payable under this Agreement not be subject to the additional tax or interest imposed pursuant to Section 409A. To the extent such potential payments or benefits are or could become subject to Section 409A, the Parties shall cooperate to amend this Agreement with the goal of giving Employee the economic benefits described herein in a manner that does not result in such tax or interest being imposed. Employee shall, at the request of the Company, take any reasonable action (or refrain from taking any action), required to comply with any correction procedure promulgated pursuant to Section 409A.
15. Severability. If any provision of this Agreement is held illegal, invalid, or unenforceable, such holding shall not affect any other provisions hereof. In the event any provision is held illegal, invalid or unenforceable, such provision shall be limited so as to effect the intent of the parties to the fullest extent permitted by applicable law. Any claim by Employee against the Company shall not constitute a defense to enforcement by the Company of this Agreement.
16. Enforcement. The Release contained herein does not release any claims for enforcement of the terms, conditions, or warranties contained in this Agreement. The Parties shall be free to pursue any remedies available to them to enforce this Agreement.
17. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes and modifies any and all prior agreements. This Agreement cannot be modified except in a writing signed by all Parties.
18. Venue, Applicable Law, and Submission to Jurisdiction. This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado, without regard to its conflicts of law provisions. Venue and jurisdiction will be in the Colorado state or federal courts.
19. Interpretation. The determination of the terms, and the drafting, of this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties. Accordingly, the Parties agree that rules relating to the interpretation of contracts against the drafter of any particular clause shall not apply in the case of this Agreement. The term "Paragraph" shall refer to the enumerated paragraphs of this Agreement. The headings contained in this Agreement are for convenience of reference only and are not intended to limit the scope or affect the interpretation of any provision of this Agreement.
20. Assignment. The Company may assign its rights under this Agreement. Employee cannot assign Employee's rights under this Agreement without the written consent of the Company. No other assignment is permitted except by written permission of the Parties.

Counterparts. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this Separation and Release Agreement on the dates written below.

Employee has carefully read the above and executes it voluntarily, fully understanding and accepting the provisions of this Agreement in its entirety and without reservation after having had sufficient time and opportunity to consult with legal advisors prior to executing this Agreement. Employee has been advised to consult with an attorney prior to executing this Agreement. In agreeing to sign this Agreement, Employee has not relied on any statements or explanation made by the Company. Employee has had at least twenty-one (21) days to consider this Agreement. Employee understands that if she does not return this Agreement signed by her to the Company upon the expiration of the twenty-one-day consideration period, this offer will expire. Employee understands that she may revoke and cancel the Agreement within seven (7) days after signing it by serving written notice upon Company as set forth in Paragraph 10 above.

EMPLOYEE

HESKA CORPORATION

/s/ Steve Asakowicz

Steve Asakowicz

/s/ Christopher Sveen

Christopher Sveen

Vice President, General Counsel

1/28/2020

Date

1/28/2020

Date

## SEPARATION AND RELEASE AGREEMENT

This Separation and Release Agreement (the “Agreement”) is made between (i) **Rod Lippincott** (“Employee”) and (ii) Heska Corporation (the “Company”). Employee and the Company are referred to collectively as the “Parties” and individually as a “Party.”

### RECITALS

WHEREAS, Employee was employed at the Company’s Loveland facility;

WHEREAS, Employee’s employment with the Company terminated effective February 3<sup>rd</sup>, 2020 (the “Termination Date”);

WHEREAS, Employee’s termination is without “Cause” under Section 6(a), entitling Employee to certain payments and benefits under Section 6(b) of the Employment Agreement;

WHEREAS, the Parties wish to resolve fully and finally any potential disputes regarding Employee’s employment with the Company and any other potential disputes between the Parties, and

WHEREAS, in order to accomplish this end, the Parties are willing to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, the sufficiency of which is acknowledged by the Parties, the Parties to this Agreement agree as follows:

### TERMS

1. Effective Date. This Agreement shall become effective on the eighth day after Employee signs this Agreement (the “Effective Date”), so long as Employee does not revoke this Agreement pursuant to Paragraph 10 below. Employee’s Termination Date will not change regardless of whether this Agreement becomes effective on the “Effective Date.”
2. Consideration for Release and Payment Terms.
  - a. Pursuant to this Agreement, the Company shall, as consideration for Employee’s release and promises set forth in this Agreement, pay Employee additional compensation that Employee would not be entitled to otherwise.
  - b. After the Effective Date and on the express condition that Employee has not revoked this Agreement, the Company will pay Employee a severance payment in the total sum of three hundred fifty thousand dollars (**\$350,000.00**), less applicable deductions and withholdings, to be paid within three business days of the Effective Date, so long as Employee does not revoke this Agreement pursuant to Paragraph 10 below. This payment is inclusive of the severance pay

described under Section 6(b)(ii) of the Employment Agreement and this Agreement supercedes the Company's obligations under the Employment Agreement. Notwithstanding the Employment Agreement, under this Agreement, Employee agrees to receive entire six months' payment in one lump sum, to be paid in accordance with the terms herein. Payment will be mailed to Employee's residence address payable to "**Rod Lippincott**" or directly deposited to the Employee's financial institution as soon as is administratively feasible.

- c. Medical and Dental Benefits. From the Termination Date through the earlier of (i) the six month anniversary of the Termination Date or (ii) the date on which Employee is provided or obtains medical or dental insurance coverage from another employer or entity, the Company shall reimburse Employee for the difference between the cost of any COBRA premiums paid by Employee for continued medical and dental coverage under the Company's group health plans for himself and his dependents and the active employee rates for coverage under such plans. The foregoing is subject to Employee's timely enrollment in COBRA and payment of applicable premiums.
- d. Reporting and Withholding. Reporting of and withholding on any payment under this Agreement for tax purposes shall be at the discretion of the Company in conformance with applicable tax laws. If a claim is made against the Company for any additional tax or withholding in connection with or arising out of any payment pursuant to this Agreement, Employee shall pay any such claim within thirty (30) days of being notified by the Company and agrees to indemnify the Company and hold it harmless against such claims, including, but not limited to, any taxes, attorneys' fees, penalties, and/or interest, which are or become due from the Company.

### 3. General Release.

- a. Employee, for Employee, and for Employee's affiliates, successors, heirs, subrogees, assigns, principals, agents, partners, employees, associates, attorneys, and representatives, voluntarily, knowingly, unequivocally, unconditionally and intentionally releases and discharges (i) the Company and its predecessors, successors, parents, subsidiaries, affiliates, and assigns, and (ii) each of their respective officers, directors, principals, shareholders, agents, attorneys, board members, and employees (the "Released Parties") from any and all claims, actions, liabilities, demands, rights, damages, costs, expenses, and attorneys' fees (including, but not limited to, any claim of entitlement for attorneys' fees under any contract, statute, or rule of law allowing a prevailing party or plaintiff to recover attorneys' fees), of every kind and description from the beginning of time through the Effective Date (the "Released Claims").
- b. The Released Claims include, but are not limited to, those which arise out of, relate to, or are based upon: (i) Employee's employment with the Company or the termination thereof; (ii) statements, acts, or omissions by the Released Parties whether in their individual or representative capacities; (iii) express or implied agreements between the Parties and claims under any severance plan (except as provided herein); (iv) any stock or stock option grant, agreement, or plan; (v) all federal, state, and municipal statutes, ordinances, and regulations, including, but not limited to, claims of discrimination based on race, color, national origin,



age, sex, sexual orientation, religion, disability, veteran status, whistleblower status, public policy, or any other characteristic of Employee under the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans with Disabilities Act, the Equal Pay Act, Title VII of the Civil Rights Act of 1964 (as amended), the Employee Retirement Income Security Act of 1974, the Rehabilitation Act of 1973, the Family and Medical Leave Act, the Worker Adjustment and Retraining Notification Act, the Colorado Anti-Discrimination in Employment Act, or any other federal, state, or municipal law prohibiting discrimination or termination for any reason; (vi) state and federal common law; (vii) the failure of this Agreement, or of any other employment, severance, profit sharing, bonus, equity incentive or other compensatory plan to which Employee and the Company are or were parties, to comply with, or to be operated in compliance with, Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), or any similar provision of state or local income tax law; and (viii) any claim which was or could have been raised by Employee.

Employee understands that nothing contained in this Agreement limits Employee's ability to file a charge or complaint with any federal, state or local governmental agency or commission (each a "Government Agency"). Employee further understands that this Release does not limit Employee's ability to communicate with any Government Agency or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. However, to the maximum extent permitted by law, Employee agrees that if such a charge or complaint is made, Employee shall not be entitled to recover any individual monetary relief or other individual remedies. This Release does not limit or prohibit Employee's right to receive an award for information provided to any Government Agency to the extent that such limitation or prohibition is a violation of law.

- c. The General Release in this Agreement does not apply to claims under federal, state, or local law (statutory, regulatory, or otherwise) that may not be lawfully waived and released, including but not limited to vested retirement benefits (if any), COBRA rights, unemployment compensation, and workers' compensation.

#### 4. Confidential Information.

- a. For the purposes of this Agreement, "Confidential Information" shall include, without limitation, any non-public information relating to or pertaining to the Company, such as the whole or any portion or phase of (i) any proprietary information or Trade Secrets (defined below); (ii) any scientific, technical, business, or financial information; (iii) any marketing information, business development information, prospect information, or marketing analysis or plans; (iv) any customer information, lists, contacts, or needs; (v) any contracts, agreements, or leases; (vi) any discoveries, inventions, products, designs, methods, know-how, techniques, systems, processes, software programs, works of authorship, projects, or plans; (vii) any proposals, strategies, concepts, analyses, surveys, ideas, research, data, databases, reports, manuals, manuscripts, articles, or records; and (viii) any other business or corporate documents related to Company Business. The Company's "Trade Secrets"

include, without limitation, the Company's non-public marketing strategies, financial information, customer and client information, projects, plans, proposals, business strategies (including potential new business opportunities and divisions). All Confidential Information identified above shall be treated as Confidential Information regardless of whether it pertains to the Company, its affiliates, subsidiaries, or parents, or their customers. The list set forth above is not intended by the Company to be a comprehensive list of Confidential Information.

- b. Employee acknowledges the success of the Company depends in large part on the protection of the Company's Confidential Information. Employee further acknowledges that, in the course of Employee's employment with the Company, Employee became familiar with the Company's Confidential Information. Employee recognizes and acknowledges that the Company's Confidential Information is a valuable, special, and unique asset of the Company's business, access to and knowledge of which were essential to the performance of Employee's duties. Employee acknowledges use or disclosure of the Confidential Information outside the performance of Employee's job duties for the Company would cause harm and/or damage to the Company.
- c. Employee agrees that Employee will not, directly or indirectly, disclose any Confidential Information to any person, firm, business, company, corporation, association, or any other entity for any reason or purpose whatsoever. Employee also agrees that Employee has not and will not use, directly or indirectly, any Confidential Information for Employee's own purposes or for the benefit of any person, firm, business, company, corporation, or any other entity (except the Company) under any circumstances. Employee has considered and treated and shall consider and treat as confidential all Confidential Information in any way relating to the Company's business and affairs, whether created by Employee or otherwise coming into Employee's possession before, during, or after the Termination Date. Employee shall not use or attempt to use any Confidential Information in any manner which has the possibility of injuring or causing loss, whether directly or indirectly, to the Company, its affiliates, subsidiaries, parents, or customers. Employee agrees all such Confidential Information shall be and remain the sole and exclusive property of the Company.

5. Remedies.

- a. Injunctive Relief. Employee acknowledges that any breach of Paragraph 4 or the surviving provisions of the Employment Agreement referenced in Paragraphs 6, 8, 12 and 13 below will cause the Company to suffer immediate and irreparable harm and damage for which money alone cannot fully compensate the Company. Employee agrees that upon breach or threat of imminent breach of any obligation under Paragraphs 4, 6, 8, 12, and/or 13 of this Agreement, the Company shall be entitled to a temporary restraining order, preliminary injunction, permanent injunction, or other injunctive relief without posting any bond or other security, and that Employee shall not oppose entry of any of these measures. This Paragraph shall not be construed as an election of any remedy, or as a waiver of any right available to the Company under this Agreement or the Colorado law governing this Agreement, including the right to seek damages from Employee.

- b. Attorneys' Fees. In the event of any controversy, claim, or dispute between the parties affecting or relating to Paragraphs 4, 6, 8, 12, and/or 13 of this Agreement, if the Company is required to defend its actions or seek enforcement of the Agreement, the Company shall be entitled to recover all of its attorneys' fees and costs if the Company is successful in its defense or enforcement action.
- c. Separate Provisions. Employee agrees the provisions of Paragraphs 4, 6, 8, 12, and 13 of this Agreement are separate from and independent of the remainder of this Agreement and that these provisions are specifically enforceable by the Company notwithstanding any claim by Employee that the Company has violated or breached this Agreement.
6. Return of Company Property. Employee represents and warrants that Employee returned all Company property to the designated Company representative on or before Employee's Termination Date, unless otherwise agreed upon. This property includes, but is not limited to, Company documents and files (in any recorded media, such as papers, computer disks, copies, transparencies, and microfiche), materials, keys, credit cards, laptops, cellular phone(s), computer disks, and badges. Employee agrees that, to the extent that Employee possesses any files, data, or information relating in any way to the Company or the Company's business on any personal computer, Employee will delete the data, files, or information (and will retain no copies in any form).
7. Unknown Facts. The releases in this Agreement include, but are not limited to, claims of every nature and kind, known or unknown, suspected or unsuspected. Employee hereby acknowledges that Employee may hereafter discover facts different from, or in addition to, those which Employee now knows to be or believes to be true with respect to this Agreement, and Employee agrees that this Agreement and the releases contained herein shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery thereof.
8. Confidentiality of Agreement. Employee agrees to keep this Agreement confidential and will not disclose the existence or the terms of this Agreement to anyone except to Employee's immediate family, accountants, legal or financial advisors, as part of an investigation or proceeding conducted by any Government Agency, or as otherwise appropriate or necessary as required by law or court order. To the extent that Employee discloses the existence or terms of this Agreement to Employee's immediate family, accountants, or legal or financial advisors, Employee must advise them that they must not disclose the existence or terms of this Agreement to any person or entity. However, nothing contained herein precludes any individual from communicating with any Government Agency. If compulsory disclosure is required by a Government Agency, Employee shall provide the Company immediate notice of the compulsory process and affording the Company the opportunity to obtain any necessary or appropriate protective orders. Otherwise, in response to inquiries about Employee's employment and this matter, Employee shall state, "My employment with the Company has ended" and nothing more.

The Company agrees to keep this Agreement confidential and will not disclose the existence or the terms of this Agreement to anyone except the Company's Human Resources Department, Legal Department, Executive Management Team and Board of Directors, or as otherwise appropriate or necessary as required by law or court order. To the extent that Company chooses to disclose the

existence or terms of this Agreement to the Company's Human Resources Department, Legal Department, Executive Management Team and Board of Directors, the Company must advise them that they must not disclose the existence or terms of this Agreement to any person or entity. However, nothing contained herein precludes any individual from communicating with any Government Agency. If compulsory disclosure is required by a Government Agency, Company shall provide the Employee immediate notice of the compulsory process and affording the Employee the opportunity to obtain any necessary or appropriate protective orders.

9. No Admission of Liability. The Parties agree that nothing contained herein, and no action taken by any Party hereto with regard to this Agreement, shall be construed as an admission by any Party of liability or of any fact that might give rise to liability for any purpose whatsoever.

10. ADEA and Older Workers Benefit Protection Act Release

In addition to the General Release contained in Section 3, Employee knowingly, voluntarily, and irrevocably discharges and releases Releasees from any claims arising under the Age Discrimination in Employment Act (ADEA). Employee acknowledges that Employee has been informed pursuant to the federal Older Workers Benefit Protection Act of 1990 as follows:

**You are advised to consult with an attorney before signing this Agreement.**

You do not waive rights or claims under the federal Age Discrimination in Employment Act that may arise after the date this Agreement is executed.

You have twenty-one (21) days from the date of receipt of this Agreement to consider this Agreement. You acknowledge that if you sign this Agreement before the end of the twenty-one-(21)-day period, it will be your personal, voluntary decision to do so and that you have not been pressured to make a decision sooner.

You have seven (7) days after signing this Agreement to revoke the Agreement, and the Agreement will not be effective until that revocation period has expired. If mailed, the rescission must be postmarked within the seven-day period, properly addressed to:

Heska Corporation  
Attn: Human Resources Department  
3760 Rocky Mountain Avenue  
Loveland, CO 80538

This agreement shall not be effective or enforceable, and no payments or benefits under this Agreement shall be provided to you, until after the seven (7) day revocation period has expired. You understand that you will not receive any settlement payment if you void your signature or revoke this Agreement.

11. Representations and Warranties. Employee represents and warrants as follows:

- a. Employee has read this Agreement and agrees to the conditions and obligations set forth in it;
  - b. Employee voluntarily executes this Agreement (i) after having been advised to consult with legal counsel, (ii) after having had opportunity to consult with legal counsel, and (iii) without being pressured or influenced by any statement or representation or omission of any person acting on behalf of the Company including, without limitation, the officers, directors, board members, committee members, employees, agents, and attorneys for the Company;
  - c. Employee has no knowledge of the existence of any lawsuit, charge, or proceeding against the Company or any of its officers, directors, board members, committee members, employees, or agents arising out of or otherwise connected with any of the matters herein released. In the event that any such lawsuit, charge, or proceeding has been filed, Employee immediately will take all actions necessary to withdraw or terminate that lawsuit, charge, or proceeding;
  - d. Employee has not previously disclosed any information which would be a violation of the confidentiality provisions set forth herein if such disclosure were to be made after the execution of this Agreement;
  - e. Employee has full and complete legal capacity to enter into this Agreement;
  - f. Employee admits, acknowledges, and agrees that Employee is not otherwise entitled to the amounts and other consideration set forth in Paragraph 2, which are good and valuable consideration for this Agreement; and
  - g. Employee further admits, acknowledges, and agrees that Employee has been fully and finally paid all wages, compensation, vacation, bonuses, stock, stock options, or other benefits from the Company which are or could be due to Employee under the terms of Employee's employment with the Company or otherwise. This Agreement explicitly excludes vested, exercised stock and stock options currently owned by the Employee and does not prevent Employee from exercising vested stock options in accordance with Employee's Stock Option Agreement. This Agreement further acknowledges that expenses submitted and approved before the Effective Date may be reimbursed after the Effective Date, in accordance with internal Company policies and procedures.
12. Non-Disparagement. Employee agrees not to make to any person any statement that disparages the Company or reflects negatively upon the Company, including, without limitation, statements regarding the Company's financial condition, business practices, employment practices, or its predecessors, successors, parents, subsidiaries, officers, directors, employees, affiliates, agents, or representatives. Company agrees not to make to any person any statement that disparages Employee or reflects negatively upon the Employee.
13. Cooperation. Employee agrees to cooperate with and assist the Company with any investigation, lawsuit, arbitration, or other proceeding to which the Company is subjected. Employee will be

available for preparation for, and attendance of, hearings, proceedings, or trial, including pretrial discovery and trial preparation. Employee further agrees to perform all acts and execute any documents that may be necessary to carry out the provisions of this Paragraph.

14. Section 409A. This Agreement is intended to comply with Section 409A of the Internal Revenue Code and shall be construed accordingly. It is the intention of the Parties that payments or benefits payable under this Agreement not be subject to the additional tax or interest imposed pursuant to Section 409A. To the extent such potential payments or benefits are or could become subject to Section 409A, the Parties shall cooperate to amend this Agreement with the goal of giving Employee the economic benefits described herein in a manner that does not result in such tax or interest being imposed. Employee shall, at the request of the Company, take any reasonable action (or refrain from taking any action), required to comply with any correction procedure promulgated pursuant to Section 409A.
15. Severability. If any provision of this Agreement is held illegal, invalid, or unenforceable, such holding shall not affect any other provisions hereof. In the event any provision is held illegal, invalid or unenforceable, such provision shall be limited so as to effect the intent of the parties to the fullest extent permitted by applicable law. Any claim by Employee against the Company shall not constitute a defense to enforcement by the Company of this Agreement.
16. Enforcement. The Release contained herein does not release any claims for enforcement of the terms, conditions, or warranties contained in this Agreement. The Parties shall be free to pursue any remedies available to them to enforce this Agreement.
17. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes and modifies any and all prior agreements. This Agreement cannot be modified except in a writing signed by all Parties.
18. Venue, Applicable Law, and Submission to Jurisdiction. This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado, without regard to its conflicts of law provisions. Venue and jurisdiction will be in the Colorado state or federal courts.
19. Interpretation. The determination of the terms, and the drafting, of this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties. Accordingly, the Parties agree that rules relating to the interpretation of contracts against the drafter of any particular clause shall not apply in the case of this Agreement. The term "Paragraph" shall refer to the enumerated paragraphs of this Agreement. The headings contained in this Agreement are for convenience of reference only and are not intended to limit the scope or affect the interpretation of any provision of this Agreement.
20. Assignment. The Company may assign its rights under this Agreement. Employee cannot assign Employee's rights under this Agreement without the written consent of the Company. No other assignment is permitted except by written permission of the Parties.

Counterparts. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this Separation and Release Agreement on the dates written below.

Employee has carefully read the above and executes it voluntarily, fully understanding and accepting the provisions of this Agreement in its entirety and without reservation after having had sufficient time and opportunity to consult with legal advisors prior to executing this Agreement. Employee has been advised to consult with an attorney prior to executing this Agreement. In agreeing to sign this Agreement, Employee has not relied on any statements or explanation made by the Company. Employee has had at least twenty-one (21) days to consider this Agreement. Employee understands that if she does not return this Agreement signed by her to the Company upon the expiration of the twenty-one-day consideration period, this offer will expire. Employee understands that she may revoke and cancel the Agreement within seven (7) days after signing it by serving written notice upon Company as set forth in Paragraph 10 above.

EMPLOYEE

HESKA CORPORATION

/s/ Rod Lippincott

Rod Lippincott

/s/ Christopher Sveen

Christopher Sveen

Vice President, General Counsel

1/27/2020

Date

1/27/2020

Date

Certain confidential information contained in this document, marked by brackets as [\*\*\*], has been omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

**THIRD AMENDMENT TO  
CLINICAL CHEMISTRY ANALYZER AGREEMENT**

This Third Amendment to Clinical Chemistry Analyzer Agreement (the "Amendment"), entered into as of August 27th, 2019, modifies that certain Clinical Chemistry Analyzer Agreement between FUJIFILM Corporation and Heska Corporation, dated January 30, 2007, including its amendments by the First Amendment to Clinical Chemistry Analyzer Agreement dated April 1st, 2014 and the Second Amendment to Clinical Chemistry Analyzer Agreement dated April 1st, 2015 (collectively, "Original Agreement"). Capitalized terms not otherwise defined have the meanings ascribed to them in the Original Agreement. In the event of any conflict between the terms and conditions of the Original Agreement and this Amendment, the terms and conditions of this Amendment shall control. The headings in this Amendment are included for purposes of convenience only and shall not affect the construction or interpretation of its provisions.

WITNESSETH:

**WHEREAS**, Fuji and Heska entered into the Original Agreement in which Heska was appointed an exclusive distributor of Products in the Territory subject to the terms and conditions of the Original Agreement;

**WHEREAS**, Fuji and Heska desire to amend the terms and conditions of the Original Agreement as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and upon the terms and subject to the conditions set forth below, Heska and Fuji hereby agree as follows:

AGREEMENT:

1. Element DC5X Analyzer. A new **Section 1.27** consisting of the following shall be added to the Original Agreement:

1.27 "Element DC5X Analyzer" shall mean a Dri-Chem NX 700 (HESKA CAT No. 6611 / Fuji's Material No : 16575966) which is an OEM product supplied by Fuji to Heska.

2. Target Purchase Quantity. A new **Section 1.28** consisting of the following shall be added to the Original Agreement:

1.28 "Target Purchase Quantity" shall mean an annual target quantity of the Element DC5X Analyzers to be purchased by Heska from Fuji in each Fiscal Year. The Target Purchase Quantity shall be [\*\*\*] Element DC5X Analyzers.

3. Actual Purchase Quantity. A new **Section 1.29** consisting of the following shall be added to the Original Agreement:

1.29 "Actual Purchase Quantity" shall mean an annual actual quantity of the Element DC5X Analyzers purchased by Heska from Fuji in each Fiscal Year. For the avoidance of doubt, the Actual Purchase Quantity shall be included in the count of the quantity of the Analyzers purchased by Heska from Fuji which shall be the basis for determining whether or not Heska meets the Minimum Commitment under **Section 1.26**.

4. Target Award. A new **Section 1.30** consisting of the following shall be added to the Original Agreement:

1.30 "Target Award" shall mean an award to be paid by Fuji to Heska in case of achievement by Heska of the Target Purchase Quantity.

5. Affected Products. A new **Section 1.31** consisting of the following shall be added to the Original Agreement:

1.31 "Affected Products" shall mean the Products of which manufacturing location has been changed from Yokohama, Japan to Ho Chi Minh City, Vietnam due to Fuji's circumstances.

6. Reimbursement Balance. A new **Section 1.32** consisting of the following shall be added to the Original Agreement:

1.32 "Reimbursement Balance" shall mean the balance between (i) the transportation cost that Heska would have incurred if the Affected Products had been shipped from Yokohama, Japan and (ii) the actual transportation cost incurred by Heska in connection with shipment of the Affected Products, to be paid by Fuji to Heska in accordance with **Section 4.15**.

7. Actual Shipment Quantity. A new **Section 1.33** consisting of the following shall be added to the Original Agreement:

1.33 "Actual Shipment Quantity" shall mean an actual quantity of the Affected Products shipped by Fuji to the shipping destination designated by Heska in each six month period.

8. Transportation Cost Balance. A new **Section 1.34** consisting of the following shall be added to the Original Agreement:



1.34 “Transportation Cost Balance” shall mean the balance per dimensional weight in U.S. dollars between (i) a transportation fee that would be charged according to the applicable total cost set forth in the paragraph (e) of **Section 4.15** if the Affected Products were shipped from Yokohama, Japan to Heska’s warehouse at Iowa, the U.S. as shipping destination and (ii) a transportation fee that is charged according to such total cost if the Affected Products are shipped from Ho Chi Minh City, Vietnam to such warehouse.

9. Payment of Target Award. A new **Section 3.7** consisting of the following shall be added to the Original Agreement:

3.7 Payment of Target Award. In the event that Heska achieves the Target Purchase Quantity, Fuji shall pay to Heska the Target Award, which shall be equivalent to the amount calculated by multiplying the Actual Purchase Quantity by [\*\*\*]. The Target Award shall be paid in accordance with the following procedures:

- (a) Within thirty (30) days after the end of each Fiscal Year, Fuji shall notify, in writing, Heska of (i) the Actual Purchase Quantity in the Fiscal Year and (ii) the amount of the Target Award calculated on the basis of such Actual Purchase Quantity in accordance with the calculation method above (the “Preliminary Target Award”, and collectively with (i) the Actual Purchase Quantity in the Fiscal Year, the “Actual Purchase Quantity, Etc”).
- (b) Within thirty (30) days after receipt by Heska of the notice set forth in the paragraph (a) above (the “Award Opposition Period”), Heska shall notify, in writing, Fuji of (i) whether or not Heska approves the Actual Purchase Quantity, Etc described in such notice and (ii) grounds for Heska’s disapproval to the Actual Purchase Quantity, Etc if Heska does not approve. If Heska fails to notify, in writing, Fuji thereof for the Award Opposition Period, Heska shall be deemed to approve the Actual Purchase Quantity, Etc upon expiration of the Award Opposition Period. The notice of Heska’s disapproval to the Actual Purchase Quantity, Etc shall be sent to Fuji along with documents supporting such disapproval.
- (c) In the event of (i) receipt by Fuji of the notice of Heska’s approval to the Actual Purchase Quantity, Etc or (ii) Heska being deemed to approve the Actual Purchase Quantity, Etc in accordance with the paragraph (b) above, the Target Award shall be fixed as the amount of the Preliminary Target Award upon such receipt or being deemed, as the case may be, and Fuji shall pay such amount to Heska within thirty (30) days after such fixation as long as such amount is greater than zero (0).
- (d) In the event of receipt by Fuji of the notice of Heska’s disapproval to the Actual Purchase Quantity, Etc and documents supporting such disapproval, Fuji and Heska shall discuss in good faith in order to eliminate the gap in perception concerning the Actual Purchase Quantity, Etc between Fuji and Heska.
- (e) Fuji will issue Heska a credit to Fuji’s Heska account (the “Discount Credit”), the Discount Credit shall be used by Heska and accepted by Fuji as payment against any Heska purchase amount of Products due Fuji, or if no amount is then due, shall cause Fuji to issue to Heska a cash refund payable to Heska by wire transfer from Fuji.

10. Delivery of Product. **Section 4.9** of the Original Agreement is hereby deleted in its entirety and replaced with the following:

4.9 Delivery of Product; Determination of Method of Transportation. Products shall be delivered FCA (Incoterms 2010) Fuji’s warehouse at Yokohama, Japan or Ho Chi Minh City, Vietnam, except for any Product made in China, which shall be DDP (Incoterms 2010) Heska’s USA warehouse specified on each Purchase Order. For Products delivered FCA Fuji’s warehouse at Yokohama, Japan or Ho Chi Minh City, Vietnam, (i) the method of transportation of the Products, shipping destination, the carrier selected and other matters concerning transportation as may be required by Fuji shall be as specified by Heska in its purchase orders, and (ii) packaging specifications of the Products shall be those specified in **Exhibit 4.9**. Notwithstanding the foregoing, regarding the consumable Products, Heska agrees and acknowledges that Fuji has an allowance of [\*\*\*] of the quantity of delivered Products than ordered quantity in the firm purchase order. In addition to the requirements set forth in **Section 4.1**, all consumable Products which has the term of validity (i.e., expiration date) shall be delivered by Fuji within [\*\*\*] from the date of manufacturing such consumable Products.

11. Payment of Reimbursement Balance. A new **Section 4.15** consisting of the following shall be added to the Original Agreement:

4.15 Payment of Reimbursement Balance. With respect to the Affected Products, Fuji shall pay to Heska the Reimbursement Balance, which shall be equivalent to the amount calculated by multiplying the Actual Shipment Quantity by the Transportation Cost Balance; provided, however, that, in the event of any change to the total cost set forth in the paragraph (e) below, the Reimbursement Balance shall be equivalent to the amount calculated by multiplying the Actual Shipment Quantity after such change by the Transportation Cost Balance from the date of such change. The Reimbursement Balance shall be paid in accordance with the following procedures:

- (a) Within thirty (30) days after April 1 and October 1 of each Fiscal Year, Fuji shall notify, in writing, Heska of (i) the Actual Shipment Quantity in the preceding six month period, (ii) the Transportation Cost Balance in the preceding six month period and (iii) the amount of the Reimbursement Balance calculated on the basis of such Actual Shipment Quantity and such Transportation Cost Balance for the preceding six month period, in accordance with the calculation method above (the “Preliminary Reimbursement Balance”, and collectively with (i) the Actual Shipment Quantity in the six month period and (ii) the Transportation Cost Balance, the “Actual Shipment Quantity, Etc”).
- (b) Within thirty (30) days after receipt by Heska of the notice set forth in the paragraph (a) above (the “Reimbursement Opposition Period”), Heska shall notify, in writing, Fuji of (i) whether or not Heska approves the Actual Shipment Quantity, Etc described in such notice and (ii) grounds for Heska’s disapproval to the Actual Shipment Quantity, Etc if Heska does not approve. If Heska fails to notify, in writing, Fuji thereof for the Reimbursement Opposition Period, Heska shall be deemed to approve the Actual Shipment Quantity, Etc upon expiration of the Reimbursement Opposition Period. The notice of Heska’s disapproval to the Actual Shipment Quantity, Etc shall be sent to Fuji along with documents supporting such disapproval.
- (c) In the event of (i) receipt by Fuji of the notice of Heska’s approval to the Actual Shipment Quantity, Etc or (ii) Heska being deemed to approve the Actual Shipment Quantity, Etc in accordance with the paragraph (b) above, the Reimbursement Balance shall be fixed as the amount of the Preliminary Reimbursement Balance upon such receipt or being deemed, as the case may be, and Fuji shall pay such amount to Heska within thirty (30) days after such fixation as long as such amount is greater than zero (0).
- (d) In the event of receipt by Fuji of the notice of Heska’s disapproval to the Actual Shipment Quantity, Etc and documents supporting such disapproval, Fuji and Heska shall discuss in good faith in order to eliminate the gap in perception concerning the Actual Shipment Quantity, Etc between Fuji and Heska.

(e) In the event of any change, of the carrier designated by Heska, or to the carrier's total cost showing a transportation fee in U.S. dollars determined by a measured rate system, Heska shall notify Fuji thereof as soon as practically possible.

12. LIST OF EXHIBITS. **LIST OF EXHIBITS** of the Original Agreement is hereby deleted in its entirety and replaced with **LIST OF EXHIBITS** attached hereto.
13. Exhibit 1.13. **Exhibit 1.13** of the Original Agreement is hereby deleted in its entirety and replaced with **Exhibit 1.13** attached hereto.
14. Exhibit 4.9. **Exhibit 4.9** attached hereto shall be added to the Original Agreement.
15. No Other Changes. Except as expressly modified by this Amendment, all other provisions of the Original Agreement shall remain in full force and effect, as amended hereby.

IN WITNESS WHEREOF, the parties have executed this Amendment by their duly authorized representatives effective as of the last date on which this Amendment has been duly signed by both parties.

SIGNED:

Heska Corporation  
By: /s/Nancy Wisnewski  
Name: Nancy Wisnewski  
Title: Chief Operating Officer  
Date: 09/04/2019

FUJIFILM Corporation  
By: \*\*\*  
Name: \*\*\*  
Title: \*\*\*  
\*\*\*  
Date: 10/23/2019

LIST OF EXHIBITS

- 1.13 Products and Purchase Prices
- 4.9 Packaging Specifications of the Products

Certain personally identifiable information, marked by brackets as [\*\*\*], has been omitted from this exhibit pursuant to Item 601(a)(6) under Regulation S-K.

## SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this “**Agreement**”) is dated as of January 12, 2020 by and among **HESKA CORPORATION**, a Delaware corporation (the “**Company**”), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a “**Purchaser**” and collectively, the “**Purchasers**”).

### RECITALS

A. The Company and each Purchaser are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the “**Securities Act**”), and Rule 506 of Regulation D (“**Regulation D**”) as promulgated by the United States Securities and Exchange Commission (the “**Commission**”) under the Securities Act.

B. Each Purchaser, severally and not jointly, wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, that aggregate number of shares of Series X Convertible Preferred Stock, par value \$0.01 per share (the “**Series X Preferred Stock**”), of the Company, set forth below such Purchaser’s name on the signature page of this Agreement (which aggregate amount for all Purchasers together shall be 125,000 shares of Series X Preferred Stock (the “**Shares**”). The shares of Public Common Stock, par value \$0.01 per share (the “**Common Stock**”), that are issuable upon conversion of the Preferred Stock collectively are referred to herein as the “**Underlying Shares**”).

C. The Shares and the Underlying Shares collectively are referred to herein as the “**Securities**”).

D. In connection with the execution and delivery of this Agreement, (i) the Company and each Purchaser shall execute and deliver a Registration Rights Agreement, substantially in the form attached hereto as Exhibit A (the “**Registration Rights Agreement**”), pursuant to which, among other things, the Company will agree to provide certain registration rights with respect to the Shares under the Securities Act and applicable state securities laws, and (ii) the Company and Covetrus Animal Health Holdings Ltd., registered with the Company House Cardiff under company no. 07402799 (the “**Seller**”) intend to execute and deliver an Agreement (the “**Acquisition Agreement**”) whereby the Company or a subsidiary of the Company would purchase and acquire from the Seller the equity interests (the “**Acquisition**”) in scil animal care company GmbH. A portion of the proceeds of the Shares are intended to be used to fund the Acquisition.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser hereby agree as follows:

### Article I DEFINITIONS

**Section 1.1 Definitions.** In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms shall have the meanings indicated in this Section 1.1:

“**Accredited Investor Questionnaire**” means the Accredited Investor Questionnaire set forth as Exhibit D hereto.

“**Action**” means any action, suit, notice of violation or investigation pending or, to the Company’s Knowledge, threatened against the Company or any of their respective properties or any officer, director or employee of the Company acting in his or her capacity as an officer, director or employee before or by any federal, state, county, local or foreign court, arbitrator, governmental or administrative agency, regulatory authority, stock market, stock exchange or trading facility.

“**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is controlled by or is under common control with such Person, as such terms are used in and construed under Rule 405 under the Securities Act. With respect to a Purchaser, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Purchaser will be deemed to be an Affiliate of such Purchaser.

“**Board**” means the Board of Directors of the Company.

“**Business Day**” means any day except Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of Colorado are authorized or required by law or other governmental action to close.

“**Certificate of Designations**” means the Certificate of Designations of Preferences, Rights and Limitations of Series X Convertible Preferred Stock to be filed immediately prior to the Closing by the Company with the Secretary of State of the State of Delaware, in the form of Exhibit C attached hereto.

“**Closing**” means the closing of the purchase and sale of the Shares on the Closing Date pursuant to Section 2.1.

“**Closing Date**” means the Business Day when all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all of the conditions set forth in Sections 2.1, 2.2, 5.1 and 5.2 hereof are satisfied or waived, as the case may be, or such other date as the parties may agree.

“**Common Stock**” has the meaning set forth in the Recitals, and also includes any other class of securities into which the Common Stock may hereafter be reclassified or changed.

“**Common Stock Equivalents**” means any securities of the Company which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time

convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock or other securities that entitle the holder to receive, directly or indirectly, Common Stock.

“**Company Covered Person**” means, with respect to the Company as an “issuer” for purposes of Rule 506 promulgated under the Securities Act, any Person listed in the first paragraph of Rule 506(d)(1).

“**Company’s Knowledge**” means with respect to any statement made to the Company’s Knowledge, that the statement is based upon the actual knowledge of the officers of the Company having responsibility for the matter or matters that are the subject of the statement, after reasonable inquiry.

“**Control**” (including the terms “controlling”, “controlled by” or “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Effectiveness Date**” means the date on which the initial Registration Statement required by Section 2(a) of the Registration Rights Agreement is first declared effective by the Commission.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“**GAAP**” means U.S. generally accepted accounting principles, as applied by the Company.

“**Lien**” means any lien, charge, claim, encumbrance, security interest, right of first refusal, preemptive right or other restrictions of any kind.

“**Material Adverse Effect**” means a material adverse effect on the results of operations, assets, prospects, business or financial condition of the Company and its subsidiaries, taken as a whole, except that any of the following, arising out of, attributable to or resulting from, alone or in combination, shall not be deemed a Material Adverse Effect: (i) effects caused by changes or circumstances affecting general market conditions in the U.S. or applicable foreign economy or which are generally applicable to the industry in which the Company operates, (ii) effects caused by earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing as of the date hereof, (iii) natural disasters or calamities, (iv) changes in any applicable laws or applicable accounting regulations or principles or interpretations thereof, (v) the announcement or pendency of this Agreement or the Acquisition Agreement and the transactions contemplated hereby or thereby and including any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, partners or employees of the Company and its subsidiaries due to the announcement and performance of this Agreement or the Acquisition Agreement and the transactions contemplated hereby or thereby, including compliance with the covenants set forth herein or

therein or (vi) any action taken by the Company, or which the Company causes to be taken by any of its subsidiaries, in each case which is required or permitted by or resulting from or arising in connection with this Agreement or the Acquisition Agreement.

“**Material Contract**” means any contract of the Company that has been filed or was required to have been filed as an exhibit to the SEC Reports pursuant to Item 601(b)(4) or Item 601(b)(10) of Regulation S-K.

“**Person**” means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

“**Proceeding**” means an Action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“**Registration Statement**” means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale by the Purchasers of the Registrable Securities (as defined in the Registration Rights Agreement).

“**Rule 144**” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“**Short Sales**” include, without limitation, (i) all “short sales” as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act, whether or not against the box, and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, “put equivalent positions” (as defined in Rule 16a-1(h) under the Exchange Act) and similar arrangements (including on a total return basis), and (ii) sales and other transactions through non-U.S. broker dealers or foreign regulated brokers (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

“**Subscription Amount**” means, with respect to each Purchaser, the aggregate amount to be paid for the Shares purchased hereunder as indicated on such Purchaser’s signature page to this Agreement next to the heading “Aggregate Purchase Price (Subscription Amount)” in United States dollars and in immediately available funds.

“**Transaction Documents**” means this Agreement, the schedules and exhibits attached hereto, the Registration Rights Agreement, the Irrevocable Transfer Agent Instructions and any other documents or agreements explicitly contemplated hereunder.

“**Transfer Agent**” means Computershare Trust Company, N.A., the current transfer agent of the Company, with a mailing address of 8742 Lucent Blvd., Suite 225, Highlands Ranch, CO 80129, and a telephone number of 303-262-0710, or any successor transfer agent for the Company.

**ARTICLE II  
PURCHASE AND SALE**

Section 2.1 Closing.

(a) Amount. Subject to and upon the terms and conditions set forth in this Agreement, at the Closing (the “**Closing**”), the Company shall issue and sell to each Purchaser, and each Purchaser shall, severally and not jointly, purchase and acquire from the Company, the number of Shares set forth below each such Purchaser’s name on its signature page to this Agreement for a purchase price per Share of \$1,000. The Subscription Amount for the aggregate number of Shares to be acquired by each Purchaser is each set forth below each such Purchaser’s name on its signature page to this Agreement. The conversion price for each Share initially shall be \$82.85, subject to adjustment, as provided in the Certificate of Designations.

(b) Closing. The Closing of the purchase and sale of the Shares shall take place at the offices of Gibson, Dunn & Crutcher LLP, 555 Mission Street, San Francisco, CA 94105-0921 on the Closing Date or at such other location(s) or remotely by other electronic means as the parties may mutually agree.

(c) Form of Payment. Except as may otherwise be agreed to among the Company and one or more of the Purchasers, on or prior to the Business Day immediately prior to the Closing Date, each Purchaser shall wire its Subscription Amount, in United States dollars and in immediately available funds, to a bank account designated by the Company.

(d) Transfer Agent Instructions. Immediately following the Closing, the Company shall issue irrevocable instructions to the Transfer Agent in substantially the form of Exhibit B attached hereto (the “**Irrevocable Transfer Agent Instructions**”) to deliver to each Purchaser (within five (5) Business Days after the Closing) one or more stock certificates, or evidence of book entry, evidencing the number of Shares that each such Purchaser is purchasing as is set forth on such Purchaser’s signature page to this Agreement next to the heading “Number of Shares to be Acquired.”

Section 2.2 Closing Deliveries.

(a) At or prior to the Closing, the Company shall issue, deliver or cause to be delivered to each Purchaser (the “**Company Deliverables**”):

- (i) evidence of the filing of the Certificate of Designations with the Secretary of State of the State of Delaware;
- (ii) duly executed Irrevocable Transfer Agent Instructions;
- (iii) the compliance certificate referred to in Section 5.1(h); and
- (iv) the Registration Rights Agreement, duly executed by the Company.

(b) At or prior to the Closing, each Purchaser shall deliver or cause to be delivered to the Company the following, with respect to such Purchaser (the “**Purchaser Deliverables**”):

(i) its Subscription Amount, in United States dollars and in immediately available funds, in the amount indicated below such Purchaser’s name on the applicable signature page hereto under the heading “Aggregate Purchase Price (Subscription Amount)” by wire transfer to a bank account designated by the Company;

(ii) a fully completed and duly executed Accredited Investor Questionnaire, satisfactory to the Company, in the form attached hereto as Exhibit D;

(iii) the compliance certificate referred to in Section 5.2(f); and

(iv) the Registration Rights Agreement, duly executed by such Purchaser.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

Section 3.1 Representations and Warranties of the Company. Except for the Required Approvals and as disclosed in the SEC Reports, the Company hereby represents and warrants as of the date hereof and the Closing Date (except for the representations and warranties that speak as of a specific date, which shall be made as of such date), to each of the Purchasers:

(a) Organization and Qualification. The Company and each of its subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as applicable), with the requisite corporate power and authority to own or lease and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any subsidiary of the Company is in violation or default of any of the provisions of its articles of incorporation or bylaws or other organizational documents. The Company and each of its subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, and no Proceeding has been instituted, is pending, or, to the Company’s Knowledge, has been threatened in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(b) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder. The Company’s execution and delivery of each of the Transaction Documents to which it is a party and the consummation by it of the transactions contemplated hereby and thereby (including, but not limited to, the sale and delivery of the Shares) have been duly authorized by all necessary corporate action on the part of the Company, and no further corporate



action is required by the Company, its Board or its stockholders in connection therewith other than in connection with the Required Approvals. Each of the Transaction Documents to which it is a party has been (or upon delivery will have been) duly executed by the Company and is, or when delivered in accordance with the terms hereof, will constitute the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(c) No Conflicts. The execution, delivery and performance by the Company of the Transaction Documents to which it is a party and the consummation by the Company of the transactions contemplated hereby or thereby (including, without limitation, the issuance of the Shares) do not and will not (i) conflict with or violate any provisions of the Company's or any subsidiary's certificate of incorporation or bylaws or other similar organizational documents of any such subsidiary, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would result in a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any subsidiary of the Company or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any Material Contract, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a subsidiary of the Company is subject (including federal and state securities laws and regulations and the rules and regulations, assuming the correctness of the representations and warranties made by the Purchasers herein, of any self-regulatory organization to which the Company or its securities are subject, including all applicable Trading Markets), or by which any property or asset of the Company is bound or affected, except in the case of clauses (ii) and (iii) such as would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect or a material adverse effect on the legality, validity or enforceability of any Transaction Document or the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document.

(d) Filings, Consents and Approvals. Neither the Company nor any of its subsidiaries is required to obtain any consent, waiver, approval, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority, holder of outstanding securities of the Company or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents (including the issuance of the Securities), other than (i) filings required by applicable state securities laws, (ii) the filing of a Notice of Sale of Securities on Form D with the Commission under Regulation D of the Securities Act, (iii) the filing of any requisite notices and/or application(s) to the Nasdaq Capital Market for the issuance and sale of the Securities and the listing of the Shares for trading or quotation, as the case may be, thereon in the time and manner required thereby, (iv) the filing with the Commission of one or more Registration Statements in accordance with the requirements of the Registration Rights Agreement, (v) obtaining stockholder approval to increase

the number of shares of authorized Common Stock and (vi) those that have been made or obtained prior to the date of this Agreement (collectively, the “**Required Approvals**”).

(e) Issuance of the Securities. The Shares have been duly authorized and, when issued and paid for in accordance with the terms of the Transaction Documents, will be duly and validly issued, fully paid and non-assessable and free and clear of all Liens, other than restrictions on transfer provided for in the Transaction Documents or imposed by applicable securities laws, and shall not be subject to preemptive or similar rights of stockholders. Assuming the accuracy of the representations and warranties of the Purchasers in this Agreement, the Securities will be issued in compliance with all applicable federal and state securities laws. No “bad actor” disqualifying event described in Rule 506(d)(1)(i)-(viii) of the Securities Act (a “Disqualification Event”) is applicable to the Company or, to the Company’s knowledge, any Company Covered Person, except for a Disqualification Event as to which Rule 506(d)(2)(ii-iv) or (d)(3), is applicable.

(f) Capitalization. The capitalization of the Company is as described in its most recently filed SEC Report on Form 10-Q, except for issuances pursuant to this Agreement, stock option exercises, issuances pursuant to equity incentive plans, exercises of warrants or issuances pursuant to the Company’s “at the market” equity program. The Company has not issued any capital stock since the date of its most recently filed SEC Report other than to reflect stock option and warrant exercises that do not, individually or in the aggregate, have a material effect on the issued and outstanding capital stock, options and other securities of the Company. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents that have not been effectively waived as of the Closing Date. Except as a result of the purchase and sale of the Shares, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any of its subsidiaries is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issuance and sale of the Shares will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. All of the outstanding shares of capital stock of the Company are validly issued, fully paid and non-assessable, have been issued in compliance in all material respects with all applicable federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities which violation would have or would reasonably be expected to result in a Material Adverse Effect. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company’s capital stock to which the Company is a party or, to the Company’s Knowledge, between or among any of the Company’s stockholders.

(g) SEC Reports. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the 12 months preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials,

including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “**SEC Reports**”) on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension, except where the failure to file on a timely basis would not have or reasonably be expected to result in a Material Adverse Effect and would not have or reasonably be expected to result in any limitation or prohibition on the Company’s ability to register the Shares for resale on Form S-3 or any Purchaser’s ability to use Rule 144 to resell any Securities. As of their respective filing dates, none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the Material Contracts to which the Company or any subsidiary of the Company is a party or to which the property or assets of the Company or any of its subsidiaries are subject has been filed (or incorporated by reference) as an exhibit to the SEC Reports.

(h) **Financial Statements.** The consolidated financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing (or to the extent corrected by a subsequent amendment). Such consolidated financial statements have been prepared in accordance with GAAP applied on a consistent basis during the periods involved, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated subsidiaries taken as a whole as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial year-end audit adjustments.

(i) **Material Changes.** Since the date of the latest financial statements included within the SEC Reports, except as specifically disclosed in a subsequent SEC Report filed prior to the date hereof or a widely disseminated press release issued prior to the date hereof, (i) there have been no events, occurrences or developments that have had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, (ii) the Company has not incurred any material liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company’s financial statements pursuant to GAAP or required to be disclosed in filings made with the Commission, (iii) the Company has not altered materially its method of accounting or the manner in which it keeps its accounting books and records, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock (other than in connection with repurchases of unvested stock issued to employees of the Company) and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except Common Stock issued in the ordinary course as dividends on outstanding preferred stock or issued pursuant to existing Company stock option or stock purchase plans or executive and director compensation arrangements disclosed in the SEC Reports.

(j) Certain Fees. No Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company or a Purchaser for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Company. The Purchasers shall have no obligation with respect to any fees or with respect to any claim made by or on behalf of other Persons for fees of a type contemplated in this Section 3.1(j) pursuant to any agreement to which the Company is a party that may be due in connection with the transactions contemplated by the Transaction Documents. The Company shall indemnify, pay, and hold each Purchaser harmless against, any liability, loss or expense (including, without limitation, attorneys' fees and out-of-pocket expenses) arising in connection with any such right, interest or claim.

(k) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2 of this Agreement and the accuracy of the information disclosed in the Accredited Investor Questionnaires provided by the Purchasers, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers under the Transaction Documents. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Nasdaq Capital Market.

(l) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Shares, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(m) Registration Rights. Other than the right of each of Purchaser pursuant to the Registration Rights Agreement, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company.

(n) Listing and Maintenance Requirements. The Company's Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to terminate the registration of the Common Stock under the Exchange Act, nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not, in the 12 months preceding the date hereof, received written notice from any Trading Market on which the Common Stock is listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company is in compliance with all listing and maintenance requirements of the Nasdaq Capital Market on the date hereof and the issuance of the Securities will not violate any such listing or maintenance requirements.

(o) Application of Takeover Protections. The Company and the Board have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's charter documents or the laws of its state of incorporation that is or could reasonably be expected to become applicable to any of the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including, without limitation, the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

(p) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, neither the Company nor, to the Company's Knowledge, any Person acting on its behalf has, directly or indirectly, at any time within the past six months, made any offers or sales of any Company security or solicited any offers to buy any security under circumstances that would (i) eliminate the availability of the exemption from registration under Regulation D under the Securities Act in connection with the offer and sale by the Company of the Securities as contemplated hereby or (ii) cause the offering of the Securities pursuant to the Transaction Documents to be integrated with prior offerings by the Company for purposes of any applicable law, regulation or stockholder approval provisions, including, without limitation, under the rules and regulations of any Trading Market on which any of the securities of the Company are listed or designated unless such integration would not have or reasonably be expected to result in a Material Adverse Effect.

(q) No General Solicitation. Neither the Company nor, to the Company's Knowledge, any Person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising.

Section 3.2 Representations and Warranties of the Purchasers. Each Purchaser hereby, for itself and for no other Purchaser, represents and warrants as of the date hereof and as of the Closing Date to the Company as follows:

(a) Organization; Authority. Such Purchaser is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite corporate, limited liability company or partnership power and authority to enter into and to consummate the transactions contemplated by the applicable Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by such Purchaser and performance by such Purchaser of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate or, if such Purchaser is not a corporation, such partnership, limited liability company or other applicable like action, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(b) No Conflicts. The execution, delivery and performance by such Purchaser of this Agreement and the Registration Rights Agreement and the consummation by such Purchaser of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Purchaser, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Purchaser is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Purchaser,

except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Purchaser to perform its obligations hereunder.

(c) Investment Intent. Such Purchaser understands that the Securities are “restricted securities” and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Shares for its own account and not with a view to, or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities laws; provided, however, that by making the representations herein, such Purchaser does not agree to hold any of the Securities for any minimum period of time and reserves the right, subject to the provisions of this Agreement and the Registration Rights Agreement, at all times to sell or otherwise dispose of all or any part of such Securities pursuant to an effective registration statement under the Securities Act or under an exemption from such registration and in compliance with applicable federal and state securities laws. Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business. Such Purchaser does not presently have any agreement, plan or understanding, directly or indirectly, with any Person to distribute or effect any distribution of any of the Securities (or any securities which are derivatives thereof) to or through any Person; such Purchaser is not a registered broker-dealer under Section 15 of the Exchange Act or an entity engaged in a business that would require it to be so registered as a broker-dealer.

(d) Purchaser Status. At the time such Purchaser was offered the Shares, it was, and at the date hereof it is, an “accredited investor” as defined in Rule 501(a) under the Securities Act.

(e) General Solicitation. Such Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general advertisement.

(f) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(g) Access to Information. Such Purchaser acknowledges that it has had the opportunity to review the SEC Reports and has been afforded the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities. Neither such inquiries nor any other investigation conducted by or on behalf of such Purchaser or its representatives or counsel shall modify, amend or affect such Purchaser’s right to rely on the truth, accuracy and completeness of the Company’s representations and warranties contained in the Transaction Documents.

(h) Brokers and Finders. No Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company or

any Purchaser for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of such Purchaser.

(i) Independent Investment Decision. Such Purchaser has independently evaluated the merits of its decision to purchase Securities pursuant to the Transaction Documents, and such Purchaser confirms that it has not relied on the advice of any other Purchaser's business and/or legal counsel in making such decision. Such Purchaser understands that nothing in this Agreement or any other materials presented by or on behalf of the Company to the Purchaser in connection with the purchase of the Securities constitutes legal, tax or investment advice. Such Purchaser has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities.

(j) Reliance on Exemptions. Such Purchaser understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Purchaser's compliance with, the representations, warranties, agreements, acknowledgements and understandings of such Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of such Purchaser to acquire the Securities.

(k) No Governmental Review. Such Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(l) Residency. Such Purchaser's residence (if an individual) or offices in which its investment decision with respect to the Securities was made (if an entity) are located at the address immediately below such Purchaser's name on its signature page hereto.

(m) Accuracy of Accredited Investor Questionnaire. The Accredited Investor Questionnaire delivered by such Purchaser in connection with this Agreement is complete and accurate in all respects as of the date of this Agreement and will be correct as of the Closing Date.

The Company and each of the Purchasers acknowledge and agree that no party to this Agreement has made or makes any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in this Article III and the Transaction Documents.

#### **ARTICLE IV OTHER AGREEMENTS OF THE PARTIES**

##### Section 4.1 Transfer Restrictions.

(a) Compliance with Laws. Notwithstanding any other provision of this Article IV, each Purchaser, severally but not jointly, covenants that the Securities may be disposed of only

pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act, or pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, and in compliance with any applicable state and federal securities laws. In connection with any transfer of the Securities other than (i) pursuant to an effective registration statement, (ii) to the Company, (iii) pursuant to Rule 144 (provided that such Purchaser provides the Company with reasonable assurances (in the form of seller and, if applicable, broker representation letters) that the securities may be sold pursuant to such rule) or (iv) in connection with a bona fide pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and the Registration Rights Agreement and shall have the rights of a Purchaser under this Agreement and the Registration Rights Agreement with respect to such transferred Securities.

(b) Legends. Certificates evidencing the Securities shall bear any legend as required by the “blue sky” laws of any state and a restrictive legend in substantially the following form, until such time as they are not required under Section 4.1(c):

NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON CONVERSION OF THESE SECURITIES HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER SAID ACT.

The Company acknowledges and agrees that a Purchaser may from time to time pledge, and/or grant a security interest in, some or all of the legended Securities in connection with applicable securities laws, pursuant to a bona fide margin agreement in compliance with a bona fide margin loan. Such a pledge would not be subject to approval or consent of the Company and no legal opinion of legal counsel to the pledgee, secured party or pledgor shall be required in connection with the pledge, but such legal opinion shall be required in connection with a subsequent transfer or foreclosure following default by such Purchaser transferee of the pledge. No notice shall be required of such pledge, but such Purchaser’s transferee shall promptly notify the Company of any such subsequent transfer or foreclosure of such legended Securities. Each Purchaser acknowledges that the Company shall not be responsible for any pledges relating to, or the grant of any security interest in, any of the Securities or for any agreement, understanding or arrangement between any Purchaser



and its pledgee or secured party. At the appropriate Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including the preparation and filing of any required prospectus supplement under Rule 424(b)(3) of the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder. Each Purchaser acknowledges and agrees that, except as otherwise provided in Section 4.1(c), any Securities subject to a pledge or security interest as contemplated by this Section 4.1(b) shall continue to bear the legend set forth in this Section 4.1(b) and be subject to the restrictions on transfer set forth in Section 4.1(a).

(c) Removal of Legends. The legend set forth in Section 4.1(b) above shall be removed and the Company shall issue a certificate or book-entry statement without such legend or any other legend to the holder of the applicable Securities upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at the Depository Trust Company ("**DTC**"), if such Securities are registered for resale under the Securities Act (provided that, if a Purchaser is selling pursuant to the Registration Statement, such Purchaser agrees to only sell such Securities during such time that the Registration Statement is effective and not withdrawn or suspended, and only as permitted by the Registration Statement). Following the Effective Date, the Company shall deliver to the Transfer Agent irrevocable instructions that the Transfer Agent shall reissue a certificate representing the applicable Shares without legend upon receipt by the Transfer Agent of the legended certificates for such Shares.

(d) Acknowledgement. Each Purchaser, severally but not jointly, acknowledges its primary responsibilities under the Securities Act and accordingly will not sell or otherwise transfer the Securities or any interest therein without complying with the requirements of the Securities Act and applicable law. While the Registration Statement remains effective, each Purchaser hereunder may sell the Shares in accordance with the plan of distribution contained in the Registration Statement and if it does so it will comply therewith and with the related prospectus delivery requirements unless an exemption therefrom is available. Each Purchaser, severally and not jointly with the other Purchasers, agrees that if it is notified by the Company in writing at any time that the Registration Statement registering the resale of the Shares is not effective or that the prospectus included in such Registration Statement no longer complies with the requirements of Section 10 of the Securities Act, such Purchaser will refrain from selling such Shares until such time as the Purchaser is notified by the Company that such Registration Statement is effective or such prospectus is compliant with Section 10 of the Securities Act, unless such Purchaser is able to, and does, sell such Shares pursuant to an available exemption from the registration requirements of Section 5 of the Securities Act. Both the Company and its Transfer Agent, and their respective directors, officers, employees and agents, may rely on this Section 4.1(d) and each Purchaser, severally but not jointly, with the other Purchasers will indemnify and hold harmless each of such persons from any breaches or violations of this Section 4.1(d).

Section 4.2 No Integration. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that will be integrated with the offer or sale of the Securities in a manner that would require

the registration under the Securities Act of the sale of the Securities to the Purchasers, or that will be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

Section 4.3 Publicity. Each Purchaser, severally but not jointly, covenants that it will comply with the provisions of any confidentiality or nondisclosure agreement executed by it and, in addition, until such time as the transactions contemplated by this Agreement are required to be publicly disclosed by the Company under applicable securities laws or as otherwise set forth in any such confidentiality or nondisclosure agreement, such Purchaser will maintain the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction).

Section 4.4 Form D; Blue Sky. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof, promptly upon the written request of any Purchaser. The Company, on or before the Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Securities for sale to the Purchasers at the Closing pursuant to this Agreement under applicable securities or “Blue Sky” laws of the states of the United States (or to obtain an exemption from such qualification) and shall provide evidence of such actions promptly upon the written request of any Purchaser.

Section 4.5 Short Sales and Confidentiality After The Date Hereof. Such Purchaser shall not, and shall cause its Affiliates not to, engage, directly or indirectly, in any transactions in the Company’s securities (including, without limitation, any Short Sales involving the Company’s securities) during the period from the date hereof until the transactions contemplated by this Agreement are first publicly announced. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until the earlier of such time as (i) the transactions contemplated by this Agreement are publicly disclosed by the Company or (ii) this Agreement is terminated in full pursuant to Section 6.15, such Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents. Further, each Purchaser agrees, severally and not jointly with any Purchasers, that they will not enter into any Net Short Sales (as hereinafter defined) from the period commencing on the date hereof and ending on the earliest of (x) the Effective Date of the initial Registration Statement, (y) January 12, 2022 or (z) the date that such Purchaser no longer holds any Securities. For purposes of this Section 4.5, a “Net Short Sale” by any Purchaser shall mean a sale of Common Stock by such Purchaser that is marked as a non-exempt short sale and that is made at a time when there is no equivalent offsetting long position in Common Stock held by such Purchaser. For purposes of determining whether there is an equivalent offsetting position in Common Stock held by the Purchaser, the amount of shares of Common Stock held in a long position shall be all Shares issuable to such Purchaser on such date, plus any shares of Common Stock or Common Stock Equivalents otherwise then held by such Purchaser. Notwithstanding the foregoing, in the event that a Purchaser is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser’s assets and the portfolio managers have no direct knowledge of the investment decisions

made by the portfolio managers managing other portions of such Purchaser's assets, the representation set forth above shall apply only with respect to the portion of assets managed by the portfolio manager that have knowledge about the financing transaction contemplated by this Agreement.

## ARTICLE V

### CONDITIONS PRECEDENT TO CLOSING

Section 5.1 Conditions Precedent to the Obligations of the Purchasers to Purchase Securities. The obligation of each Purchaser to acquire Shares at the Closing is subject to the fulfillment to such Purchaser's satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by such Purchaser (as to itself only):

(a) Representations and Warranties. The representations and warranties of the Company contained herein shall be true and correct in all material respects (except for those representations and warranties which are qualified as to materiality, in which case such representations and warranties shall be true and correct in all respects) as of the date when made and as of the Closing Date, as though made on and as of such date, except for such representations and warranties that speak as of a specific date.

(b) Performance. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Closing.

(c) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(d) Consents. The Company shall have obtained in a timely fashion any and all consents, permits, approvals, registrations and waivers necessary for consummation of the purchase and sale of the Securities at the Closing (including all Required Approvals that are required to be performed prior to the Closing), all of which shall be and remain so long as necessary in full force and effect.

(e) Adverse Change. Since the date of execution of this Agreement, no event or series of events shall have occurred that has had or would reasonably be expected to have a Material Adverse Effect.

(f) No Suspensions of Trading in Common Stock. The Common Stock shall not have been suspended, as of the Closing Date, by the Commission or the Nasdaq Capital Market from trading on the Nasdaq Capital Market nor shall suspension by the Commission or the Nasdaq Capital Market have been threatened, as of the Closing Date, either (A) in writing by the Commission

or the Nasdaq Capital Market or (B) by falling below the minimum listing maintenance requirements of the Nasdaq Capital Market.

(g) Company Deliverables. The Company shall have delivered the Company Deliverables in accordance with Section 2.2(a).

(h) Compliance Certificate. The Company shall have delivered to each Purchaser a certificate, dated as of the Closing Date and signed by its Chief Executive Officer or its Principal Accounting and Financial Officer, certifying to the fulfillment of the conditions specified in Sections 5.1(a) and (b).

(i) Acquisition Agreement. All conditions in Article 4 of the Acquisition Agreement to be satisfied prior to Closing (as defined in the Acquisition Agreement) shall have been satisfied or waived (except for any such conditions that by their nature may only be satisfied at or in connection with the occurrence of Closing under the Acquisition Agreement) and each of the Parties (as defined in the Acquisition Agreement) shall be prepared to take the Closing Actions (as defined in the Acquisition Agreement) set forth in Section 4.4 of the Acquisition Agreement.

(j) Termination. This Agreement shall not have been terminated as to such Purchaser in accordance with Section 6.15 herein.

Section 5.2 Conditions Precedent to the Obligations of the Company to sell Securities. The Company's obligation to sell and issue the Shares at the Closing to the Purchasers is subject to the fulfillment to the satisfaction of the Company on or prior to the Closing Date of the following conditions, any of which may be waived by the Company:

(a) Representations and Warranties. The representations and warranties made by the Purchasers in Section 3.2 hereof shall be true and correct in all material respects (except for those representations and warranties which are qualified as to materiality, in which case such representations and warranties shall be true and correct in all respects) as of the date when made, and as of the Closing Date as though made on and as of such date, except for representations and warranties that speak as of a specific date.

(b) Performance. Such Purchaser shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by such Purchaser at or prior to the Closing Date.

(c) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(d) Consents. The Company shall have obtained in a timely fashion any and all consents, permits, approvals, registrations and waivers necessary for consummation of the purchase and sale of the Securities at the Closing (including all Required Approvals that are required to be

performed prior to the Closing), all of which shall be and remain so long as necessary in full force and effect.

(e) Purchasers Deliverables. Such Purchaser shall have delivered its Purchaser Deliverables in accordance with Section 2.2(b).

(f) Compliance Certificate. Such Purchaser shall have delivered to the Company a certificate, dated as of the Closing Date and signed by a duly authorized executive officer, certifying to the fulfillment of the conditions specified in Sections 5.2(a) and (b).

(g) Acquisition Agreement. All conditions in Article 4 of the Acquisition Agreement to be satisfied prior to Closing (as defined in the Acquisition Agreement) shall have been satisfied or waived (except for any such conditions that by their nature may only be satisfied at or in connection with the occurrence of Closing under the Acquisition Agreement) and each of the Parties (as defined in the Acquisition Agreement) shall be prepared to take the Closing Actions (as defined in the Acquisition Agreement) set forth in Section 4.4 of the Acquisition Agreement.

(h) Termination. This Agreement shall not have been terminated as to such Purchaser in accordance with Section 6.15 herein.

## **ARTICLE VI MISCELLANEOUS**

Section 6.1 Fees and Expenses. The Company and each Purchaser, severally and not jointly with any other Purchaser, shall pay the fees and expenses of their respective advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party in connection with the negotiation, preparation, execution, delivery and performance of this Agreement. Each Purchaser, severally and not jointly with any other Purchaser, shall be responsible for all other tax liability that may arise as a result of the holding or the transferring of the Securities by it.

Section 6.2 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, and any confidentiality or nondisclosure agreement entered into prior to the date of this Agreement with respect to the transactions contemplated thereby, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, discussions and representations, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. At or after the Closing, and without further consideration, the Company and the Purchasers will execute and deliver to the other such further documents as may be reasonably requested in order to give practical effect to the intention of the parties under the Transaction Documents.

Section 6.3 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via electronic mail to the electronic mail address specified in this Section 6.3 prior to 5:00 p.m., Mountain Time, on a Business Day, (b) the next Business Day after the date of transmission, if such notice

or communication is delivered via electronic mail to the electronic mail address specified in this Section 6.3 on a day that is not a Business Day or later than 5:00 p.m., Mountain Time, on any Business Day, (c) the Business Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service with next day delivery specified, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as follows:

If to the Company: Heska Corporation  
3760 Rocky Mountain Ave  
Loveland, CO 80538  
Attention: Legal Department  
Email: [\*\*\*]

With a copy to (which shall not constitute notice):

Gibson, Dunn & Crutcher LLP  
1801 California Street  
Denver, Colorado, 80202-2642  
Attention: Robyn Zolman  
Ryan A. Murr  
Email: [rzolman@gibsondunn.com](mailto:rzolman@gibsondunn.com)  
[rmurr@gibsondunn.com](mailto:rmurr@gibsondunn.com)

If to a Purchaser: To the address set forth under such Purchaser's name on the signature page hereof; or such other address as may be designated in writing hereafter, in the same manner, by such Person.

Section 6.4 Amendments; Waivers; No Additional Consideration. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchasers holding or having the right to acquire a majority of the Shares on a fully-diluted basis at the time of such amendment (which amendment shall be binding on all Purchasers or, in the case of a waiver, by the party against whom enforcement of any such waiver is sought). No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right. No consideration shall be offered or paid to any Purchaser to amend or consent to a waiver or modification of any provision of any Transaction Document that, by its terms, applies to all Purchasers, unless the same consideration is also offered to all Purchasers who then hold Securities.

Section 6.5 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. This

Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement or any of the Transaction Documents.

Section 6.6 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties and their successors and permitted assigns. This Agreement, or any rights or obligations hereunder, may not be assigned by the Company without the written consent of Purchasers holding or having the right to acquire a majority of the Shares on a fully-diluted basis at the time of such consent. Any Purchaser may assign its rights hereunder in whole or in part to any Person to whom such Purchaser assigns or transfers any Securities in compliance with the Transaction Documents and applicable law, provided that such transferee shall agree in writing to be bound, with respect to the transferred Securities, by the terms and conditions of this Agreement that apply to the “Purchasers”.

Section 6.7 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

Section 6.8 Survival. Subject to applicable statute of limitations, the representations, warranties agreements and covenants contained herein shall survive the Closing and the delivery of the Securities and any confidentiality or nondisclosure obligations set forth in any agreement entered into prior to the date of this Agreement with respect to the transactions contemplated by the Transaction Documents shall survive according to the terms of such agreements.

Section 6.9 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof.

Section 6.10 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

Section 6.11 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company and the Transfer Agent of such loss, theft or destruction and the execution by the holder thereof of a customary lost certificate affidavit of that fact and an agreement to indemnify and hold harmless the Company and the Transfer Agent for any losses in connection therewith or, if required

by the Transfer Agent, a bond in such form and amount as is required by the Transfer Agent. The applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities. If a replacement certificate or instrument evidencing any Securities is requested due to a mutilation thereof, the Company may require delivery of such mutilated certificate or instrument as a condition precedent to any issuance of a replacement.

Section 6.12 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations described in the foregoing sentence and hereby agree to waive in any Action for specific performance of any such obligation (other than in connection with any Action for a temporary restraining order) the defense that a remedy at law would be adequate.

Section 6.13 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflicts of law thereof. Each party agrees that all Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective Affiliates, employees or agents) shall be commenced exclusively in the Court of Chancery of the State of Delaware, provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then any such legal action or proceeding may be brought in any federal court located in the State of Delaware or any other Delaware state court. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, or that such Proceeding has been commenced in an improper or inconvenient forum. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 6.14 Waiver of Conflicts. Each Purchaser acknowledges that Gibson, Dunn & Crutcher LLP, outside general counsel to the Company, has in the past performed and is or may now or in the future represent one or more Purchasers or their Affiliates in matters unrelated to the transactions contemplated by the this Agreement, including representation of such Purchasers or



their Affiliates in matters of a similar nature to the transactions contemplated by this Agreement. The applicable rules of professional conduct require that Gibson, Dunn & Crutcher LLP inform the Purchasers hereunder of this representation and obtain their consent. Gibson, Dunn & Crutcher LLP has served as outside general counsel to the Company and has negotiated the terms of this Agreement solely on behalf of the Company. Each Purchaser hereby (a) acknowledges that they have had an opportunity to ask for and have obtained information relevant to such representation; (b) acknowledges that with respect to the transactions contemplated by this Agreement, Gibson, Dunn & Crutcher LLP has represented solely the Company, and not any Purchaser or any stockholder, director or employee of the Company or any Purchaser; and (c) gives its informed consent to Gibson, Dunn & Crutcher LLP's representation of the Company in the transactions contemplated by this Agreement.

Section 6.15 Termination. This Agreement may be terminated and the sale and purchase of the Shares abandoned at any time prior to the Closing by either the Company or any Purchaser (with respect to itself only) upon written notice to the other, if the Closing has not been consummated on or prior to May 31, 2020; provided, however, that the right to terminate this Agreement under this Section 6.15 shall not be available to any Person whose failure to comply with its obligations under this Agreement has been the cause of or resulted in the failure of the Closing to occur on or before such time. Nothing in this Section 6.15 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents. In the event of a termination pursuant to this Section 6.15, the Company shall promptly notify all non-terminating Purchasers. Upon a termination in accordance with this Section 6.15, the Company and the terminating Purchaser(s) shall not have any further obligation or liability (including arising from such termination) to the other, and no Purchaser will have any liability to any other Purchaser under the Transaction Documents as a result therefrom. The Company and any Purchaser(s) may extend the term of this Agreement in accordance with the amendment provisions of Section 6.4 herein.

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IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

HESKA CORPORATION

By: /s/ Kevin Wilson

Name: Kevin Wilson

Title: CEO, President

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOR PURCHASERS FOLLOW]

*[Signature Page to Securities Purchase Agreement]*

NAME OF PURCHASER:

Janus Henderson Venture Fund

By: /s/ Scott Stutzman

Name: Scott Stutzman

Title: Executive Vice President – Portfolio Manager

Aggregate Purchase Price (Subscription Amount): \$19,025,000

Number of Shares to be Acquired: 19,025

Tax ID No.: [\*\*\*]

Address for Notice/Residency of Purchaser:

[\*\*\*]

Delivery Instructions (if different than above):

[\*\*\*]

*[Signature Page to Securities Purchase Agreement]*

NAME OF PURCHASER:

Janus Capital Funds PLC – Janus Henderson US Venture Fund

By: /s/ Scott Stutzman

Name: Scott Stutzman

Title: Executive Vice President – Portfolio Manager

Aggregate Purchase Price (Subscription Amount): \$975,000

Number of Shares to be Acquired: 975

Tax ID No.: [\*\*\*]

Address for Notice/Residency of Purchaser:

[\*\*\*]

Delivery Instructions (if different than above):

[\*\*\*]

*[Signature Page to Securities Purchase Agreement]*

NAME OF PURCHASER:

Nine Ten Partners LP

By: /s/ Russell Mollen

Name: Russell Mollen

Title: Portfolio Manager

Aggregate Purchase Price (Subscription Amount): \$35,000,000

Number of Shares to be Acquired: 35,000

Tax ID No.: [\*\*\*]

Address for Notice/Residency of Purchaser:

[\*\*\*]

Delivery Instructions (if different than above):

*[Signature Page to Securities Purchase Agreement]*

NAME OF PURCHASER:

Eversept Global Healthcare Fund, L.P.

By:  /s/ Kamran Moghtaderi

Name: Kamran Moghtaderi

Title: Managing Member, Eversept GP, LLC, general partner

Aggregate Purchase Price (Subscription Amount): \$30,000,000

Number of Shares to be Acquired: 30,000

Tax ID No.: [\*\*\*]

Address for Notice/Residency of Purchaser:

[\*\*\*]

Delivery Instructions (if different than above):

*[Signature Page to Securities Purchase Agreement]*

NAME OF PURCHASER:

Park West Investors Master Fund, Limited

By: Park West Asset Management LLC

Its: Investment Manager

By: /s/ Grace Jimenez

Name: Grace Jimenez

Title: Chief Financial Officer

Aggregate Purchase Price (Subscription Amount): \$36,360,000

Number of Shares to be Acquired: 36,360

Tax ID No.: [\*\*\*]

Address for Notice/Residency of Purchaser:

[\*\*\*]

Delivery Instructions (if different than above):

*[Signature Page to Securities Purchase Agreement]*



NAME OF PURCHASER:

Park West Partners International, Limited

By: Park West Asset Management LLC

Its: Investment Manager

By: /s/ Grace Jimenez

Name: Grace Jimenez

Title: Chief Financial Officer

Aggregate Purchase Price (Subscription Amount): \$3,640,000

Number of Shares to be Acquired: 3,640

Tax ID No.: [\*\*\*]

Address for Notice/Residency of Purchaser:

[\*\*\*]

Delivery Instructions (if different than above):

*[Signature Page to Securities Purchase Agreement]*

## EXHIBITS

Exhibit A: Form of Registration Rights Agreement

Exhibit B: Form of Irrevocable Transfer Agent Instructions

Exhibit C: Form of Certificate of Designations

Exhibit D: Accredited Investor Questionnaire

### EXHIBIT A

Form of Registration Rights Agreement

[Attached]

#### REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this “Agreement”) is made and entered into as of [\_\_\_\_], 2020, by and among Heska Corporation, a Delaware corporation (the “Company”), and the several purchasers signatory hereto (each a “Purchaser” and collectively, the “Purchasers”).

This Agreement is made pursuant to that certain Series X Preferred Securities Purchase Agreement, dated as of January 12, 2020, by and among the Company and the Purchasers (the “Purchase Agreement”).

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Purchasers agree as follows:

1. Definitions. Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the respective meanings set forth in this Section 1: “Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is controlled by or is under common control with such Person, as such terms are used in and construed under Rule 405 under the Securities Act. With respect to a Purchaser, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Purchaser will be deemed to be an Affiliate of such Purchaser.

“Commission” means the U.S. Securities and Exchange Commission, or any successor entity or entities, including, if applicable, the staff of the Commission.

“Common Stock” means the Company’s Public Common Stock, par value \$0.01 per share, and any other class of securities into which the Common Stock may hereafter be reclassified or changed.

“Control” (including the terms “controlling”, “controlled by” or “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Conversion Date” means the date of issuance of the Common Stock issued upon the conversion of the Series X Preferred Stock.

“Effectiveness Date” means: (a) with respect to the Initial Registration Statement required to be filed hereunder, the 90<sup>th</sup> day following the Conversion Date (or the 135<sup>th</sup> day following the Conversion Date in the event the Initial Registration Statement is reviewed by the Commission), (b) with respect to any additional Registration Statements which may be required pursuant to Section 2 hereof, the 90<sup>th</sup> day following the date on which an additional Registration Statement is required to be filed hereunder (or the 135<sup>th</sup> day following such date in the event such additional Registration Statement is reviewed by the Commission). If the Effectiveness Date falls on a Saturday, Sunday or other date that the Commission is closed for business, the Effectiveness Date shall be extended to the next day on which the Commission is open for business.

“Effectiveness Period” shall have the meaning set forth in Section 2(a).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Filing Date” means: (a) with respect to the Initial Registration Statement, the later of (i) the 45<sup>th</sup> calendar day following the Conversion Date and (ii) the 75<sup>th</sup> calendar day following the Closing Date of the Acquisition Agreement, and (b) with respect to any additional Registration Statements that may be required pursuant to Section 2 hereof, the 45<sup>th</sup> day following the date on which the Company first knows, or reasonably should have known, that such additional Registration Statement is required under such Section; provided, however, that if the Filing Date falls on a Saturday, Sunday or other day that the Commission is closed for business, the Filing Date shall be extended to the next business day on which the Commission is open for business.

“Holder” or “Holders” means the holder or holders, as the case may be, from time to time of Registrable Securities.

“Indemnified Party” shall have the meaning set forth in Section 6(c).

“Indemnifying Party” shall have the meaning set forth in Section 6(c).

“Initial Registration Statement” means the initial Registration Statement required to be filed to cover the resale by the Holders of the Registrable Securities pursuant to Section 2(a).

“Losses” shall have the meaning set forth in Section 6(a).

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Prospectus” means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A or Rule 430B promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Reduction Securities” shall have the meaning set forth in Section 2(b).

“Registrable Securities” means Common Stock issuable upon the conversion of the Series X Preferred Stock; provided, however, that with respect to any Holder, the Registrable Securities of such Holder shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (a) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and all such Registrable Securities have been disposed of by such Holder in accordance with such effective Registration Statement, (b) such Registrable Securities of such Holder have been previously sold or transferred in accordance with Rule 144, or (c) such Registrable Securities of such Holder become eligible for resale without volume or manner-of-sale restrictions and without current public information requirements under Rule 144, as reasonably determined by the Company, upon the advice of counsel to the Company.

“Registration Statement” means each of the following: (i) an initial registration statement which is required to register the resale of the Registrable Securities, and (ii) each additional registration statement, if any, contemplated by Section 2, and including, in each case, the Prospectus, amendments and supplements to each such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

“Resumption Notice” shall have the meaning set forth in Section 7(c).

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Series X Preferred Stock” means the Company’s Series X Convertible Preferred Stock, par value \$0.01 per share.

“Trading Day” means any day on which the Common Stock is traded on The NASDAQ Capital Market, or, if The NASDAQ Capital Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded.

“Transaction Documents” shall have the meaning set forth in the Purchase Agreement.

“Underwritten Offering” means a registration in which Registrable Securities are sold to an underwriter for reoffering to the public.

2. Registration. As soon as reasonably practicable, on or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an existing and effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 or, if Rule 415 is not available for offers and sales of the Registrable Securities, by such other means of distribution of Registrable Securities as the Holders may reasonably specify. The Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith) and shall contain (except if otherwise required pursuant to written comments received from the Commission upon a review of such Registration Statement) the “Plan of Distribution” in substantially the form attached hereto as Annex A (which may be modified to respond to comments, if any, provided by the Commission). The Company shall use its commercially reasonable efforts to cause a Registration Statement filed under this Agreement to be declared effective under the Securities Act promptly but, in any event, no later than the Effectiveness Date for such Registration Statement, and shall, subject to Section 7(c) hereof, use its commercially reasonable efforts to keep the Registration Statement continuously effective under the Securities Act until the earlier of (i) the date that is two years after the effectiveness of the Registration

Statement and (ii) the date on which all securities under such Registration Statement have ceased to be Registrable Securities (the “Effectiveness Period”). Notwithstanding the foregoing, the Company shall be entitled to suspend the effectiveness of the Registration Statement at any time prior to the expiration of the Effectiveness Period for up to an aggregate of 30 consecutive Trading Days or an aggregate of 60 Trading Days (which need not be consecutive) in any given 360-day period. It is agreed and understood that the Company shall, from time to time, be obligated to file one or more additional Registration Statements to cover any Registrable Securities which are not registered for resale pursuant to a pre-existing Registration Statement.

(a) Notwithstanding anything contained herein to the contrary, in the event that the Commission limits the amount of Registrable Securities that may be included and sold by Holders in any Registration Statement, including the Initial Registration Statement, pursuant to Rule 415 or any other basis, the Company may reduce the number of Registrable Securities included in such Registration Statement on behalf of the Holders in whole or in part (in case of an exclusion as to a portion of such Registrable Securities, such portion shall be allocated pro rata among such Holders first in proportion to the respective numbers of Registrable Securities requested to be registered by each such Holder over the total amount of Registrable Securities) (such Registrable Securities, the “Reduction Securities”). In such event the Company shall give the Holders prompt notice of the number of such Reduction Securities excluded and the Company will not be liable for any damages under this Agreement in connection with the exclusion of such Reduction Securities. The Company shall use its commercially reasonable efforts to file with the Commission, as promptly as allowed by the Commission, one or more registration statements on Form S-3 or, if the Company is ineligible to register for resale the Registrable Securities on Form S-3, such other form available to register for resale all of the Reduction Securities that were not registered for resale on the Initial Registration Statement, as amended, or the New Registration Statement (the “Remainder Registration Statements”). Such Remainder Registration Statements shall contain (except if otherwise required pursuant to written comments received from the Commission upon a review of any such Registration Statement) the “Plan of Distribution” in substantially the form attached hereto as Annex A (which may be modified to respond to comments, if any, provided by the Commission). The Company shall use its commercially reasonable efforts to cause each such Remainder Registration Statement to be declared effective under the Securities Act no later than the Effectiveness Date, and shall use its commercially reasonable efforts to keep each such Remainder Registration Statement continuously effective under the Securities Act during the entire Effectiveness Period, subject to Section 7(c) hereof. Notwithstanding the foregoing, the Company shall be entitled to suspend the effectiveness of a Remainder Registration Statement at any time prior to the expiration of the Effectiveness Period for an aggregate of no more than 30 consecutive Trading Days or an aggregate of 60 Trading Days (which need not be consecutive) in any given 360-day period.

3. Registration Procedures. In connection with the Company’s registration obligations hereunder, the Company shall: Not less than three Trading Days prior to the filing of a Registration Statement or any related Prospectus or any amendment or supplement thereto, furnish to the Holders copies of all such documents proposed to be filed (other than those incorporated by reference). Notwithstanding the foregoing, the Company shall not be required to furnish to the Holders any prospectus supplement being prepared and filed solely to name new or additional selling stockholders unless such Holders are named in such prospectus supplement. In addition, in the event that any Registration Statement is on Form S-1 (or other form which does not permit incorporation by reference), the Company shall not be required to furnish to the Holders any prospectus supplement containing information included in a report or proxy statement filed under the Exchange Act that would be incorporated by reference in such Registration Statement if such Registration Statement were on Form S-3 (or other form which permits incorporation by reference). The Company shall duly consider any comments made by Holders and received by the Company not later than two Trading Days prior to the filing of the Registration Statement, but shall not be required to accept any such comments to which it reasonably objects.

(a) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to each Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement continuously effective as to the applicable Registrable Securities for its Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities; (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement, and as so supplemented or amended to be filed pursuant to Rule 424; (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to each Registration Statement or any amendment thereto; and (iv) comply in all material respects with the provisions of the Securities Act and the Exchange Act with respect to the Registration Statements and the disposition of all Registrable Securities covered by each Registration Statement; provided, however, that each Holder shall be responsible for the delivery of the Prospectus to the Persons to whom such Holder sells any of the Series X Preferred Stock (including in accordance with Rule 172 under the Securities Act), and each Holder agrees to dispose of Registrable Securities in compliance with the “Plan of Distribution” described in the Registration Statement and otherwise in compliance with applicable federal and state securities laws.

(b) Notify the Holders (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably practicable (and, in the case of (i)(A) below, not less than three Trading Days prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one Trading Day following the day: (i)(A) when a Prospectus or any prospectus supplement (but only to the extent notice is required under Section 3(a) above) or post-effective amendment to a Registration Statement is proposed to be filed; (B) when the Commission notifies the Company in writing whether there will be a “review” of such Registration Statement and whenever the Commission comments in writing on such Registration Statement (in which case the Company shall, solely to the extent such comments relate to the selling stockholders or the Plan of Distribution, provide true and complete copies thereof and all written responses thereto to each of the Holders that pertain to the Holders as a selling stockholder or to the Plan of Distribution, but not information which the Company believes would constitute material non-public information); and (C) with respect to each Registration Statement or any post-effective amendment, when the same has been declared effective; (ii) of any request by the Commission or any other Federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information that pertains to the Holders as selling stockholders or the Plan of Distribution; (iii) of the issuance by the Commission of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose; (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose; (v) of the occurrence of any event or passage of time that makes the financial statements included or incorporated by reference in a Registration Statement ineligible for inclusion or incorporation by reference therein or any statement made in such Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to such Registration Statement, Prospectus or other documents so that, in the case of such Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus; provided, that any and all of such information shall remain confidential to each Holder until such information otherwise becomes public, unless disclosure by a Holder is required by law.

(c) Use its commercially reasonable efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(d) If requested by a Holder, furnish to such Holder, without charge, at least one conformed copy of each Registration Statement and each amendment thereto and all exhibits to the extent reasonably requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission; provided, that the Company shall have no obligation to provide any document pursuant to this clause that is available on the Commission's EDGAR system.

(e) If requested by a Holder, promptly deliver to such Holder, without charge, as many copies of each Prospectus or Prospectuses (including each form of prospectus) and each amendment or supplement thereto as such Persons may reasonably request. Subject to Section 7(c) hereof, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto.

(f) Prior to any public offering of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of those jurisdictions within the United States as any Holder reasonably requests in writing to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by the Registration Statements; provided, that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or subject the Company to any material tax in any such jurisdiction where it is not then so subject.

(g) If requested by a Holder, to exercise commercially reasonable efforts to cause the Company's transfer agent to take all necessary actions and to otherwise cooperate with such Holder to facilitate the timely preparation and delivery of certificates or book-entry statements representing Registrable Securities to be delivered to a transferee pursuant to the Registration Statements, which certificates or book-entry statements shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may reasonably request.

(h) Upon the occurrence of any event contemplated by clauses (v) of Section 3(c), as promptly as reasonably possible (taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event), prepare a supplement or amendment, including a post-effective amendment, to the affected Registration Statements or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, no Registration Statement nor any Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (ii) through (vi) of Section 3(c) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its commercially reasonable efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable and to update the Registration Statement to the extent required by applicable law or regulation to ensure that it contains materially accurate information with respect to the Company and no omission that would make the statements contained therein materially misleading. For the avoidance of doubt, (i) any period of time for which the availability of a Registration Statement and Prospectus are suspended pursuant to Section 2(d) and (e) shall be disregarded when determining the time period allotted this under Section 3(i), and (ii) no suspension of the availability of a Registration Statement and Prospectus hereunder shall be deemed to restrict the sale of any Registrable Securities in any other manner that may be permitted by applicable law (including, to the extent available, Rule 144).

(i) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and any Affiliate thereof, the natural persons thereof that have voting and dispositive control over the shares and any other information with respect to such Holder as the Commission requests.

4. **Holder's Obligations.** It shall be a condition precedent to the obligations of the Company to complete any registration pursuant to this Agreement with respect to the Registrable Securities of a Holder that such Holder shall timely furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required by the Company to effect and maintain the effectiveness of the registration of such Registrable Securities and shall timely execute such documents in connection with such registration as the Company may reasonably request. Any sale of any Registrable Securities by any Holder pursuant to a Prospectus delivered by such Holder shall constitute a representation and warranty by such Holder that the information regarding such Holder is as set forth in such Prospectus, and that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact regarding such Holder or omit to state any material fact regarding such Holder necessary to make the statements in such Prospectus, in the light of the circumstances under which they were made, not misleading, solely to the extent such facts are based upon information regarding such Holder furnished in writing to the Company by such Holder for use in such Prospectus.

5. **Registration Expenses.** All fees and expenses incident to the Company's performance of or compliance with its obligations under this Agreement (excluding any underwriting discounts and selling commissions and all legal fees of counsel to the Holder(s), which shall be borne solely by the Holder(s)) shall be borne by the Company whether or not any Registrable Securities are sold or transferred pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with the principal market on which the Common Stock is then listed for trading, and (B) in compliance with applicable state securities or Blue Sky laws), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing prospectuses if the printing of prospectuses is reasonably requested by the Holders of a majority of the Registrable Securities included in the Registration Statement), (iii) messenger, telephone and delivery expenses, (iv) reasonable fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) reasonable fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any underwriting, broker or similar fees or commissions of any Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders. To the extent that underwriting discounts and selling commissions are incurred in connection with the sale of Registrable Securities in an Underwritten Offering hereunder, such underwriting discounts and selling commissions shall be borne by the Holders of Registrable Securities sold pursuant to such Underwritten Offering, pro rata on the basis of the number of Registrable Securities sold on their behalf in such Underwritten Offering. Indemnification. Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, agents, partners, members, stockholders and employees of each Holder, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, agents, partners, members, stockholders and employees of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable costs of preparation and reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto (it being understood that the

Holder has approved Annex A hereto for this purpose), or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that (1) such untrue statements, alleged untrue statements, omissions or alleged omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (2) in the case of an occurrence of an event of the type specified in Section 3(c)(ii)-(v), the Losses were caused solely by the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of a Resumption Notice (as defined below) or an amended or supplemented Prospectus, but only if and to the extent that following the receipt of a Resumption Notice or the amended or supplemented Prospectus the misstatement or omission giving rise to such Loss would have been corrected; provided, however, that the foregoing indemnity shall not apply to amounts paid in settlement of any such Loss if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding of which the Company is aware in connection with the transactions contemplated by this Agreement. Indemnification by Holders Each Holder shall, notwithstanding any termination of this Agreement, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents, partners, members, stockholders or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, arising solely out of or based solely upon: (x) for so long as the Company is not eligible to use Form S-3 under the Securities Act for a primary offering in reliance on General Instruction I.B.1 of such form and the prospectus delivery requirements of the Securities Act apply to sales by such Holder, such Holder's failure to comply with the prospectus delivery requirements of the Securities Act or (y) any untrue statement of a material fact contained in any Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto, or arising solely out of or based solely upon any omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, or any form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading to the extent, but only to the extent that, (1) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose), (2) in the case of an occurrence of an event of the type specified in Section 3(c)(ii)-(v), the Losses were caused solely by the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of a Resumption Notice or an amended or supplemented Prospectus, but only if and to the extent that following the receipt of a Resumption Notice or the amended or supplemented Prospectus the misstatement or omission giving rise to such Loss would have been corrected or (3) to the extent that any such Losses arise out of the Purchaser's (or any other indemnified Person's) failure to send or give a copy of the Prospectus or supplement (as then amended or supplemented), if required, pursuant to Rule 172 under the Securities Act (or any successor rule) to the Persons asserting an untrue statement or alleged untrue statement or alleged untrue statement or omission or alleged omission at or prior to the written confirmation of the sale of Registrable Securities to such Person if such statement or omission was corrected in such Prospectus or supplement; provided, however, that the foregoing indemnity shall not apply to amounts paid in settlement of any such Loss if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld, conditioned or delayed). In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation. Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party. An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party); provided, that the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys at any time for all Indemnified Parties pursuant to this Section 6(c). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld, delayed or conditioned. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder; provided, that the Indemnifying Party may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification hereunder).

(a) Contribution. If a claim for indemnification under Section 6(a) or 6(b) is unavailable to an Indemnified Party (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in

Section 6(c), any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 6(d), no Holder shall be required to contribute, in the aggregate, any amount in excess of the amount by which the proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

The indemnity and contribution agreements contained in this Section 6 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties and are not in diminution or limitation of the indemnification provisions under the Purchase Agreement.

6. Miscellaneous Remedies. In the event of a breach by the Company or by a Holder of any of their obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company and each Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agree that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate. Compliance. Each Holder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it in connection with sales of Registrable Securities pursuant to the Registration Statement and shall sell the Registrable Securities only in accordance with the Plan of Distribution described in the Prospectus. Discontinued Disposition. Each Holder agrees by its acquisition of such Registrable Securities that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(c), such Holder will forthwith discontinue disposition of such Registrable Securities under the Registration Statement until such Holder's receipt of the copies of the supplemented Prospectus and/or amended Registration Statement or until it is advised in writing (a "Resumption Notice") by the Company that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement. The Company may provide appropriate stop orders to its transfer agent to enforce the provisions of this paragraph. Furnishing of Information. Each Holder shall furnish in writing to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably requested by the Company to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. Amendments and Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed by the Company and the Holder or Holders (as applicable) of no less than a majority of the then outstanding Registrable Securities. The Company shall provide prior notice to all Holders of any proposed waiver or amendment. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right. Termination of Registration Rights. For the avoidance of doubt, it is expressly agreed and understood that (i) in the event that there are no Registrable Securities outstanding as of a Filing Date, then the Company shall have no obligation to file, cause to be declared effective or to keep effective any Registration Statement hereunder (including any Registration Statement previously filed pursuant to this Agreement) and (ii) all registration rights granted to the Holders hereunder, shall terminate in their entirety effective on the first date on which there shall cease to be any Registrable Securities outstanding. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be sent by confirmed electronic mail, or mailed by first-class registered or certified airmail, or nationally recognized overnight express courier, postage prepaid, and shall be deemed given when so sent in the case of electronic mail transmission, or when so received in the case of mail or courier, and addressed as follows: if to the Company, to:

Heska Corporation  
3760 Rocky Mountain Ave  
Loveland, CO 80538  
Attention: Legal Department  
Email: [\*\*\*]

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

Gibson, Dunn & Crutcher LLP  
1801 California Street  
Denver, Colorado, 80202-2642  
Attention: Robyn Zolman  
Ryan A. Murr  
Email: rzolman@gibsondunn.com  
rmurr@gibsondunn.com

If to a Purchaser: To the address set forth under such Purchaser's name on the signature pages hereto

If to any other Person who is then the registered Holder: To the address of such Holder as it appears in the stock transfer books of the Company

or such other address as may be designated in writing hereafter, in the same manner, by such Person.

(a) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or

by reason of this Agreement, except as expressly provided in this Agreement. Each Holder may assign its respective rights hereunder in the manner and to the Persons as permitted under the Purchase Agreement; provided, in each case, that (i) the Holder agrees in writing with the transferee or assignee to assign such rights and related obligations under this Agreement, and for the transferee or assignee to assume such obligations, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being transferred or assigned, (iii) at or before the time the Company received the written notice contemplated by clause (ii) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein and (iv) the transferee is an "accredited investor," as that term is defined in Rule 501 of Regulation D. Execution and Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile of ".pdf" signature were the original thereof. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflicts of law thereof. With respect to any disputes arising out of or related to this Agreement, the parties consent to the exclusive jurisdiction of, and venue in, the Court of Chancery of the State of Delaware, provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then any such legal action or proceeding may be brought in any federal court located in the State of Delaware or any other Delaware state court. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.** Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any remedies provided by law. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their good faith reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable. Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser hereunder are several and not joint with the obligations of any other Purchaser hereunder, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser hereunder. The decision of each Purchaser to purchase Securities pursuant to the Transaction Documents has been made independently of any other Purchaser. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert with respect to such obligations or the transactions contemplated by this Agreement. Each Purchaser acknowledges that no other Purchaser has acted as agent for such Purchaser in connection with making its investment hereunder and that no Purchaser will be acting as agent of such Purchaser in connection with monitoring its investment in the Shares or enforcing its rights under the Transaction Documents. Each Purchaser shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose. [Signature pages follow]

**IN WITNESS WHEREOF**, the parties have executed this Registration Rights Agreement as of the date first written above.

**HESKA CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Registration Rights Agreement as of the date first written above.

**PURCHASERS:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_



## **ANNEX A**

### **PLAN OF DISTRIBUTION**

The selling stockholders and any of their pledgees, donees, transferees, assignees or other successors-in-interest may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions. The selling stockholders may use one or more of the following methods when disposing of the shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- through brokers, dealers or underwriters that may act solely as agents;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- through the writing or settlement of options or other hedging transactions entered into after the effective date of the registration statement of which this prospectus is a part, whether through an options exchange or otherwise;
- settlement of short sales entered into after the effective date of the registration statement of which this prospectus is a part;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of disposition; and
- any other method permitted pursuant to applicable law.

The selling stockholders may also sell shares under Rule 144 under the Securities Act of 1933, as amended, or Securities Act, if available, or Section 4(a)(1) under the Securities Act, rather than under this prospectus, provided that they meet the criteria and conform to the requirements of those provisions.

If the selling stockholders effect such transactions by selling shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents engaged by the selling stockholders may arrange for other broker-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the selling stockholders (or, if any broker-dealer acts as agent for the purchaser of shares, from the purchaser) in amounts to be negotiated. The selling stockholders do not expect these commissions and discounts to exceed what is customary in the types of transactions involved.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time under this prospectus, or under a supplement or amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending, if necessary, the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus.

Each selling stockholder has informed the Company that it is not a registered broker-dealer and does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the common stock. If the Company is notified in writing by a selling stockholder that any material arrangement has been entered into with a broker-dealer for the sale of common stock through a block trade, special offering, exchange distribution or secondary distribution or a purchase by a broker or dealer, we will file a supplement to this prospectus, if required, pursuant to Rule 424(b) under the Securities Act, disclosing (i) the name of each such selling stockholder and of the participating broker-dealer(s), (ii) the number of shares involved, (iii) the price at which such shares of common stock were sold, (iv) the commissions paid or discounts or concessions allowed to such broker-dealer(s), where applicable, (v) that such broker-dealer(s) did not conduct any investigation to verify the information set out or incorporated by reference in this prospectus, and (vi) other facts material to the transaction. In addition, upon being notified in writing by a selling stockholder that a donee or pledge intends to sell more than 500 shares of common stock, the Company will file a supplement to this prospectus if then required in accordance with applicable securities law.

The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of the shares of common stock or interests in shares of common stock, the selling stockholders may enter into hedging transactions after the effective date of the registration statement of which this prospectus is a part with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of common stock short after the effective date of the registration statement of which this prospectus is

a part and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions after the effective date of the registration statement of which this prospectus is a part with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The selling stockholders and any broker-dealers or agents that are involved in selling the shares may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. The maximum commission or discount to be received by any member of the Financial Industry Regulatory Authority (FINRA) or independent broker-dealer will not be greater than eight percent of the initial gross proceeds from the sale of any security being sold.

The Company has advised the selling stockholders that they are required to comply with Regulation M promulgated under the Securities Exchange Act of 1934, as amended, during such time as they may be engaged in a distribution of the shares. The foregoing may affect the marketability of the common stock.

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. The Company will not receive any of the proceeds from this offering.

The Company is required to pay all fees and expenses incident to the registration of the shares. The Company has agreed to indemnify the selling stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act or otherwise.

The Company has agreed with the selling stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of (a) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement, or (b) the date on which the shares of common stock covered by this prospectus may be sold or transferred by non-affiliates without any volume limitations or pursuant to Rule 144 of the Securities Act.

## Exhibit B

### Irrevocable Transfer Agent Instructions

[●], 2020

Computershare Trust Company, N.A.  
8742 Lucent Blvd., Suite 225  
Highlands Ranch, CO 80129  
Attention: Brooke Webb

Ladies and Gentlemen:

Reference is made to that certain Securities Purchase Agreement, dated as of January 12, 2020 (the “**Agreement**”), by and among Heska Corporation, a Delaware corporation (the “**Company**”), and the purchasers set forth on Schedule I hereto (collectively, and including permitted transferees, the “**Holder**s”), pursuant to which the Company is issuing to the Holders shares of Series X Convertible Preferred Stock of the Company, par value \$0.01 per share (the “**Preferred Stock**”), which are convertible into shares of Public Common Stock, par value \$0.01 per share (the “**Common Stock**”).

By this letter, you are irrevocably authorized and directed to issue an aggregate of 125,000 shares of the Company’s Preferred Stock (the “**Shares**”). The Shares should be issued as book restricted shares in the names and denominations specified on Schedule I hereto. The Shares have not been registered and are, therefore, “restricted shares.” Accordingly, the Shares should bear the following restricted legend:

NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON CONVERSION OF THESE SECURITIES HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER SAID ACT.

The Shares may be issued to any Holder in certificate form (each, a “**Certificate**” and collectively, the “**Certificates**”) upon request. The date of any Certificate issued should be [●], 2020 and should contain the aforementioned legend.

This letter shall also serve as our irrevocable authorization and direction to you (provided that you are the transfer agent of the Company at such time and the conditions set forth in this letter are satisfied), subject to any stop transfer instructions that we may issue to you from time to time, if any, to issue shares of Preferred Stock upon transfer or resale of the Shares.

You acknowledge and agree that so long as you have received written confirmation from the Company’s legal counsel that a registration statement covering resales of the Shares has been declared effective by the Securities and Exchange Commission (the “**Commission**”) under the Securities Act of 1933, as amended (the “**Securities Act**”), and a copy of such registration statement, then, unless otherwise required by law, you shall use your commercially reasonable efforts to issue the certificates representing the Shares registered in the names of such Holders or transferees, as the case may be, within five (5) Business Days of your receipt of a notice of transfer of Shares, and such certificates shall not bear any legend restricting transfer of the Shares thereby and should not be subject to any stop-transfer restriction.

A form of written confirmation from the Company’s outside legal counsel that a registration statement covering resales of the Shares has been declared effective by the Commission under the Securities Act (which confirmation shall be delivered to you upon effectiveness of the registration statement) is attached hereto as Annex A.

Please be advised that the Holders are relying upon this letter as an inducement to enter into the Agreement and, accordingly, each Holder is a third party beneficiary to these instructions.

Please execute this letter in the space indicated to acknowledge your agreement to act in accordance with these instructions.

[Signature page follows]

Very truly yours,

HESKA CORPORATION

By: \_\_\_\_\_

Name:

Title: \_\_\_\_\_

Acknowledged and Agreed:  
Computershare Trust Company, N.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2020

**EXHIBIT C**

Form of Certificate of Designations

[Attached]

**HESKA CORPORATION  
CERTIFICATE OF DESIGNATION OF PREFERENCES,  
RIGHTS AND LIMITATIONS**

**OF**

**SERIES X CONVERTIBLE PREFERRED STOCK**

PURSUANT TO SECTION 151 OF THE  
DELAWARE GENERAL CORPORATION LAW

**HESKA CORPORATION**, a Delaware corporation (the “**Corporation**”), in accordance with the provisions of Section 103 of the Delaware General Corporation Law (the “**DGCL**”) does hereby certify that, in accordance with Sections 141(c) and 151 of the DGCL, the following resolution was duly adopted by the Board of Directors of the Corporation (the “**Board**”) on January 11, 2020:

**RESOLVED**, pursuant to authority expressly set forth in the Restated Certificate of Incorporation of the Corporation, as amended (the “**Certificate of Incorporation**”), the issuance of a series of Preferred Stock designated as the Series X Convertible Preferred Stock, par value \$0.01 per share, of the Corporation is hereby authorized and the designation, number of shares, powers, preferences, rights, qualifications, limitations and restrictions thereof (in addition to any provisions set forth in the Certificate of Incorporation that are applicable to the Preferred Stock of all classes and series) are hereby fixed, and this Certificate of Designation of Preferences, Rights and Limitations of Series X Convertible Preferred Stock is hereby approved as follows:

## **SERIES X CONVERTIBLE PREFERRED STOCK**

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“**Affiliate**” means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act of 1933. With respect to a Holder, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder.

“**Business Day**” means any day except Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“**Commencement Date**” means May 1, 2020.

“**Commission**” means the Securities and Exchange Commission.

“**Common Stock**” means the Corporation’s Public Common Stock, par value \$0.01 per share, and stock of any other class of securities into which such securities may hereafter be reclassified into.

“**Conversion Price**” for the Series X Preferred Stock shall be equal to \$82.85.

“**Conversion Shares**” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Series X Preferred Stock in accordance with the terms hereof.

“**Dividend Payment Date**” shall mean the date that is 60 days after the end of each Dividend Period, unless the Board designates an earlier date that is no earlier than the first day after the end of such Dividend Period, commencing with the Dividend Period in which the Commencement Date occurs, and no later than the earliest date of payment in respect of any Parity Securities or Junior Securities with respect to any such Dividend Period.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Holder**” means any holder of Series X Preferred Stock.

“**Liquidation Preference**” means, with respect to any share of Series X Preferred Stock, as of any date, an amount equal to the sum of (x) the Stated Value and (y) accrued but unpaid dividends, if any, on such share of Series X Preferred Stock.

“**National Securities Exchange**” shall mean an exchange registered with the Commission under Section 6(a) of the Exchange Act.

“**Person**” means any individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“**Stated Value**” shall mean \$1,000 per share.

“**Trading Day**” means a day on which the Common Stock is traded for any period on a National Securities Exchange or if the Common Stock is not traded on a National Securities Exchange, on a day that the Common Stock is traded on another securities market on which the Common Stock is then being traded.

Section 2. Designation, Amount and Par Value; Assignment; Maturity.

(a) The series of Preferred Stock designated by this Certificate of Designation shall be designated as the Corporation's Series X Convertible Preferred Stock (the "**Series X Preferred Stock**") and the number of shares so designated shall be 125,000. Series X Preferred Stock shall have a par value of \$0.01 per share.

(b) The Corporation shall register shares of the Series X Preferred Stock, upon records to be maintained by the Corporation for that purpose (the "**Series X Preferred Stock Register**"), in the name of the Holders thereof from time to time. The Corporation may deem and treat the registered Holders of shares of Series X Preferred Stock as the absolute owners thereof for the purpose of any conversion thereof and for all other purposes. Shares of Series X Preferred Stock may be issued solely in book-entry form or, if requested by any Holder, such Holder's shares may be issued in certificated form. The Corporation shall register the transfer of any shares of Series X Preferred Stock in the Series X Preferred Stock Register, upon surrender of the certificates (if applicable) evidencing such shares to be transferred, duly endorsed by the Holder thereof, to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series X Preferred Stock so transferred shall be issued to the transferee and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring Holder, in each case, within ten (10) Business Days. The provisions of this Certificate of Designation are intended to be for the benefit of all Holders from time to time and shall be enforceable by any such Holder.

(c) The Series X Preferred Stock has no stated maturity. Shares of Series X Preferred Stock will remain outstanding indefinitely until converted in accordance with the terms of this Certificate of Designation or otherwise repurchased by the Corporation.

### Section 3. Dividends.

(a) From the Commencement Date, each share of Series X Preferred Stock outstanding shall accrue dividends, whether or not declared by the Board, on a daily basis, at a per annum rate of 5.75% (the "**Coupon**") on the amount of the Stated Value per share of Series X Preferred Stock ("**Preferred Dividends**"); provided, that (x) for each of the Dividend Periods ended September 30, 2021, December 31, 2021, March 30, 2022 and June 30, 2022, the Coupon shall be a per annum rate of 6.50% and (y) for the Dividend Period ended September 30, 2022 and any Dividend Period thereafter, the Coupon shall be a per annum rate of 7.25%. Such Preferred Dividends shall be non-compounding and shall be payable quarterly in cash, out of funds legally available for the payment of dividends to the Corporation's stockholders under the DGCL. If and to the extent that the Board determines that there are insufficient funds legally available for the payment of dividends to the Corporation's stockholders under the DGCL and, as a result, it elects not to pay all or any portion of the Preferred Dividend payable for a particular Dividend Period pursuant to this Section 3(a) in cash on the applicable Dividend Payment Date, then the amount of the Preferred Dividend or any portion thereof that is not paid in cash shall accrue and the Liquidation Preference would be increased by the amount of any such accrued but unpaid dividends.

(b) The amount of Preferred Dividends payable on the Series X Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

(c) Preferred Dividends payable on Series X Preferred Stock on any Dividend Payment Date and that are declared by the Board will be payable to Holders of record as of the close of business on the applicable record date, which shall be (i) the fifteenth (15th) calendar day preceding the applicable Dividend Payment Date, or, (ii) with respect to any Preferred Dividends not paid on the scheduled Dividend Payment Date therefor, such record date fixed by the Board (or a duly authorized committee of the Board) that is not more than sixty (60) nor less than ten (10) days prior to such date on which such accrued and unpaid Preferred Dividends are to be paid (each such record date, a "**Dividend Record Date**"). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

(d) The quarterly dividend periods with respect to Preferred Dividends shall commence on and include January 1, April 1, July 1 and October 1 of each year, respectively (other than the initial Dividend Period, which shall commence on and include the Commencement Date for each share of Series X Preferred Stock), and shall end on and include the last calendar day of the quarterly dividend periods ending March 31, June 30, September 30 and December 31, respectively, preceding the next Dividend Payment Date (each, a "**Dividend Period**").

(e) In addition to the Preferred Dividends, Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of the Series X Preferred Stock (on an as-if-converted-to-Common-Stock basis) equal to and in the same form, and in the same manner, as dividends (other than dividends on shares of the Common Stock payable in the form of Common Stock) actually paid on shares of the Common Stock when, as and if such dividends (other than dividends payable in the form of Common Stock) are paid on shares of the Common Stock. Other than as set forth in this Section 3, no other dividends shall be paid on shares of Series X Preferred Stock, and the Corporation shall pay no dividends (other than dividends payable in the form of Common Stock) on shares of the Common Stock unless it simultaneously complies with the previous sentence.

(f) Notwithstanding anything to the contrary herein, (i) if any shares of Series X Preferred Stock are converted into Conversion Shares in accordance with this Certificate of Designation on a Conversion Date during the period after the last day of a Dividend Period and prior to the close of business on the corresponding Dividend Record Date for such Dividend Period and the Corporation has not paid the entire amount of the Preferred Dividends payable for such corresponding Dividend Period, then the amount of the Preferred Dividends with respect to such shares of Series X Preferred Stock shall be added to the Liquidation Preference for purposes of such conversion; and (ii) if any shares of Series X Preferred Stock are converted into Conversion Shares in accordance with this Certificate of Designation on a Conversion Date during the period after the close of business on any Dividend Record Date and prior to the close of business on the corresponding Dividend Payment

Date, then the amount of the Preferred Dividends with respect to such shares of Series X Preferred Stock (the “**Residual Payments**”), at the Corporation’s option, shall either (x) be paid in cash on or prior to the date of such conversion or (y) if not paid in cash, be added to the Liquidation Preference for purposes of such conversion. For the avoidance of doubt, such accrued dividends described in the immediately preceding sentence shall include, without limitation, dividends accruing from, and including, the last day of the most recently preceding Dividend Period to, but not including, the applicable Conversion Date.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by the DGCL, the Series X Preferred Stock shall have no voting rights. However, as long as any shares of Series X Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of the Series X Preferred Stock, (i) (x) alter or change adversely the powers, preferences or rights given to the Series X Preferred Stock or (y) alter or amend this Certificate of Designation, amend or repeal any provision of, or add any provision to, the Certificate of Incorporation or bylaws of the Corporation, or file any articles of amendment, certificate of designations, preferences, limitations and relative rights of any series of preferred stock, if such action would adversely alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Series X Preferred Stock in a manner materially different than the effect on the Common Stock, regardless of whether any of the foregoing actions shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise, (ii) issue further shares of Series X Preferred Stock or increase or decrease (other than by conversion) the number of authorized shares of Series X Preferred Stock, or (iii) enter into any agreement with respect to any of the foregoing.

Section 5. Rank; Liquidation.

(a) The Series X Preferred Stock shall rank: (i) senior to all of the Common Stock; (ii) senior to any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms junior to any Series X Preferred Stock (“**Junior Securities**”); (iii) on parity with any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms on parity with the Series X Preferred Stock (“**Parity Securities**”); and (iv) junior to any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms senior to any Series X Preferred Stock (“**Senior Securities**”), in each case, as to distributions of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntarily or involuntarily.

(b) Subject to the prior and superior rights of the holders of any Senior Securities of the Corporation, upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, each Holder of shares of Series X Preferred Stock shall be entitled to: (i) receive, in preference to any distributions of any of the assets or surplus funds of the Corporation to the holders of the Common Stock and Junior Securities and *pari passu* with any distribution to the holders of Parity Securities, (x) any dividends accrued but unpaid on such shares, (y) any Residual Payments and (z) the Liquidation Preference with respect to such shares of Series X Preferred Stock, in each case, before any payments shall be made or any assets distributed to holders of any class of Common Stock or Junior Securities, and (ii) participate *pari passu* with the holders of Common Stock (on an as-converted basis) in the remaining distribution of the net assets of the Corporation available for distribution. If, upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be insufficient to pay the Holders of shares of the Series X Preferred Stock the amount required under clause (i) of the preceding sentence, then all remaining assets of the Corporation shall be distributed ratably to holders of the shares of the Series X Preferred Stock and Parity Securities.

Section 6. Conversion.

(a) Conversions at Option of Holder. Subject to Section 6(d)(v), each share of Series X Preferred Stock shall be convertible, at any time and from time to time from and after the date such share is issued and subject to Section 6(d)(iii), at the option of the Holder thereof, into a number of shares of Common Stock equal to the Conversion Ratio. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a “**Notice of Optional Conversion**”), duly completed and executed. Other than a conversion following a Fundamental Transaction or following a notice provided for under Section 7(d)(ii) hereof, the Notice of Optional Conversion must specify at least a number of shares of Series X Preferred Stock to be converted equal to the lesser of (x) 1,000 shares (such number subject to appropriate adjustment following the occurrence of an event specified in Section 7(a) hereof) and (y) the number of shares of Series X Preferred Stock then held by the Holder. Provided the Corporation’s transfer agent is participating in the Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer program, the Notice of Optional Conversion may specify, at the Holder’s election, whether the applicable Conversion Shares shall be credited to the account of the Holder’s prime broker with DTC through its Deposit Withdrawal Agent Commission system (a “**DWAC Delivery**”). The “**Optional Conversion Date**”, or the date on which a conversion shall be deemed effective, shall be defined as the Trading Day that the Notice of Optional Conversion, completed and executed, is sent by facsimile to, and received during regular business hours by, the Corporation; provided, that the original certificate(s) (if any) representing such shares of Series X Preferred Stock being converted, duly endorsed, and the accompanying Notice of Optional Conversion, are received by the Corporation within two (2) Trading Days thereafter. In all other cases, the Optional Conversion Date shall be defined as the Trading Day on which the original shares of Series X Preferred Stock being converted, duly endorsed, and the accompanying Notice of Optional Conversion, are received by the Corporation.

(b) Conversions at Option of the Corporation. If the Holders have not elected to convert all outstanding shares of Series X Preferred Stock pursuant to Section 6(a), each share of Series X Preferred Stock shall be convertible, at any time and from time to time from and after the date such share is issued, at the option of the Corporation, into a number of shares of Common Stock equal to the Conversion Ratio. To convert shares of Series X Preferred Stock into Conversion Shares pursuant to this Section 6(b), the Corporation shall give written notice (the “**Notice of Forced Conversion**”) to each Holder stating that the Corporation elects to force conversion of such shares of Series X Preferred Stock pursuant to this Section 6(b) and shall state therein (A) the number of shares of Series X Preferred Stock to be converted and (B) the number of shares of Common Stock to be received by the Holder. If the Corporation validly delivers a Notice of Forced Conversion in accordance with this Section 6(b), the Corporation shall issue the Conversion Shares as soon as reasonably practicable, but not later than ten (10) Business Days

thereafter (the date of issuance of such shares, the “**Forced Conversion Date**,” and each Forced Conversion Date or Optional Conversion Date, a “**Conversion Date**”). Any partial conversion of the Series X Preferred Stock will be made on a pro rata basis based on the relative number of shares of Series X Preferred Stock held by each Holder.

(c) **Conversion Ratio.** The “**Conversion Ratio**” for each share of Series X Preferred Stock shall be equal to the Liquidation Preference of each such share divided by the Conversion Price.

(d) **Mechanics of Conversion.**

(i) **Optional Conversion.** Not later than ten (10) Trading Days after the applicable Optional Conversion Date, or if the Holder requests the issuance of physical certificate(s), ten (10) Trading Days after receipt by the Corporation of the original certificate(s) representing such shares of Series X Preferred Stock being converted, duly endorsed, and the accompanying Notice of Optional Conversion, the Corporation shall (a) deliver, or cause to be delivered, to the converting Holder a physical certificate or certificates representing the number of Conversion Shares being acquired upon the conversion of shares of Series X Preferred Stock, or (b) in the case of a DWAC Delivery (if so requested by the Holder), electronically transfer such Conversion Shares by crediting the account of the Holder’s prime broker with DTC through its DWAC system.

(ii) **Forced Conversion.** Upon a conversion at the option of the Corporation, each Holder shall promptly surrender to the Corporation the original certificate(s) (if any) representing such shares of Series X Preferred Stock being converted, duly endorsed.

(iii) **Termination of Series X Preferred Stock Rights.** Immediately prior to the close of business on the Optional Conversion Date or the Forced Conversion Date, as applicable, with respect to a conversion, a Holder shall be deemed to be the holder of record of Common Stock issuable upon conversion of such Holder’s shares of Series X Preferred Stock notwithstanding that the share register of the Corporation shall then be closed or that certificates or book-entry notations representing such Common Stock shall not then be actually delivered to such Holder. On the Optional Conversion Date or the Forced Conversion Date, as applicable, dividends shall cease to accrue on the shares of Series X Preferred Stock so converted and all other rights with respect to the shares of Series X Preferred Stock so converted, including the rights, if any, to receive notices, will terminate, except only the rights of Holders thereof to receive the number of whole, fully-paid and non-assessable shares of Common Stock into which such shares of Series X Preferred Stock have been converted.

(iv) **Available Shares of Common Stock.** Corporation covenants that at all times after receipt of stockholder approval to increase the Company’s shares of authorized Common Stock it will reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series X Preferred Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series X Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments of Section 7) upon the conversion of all outstanding shares of Series X Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and non-assessable.

(v) **Limitation on Conversion.** In the event that any Holder elects to convert shares of Series X Preferred Stock into Conversion Shares pursuant to Section 6(a), the number of shares of Common Stock into which the shares of Series X Preferred Stock can then be converted upon such exercise pursuant this Certificate of Designation shall not exceed the maximum number of unissued and otherwise unreserved shares of Common Stock which the Corporation may issue under the Certificate of Incorporation at any given time.

(vi) **Fractional Shares.** No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon the conversion of the Series X Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to receive upon such conversion, the Corporation shall pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price.

(vii) **Transfer Taxes.** The issuance of certificates for shares of the Common Stock upon conversion of the Series X Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the registered Holder(s) of such shares of Series X Preferred Stock and the Corporation shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

## **Section 7. Certain Adjustments.**

(a) **Stock Dividends and Stock Splits.** If the Corporation, at any time while this Series X Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of this Series X Preferred Stock) with respect to the then outstanding shares of Common Stock; (B) subdivides outstanding shares of Common Stock into a larger number of shares; or (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event (excluding any treasury shares of the Corporation). Any adjustment made pursuant to this Section

7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision or combination.

(b) **Fundamental Transaction.** If, at any time while this Series X Preferred Stock is outstanding, (A) the Corporation effects any merger or consolidation of the Corporation with or into another Person or any stock sale to, or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, share exchange or scheme of arrangement) with or into another Person (other than such a transaction in which the Corporation is the surviving or continuing entity and its Common Stock is not exchanged for or converted into other securities, cash or property), (B) the Corporation effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, (C) any tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which more than 50% of the Common Stock not held by the Corporation or such Person is exchanged for or converted into other securities, cash or property, or (D) the Corporation effects any reclassification of the Common Stock or any compulsory share exchange pursuant (other than as a result of a dividend, subdivision or combination covered by Section 7(a) above) to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a **"Fundamental Transaction"**), then, upon any subsequent conversion of this Series X Preferred Stock the Holders shall have the right to receive, in lieu of the right to receive Conversion Shares, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the **"Alternate Consideration"**). For purposes of any such subsequent conversion, the determination of the Conversion Ratio shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall adjust the Conversion Ratio in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Series X Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The terms of any agreement to which the Corporation is a party and pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7(b) and insuring that this Series X Preferred Stock (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction. The Corporation shall cause to be delivered to each Holder, at its last address as it shall appear upon the stock books of the Corporation, written notice of any Fundamental Transaction at least twenty (20) calendar days prior to the date on which such Fundamental Transaction is expected to become effective or close.

(c) **Calculations.** All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(d) **Notice to the Holders.**

(i) **Adjustment to Conversion Price.** Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder a notice setting forth the Conversion Ratio after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

(ii) **Other Notices.** If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Series X Preferred Stock, and shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice.

## Section 8. Miscellaneous.

(a) **Notices.** Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Optional Conversion, shall be in writing and delivered personally, by facsimile, via email, or sent by a nationally recognized overnight courier service, addressed to Heska Corporation, at 3760 Rocky Mountain Ave, Loveland, CO 80538, [\*\*\*], [\*\*\*], attention Legal Department, with a copy to (which shall not constitute notice) to: Gibson, Dunn & Crutcher LLP, 555 Mission Street, San Francisco, CA 94105-0921, Attn: Ryan Murr or such other facsimile number, email address, or mailing address as the Corporation may specify



for such purposes by notice to the Holders delivered in accordance with this Section. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder, including any Notice of Forced Conversion, shall be in writing and delivered personally, by facsimile, email, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, email address or mailing address of such Holder appearing on the books of the Corporation, or if no such facsimile number, email address, or mailing address appears on the books of the Corporation, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of: (i) the date of transmission, if such notice or communication is delivered via facsimile or email prior to 5:30 p.m. (New York City time) on any date, (ii) the date immediately following the date of transmission, if such notice or communication is delivered via facsimile or email between 5:30 p.m. and 11:59 p.m. (New York City time) on any date, (iii) the second Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

(b) Lost or Mutilated Series X Preferred Stock Certificate. If a Holder's Series X Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series X Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership thereof, reasonably satisfactory to the Corporation and, in each case, customary and reasonable indemnity, if requested. Applicants for a new certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Corporation may prescribe.

(c) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation. Any waiver by the Corporation or a Holder must be in writing. Notwithstanding any provision in this Certificate of Designation to the contrary, any provision contained herein and any right of the Holders of Series X Preferred Stock granted hereunder may be waived as to all shares of Series X Preferred Stock (and the Holders thereof) upon the written consent of the Holders of not less than a majority of the shares of Series X Preferred Stock then outstanding, unless a higher percentage is required by the DGCL, in which case the written consent of the Holders of not less than such higher percentage shall be required.

(d) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

(e) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

(f) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

(g) Status of Converted Series X Preferred Stock. If any shares of Series X Preferred Stock shall be converted or redeemed by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series X Preferred Stock.

\*\*\*\*\*

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Designation this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER  
IN ORDER TO CONVERT SHARES OF SERIES X PREFERRED STOCK)

The undersigned Holder hereby irrevocably elects to convert the number of shares of Series X Preferred Stock indicated below, represented by stock certificate No(s). [ ● ] (the "**Preferred Stock Certificates**"), into shares of Public Common Stock, par value \$0.01 per share (the "**Common Stock**"), of Heska Corporation, a Delaware corporation (the "**Corporation**"), as of the date written below. If securities are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. Capitalized terms utilized but not defined herein shall have the meaning ascribed to such terms in that certain Certificate of Designation of Preferences, Rights and Limitations of Series X Convertible Preferred Stock (the "**Certificate of Designation**") filed by the Corporation with the Delaware Secretary of State on [ ● ], 2020.

Conversion calculations:

Date to Effect Conversion:

\_\_\_\_\_

Number of shares of Series X Preferred Stock owned prior to Conversion:

\_\_\_\_\_

Number of shares of Series X Preferred Stock to be Converted:

\_\_\_\_\_

Number of shares of Common Stock to be Issued:

\_\_\_\_\_

Address for delivery of physical certificates:

\_\_\_\_\_

or

for DWAC Delivery:

\_\_\_\_\_

DWAC Instructions:

\_\_\_\_\_

Broker no:

\_\_\_\_\_

Account no:

\_\_\_\_\_

HOLDER

By:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT D**

**ACCREDITED INVESTOR QUESTIONNAIRE  
(ALL INFORMATION WILL BE TREATED CONFIDENTIALLY)**

To: Heska Corporation

This Investor Questionnaire (“**Questionnaire**”) must be completed by each potential investor in connection with the offer and sale of the shares of Series X Convertible Preferred Stock, par value \$0.01 per share (collectively, the “**Securities**”), of Heska Corporation., a Delaware corporation (the “**Corporation**”). The Securities are being offered and sold by the Corporation without registration under the Securities Act of 1933, as amended (the “**Act**”), and the securities laws of certain states, in reliance on the exemptions contained in Section 4(a)(2) of the Act and on Regulation D promulgated thereunder and in reliance on similar exemptions under applicable state laws. The Corporation must determine that a potential investor meets certain suitability requirements before offering or selling Securities to such investor. The purpose of this Questionnaire is to assure the Corporation that each investor will meet the applicable suitability requirements. The information supplied by you will be used in determining whether you meet such criteria, and reliance upon the private offering exemptions from registration is based in part on the information herein supplied.

This Questionnaire does not constitute an offer to sell or a solicitation of an offer to buy any security. Your answers will be kept strictly confidential. However, by signing this Questionnaire, you will be authorizing the Corporation to provide a completed copy of this Questionnaire to such parties as the Corporation deems appropriate in order to ensure that the offer and sale of the Securities will not result in a violation of the Act or the securities laws of any state and that you otherwise satisfy the suitability standards applicable to purchasers of the Securities. All potential investors must answer all applicable questions and complete, date and sign this Questionnaire. Please print or type your responses and attach additional sheets of paper if necessary to complete your answers to any item.

**PART A. BACKGROUND INFORMATION**

Name of Beneficial Owner of the Securities: \_\_

Business Address: \_\_

(Number and Street)

(City) (State) (Zip Code) \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_

*If a corporation, partnership, limited liability company, trust or other entity:*

Type of entity:

State of formation: \_\_\_\_\_ Approximate date of formation: \_\_\_\_\_

Were you formed for the purpose of investing in the securities being offered?

Yes \_\_\_\_ No \_\_\_\_

*If an individual:*

Residence Address:

(Number and Street)

(City) (State) (Zip Code)

Telephone Number: (\_\_\_\_)

Age: \_\_\_\_\_ Citizenship: \_\_\_\_\_ Where registered to vote: \_\_\_\_\_

Set forth in the space provided below the state(s), if any, in the United States in which you maintained your residence during the past two years and the dates during which you resided in each state:

Are you a director or executive officer of the Corporation?

Yes \_\_\_\_ No \_\_\_\_

Social Security or Taxpayer Identification No.

**PART B. ACCREDITED INVESTOR QUESTIONNAIRE**

In order for the Company to offer and sell the Securities in conformance with state and federal securities laws, the following information must be obtained regarding your investor status. Please initial each category applicable to you as a Purchaser of Securities of the Company.

- A bank as defined in Section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined (1) in Section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity;
- (2) A broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934;
- (3) An insurance company as defined in Section 2(13) of the Securities Act;
- (4) An investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of such act;
- (5) A Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;
- (6) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;
- (7) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- (8) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;
- (9) An organization described in Section 501(c)(3) of the Internal Revenue Code, a corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the Securities, with total assets in excess of \$5,000,000;
- (10) A trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Securities, whose purchase is directed by a sophisticated person who has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of investing in the Company;
- (11) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000 (excluding the value of such persons' primary residence);
- (12) A natural person who had an individual income in excess of \$200,000 in each of the two most recent years, or joint income with that person's spouse in excess of \$300,000, in each of those years, and has a reasonable expectation of reaching the same income level in the current year;
- (13) An executive officer or director of the Company;
- (14) An entity in which all of the equity owners qualify under any of the above subparagraphs. If the undersigned belongs to this investor category only, list the equity owners of the undersigned, and the investor category which each such equity owner satisfies.

**A. FOR EXECUTION BY AN INDIVIDUAL:**

Date \_\_\_\_\_ By \_\_\_\_\_  
Print Name: \_\_\_\_\_

**B. FOR EXECUTION BY AN ENTITY:**

Entity Name: \_\_\_\_\_  
By \_\_\_\_\_  
Date \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**C. ADDITIONAL SIGNATURES (if required by partnership, corporation or trust document):**

Entity Name: \_\_\_\_\_  
By \_\_\_\_\_  
Date \_\_\_\_\_

Print Name: \_\_

Title: \_\_

Entity Name: \_\_

By \_\_

Date

Print Name: \_\_

Title: \_\_\_\_\_

*[Signature Page to Securities Purchase Agreement]*

**SUBSIDIARIES OF COMPANY**

Diamond Animal Health, Inc., an Iowa corporation

Heska Imaging, LLC, a Delaware Limited Liability Company

Heska AG, a corporation incorporated under the laws of Switzerland

Heska Canada, Limited, a corporation organized under the laws of British Columbia, Canada

Heska Australia Pty Ltd, a proprietary company organized under the laws of Australia and registered in Victoria

Heska GmbH, a corporation incorporated under the laws of Germany

Optomed SAS, a corporation incorporated under the laws of France

CVM Diagnostico Veterinario, S.L., a corporation incorporated under the laws of Spain

CVM Ecografia, S.L., a corporation incorporated under the laws of Spain

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in Heska Corporation's Registration Statements on Form S-8 (File Nos. 333-30951, 333-34111, 333-47129, 333-72155, 333-38138, 333-39448, 333-55112, 333-82096, 333-89738, 333-102871, 333-106679, 333-112701, 333-115995, 333-123196, 333-132916, 333-141737, 333-194120, 333-194122, 333-195734, 333-204036, 333-211567, and 333-225112) of our report dated February 28, 2020, relating to the December 31, 2019 and 2018 consolidated financial statements and the effectiveness of internal control over financial reporting of Heska Corporation, which appears in this Annual Report on Form 10-K.

/s/ Plante & Moran, PLLC

Denver, Colorado  
February 28, 2020

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in Heska Corporation's Registration Statements on Form S-8 (File Nos. 333-30951, 333-34111, 333-47129, 333-72155, 333-38138, 333-39448, 333-55112, 333-82096, 333-89738, 333-102871, 333-106679, 333-112701, 333-115995, 333-123196, 333-132916, 333-141737, 333-194120, 333-194122, 333-195734, 333-204036, 333-211567, and 333-225112) of our report dated March 19, 2018, relating to the December 31, 2017 consolidated financial statements of Heska Corporation, which appears in this Annual Report on Form 10-K.

/s/ EKS&H LLLP

Denver, Colorado  
February 28, 2020



**CERTIFICATION**

I, Kevin S. Wilson, certify that:

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

Dated: February 28, 2020

/s/ Kevin S. Wilson

KEVIN S. WILSON

Chief Executive Officer and President  
(Principal Executive Officer)

## CERTIFICATION

I, Catherine Grassman, certify that:

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

Dated: February 28, 2020

/s/ Catherine Grassman

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CATHERINE GRASSMAN

Executive Vice President, Chief Financial Officer  
(Principal Financial and Accounting Officer)

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Kevin S. Wilson, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Heska Corporation on Form 10-K for the year ended December 31, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Form 10-K fairly presents in all material respects the financial condition and results of operations of Heska Corporation, to the best of my knowledge.

Dated: February 28, 2020

By: /s/ Kevin S. Wilson  
Name: KEVIN S. WILSON  
Title: Chief Executive Officer and President

I, Catherine Grassman, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Heska Corporation on Form 10-K for the year ended December 31, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Form 10-K fairly presents in all material respects the financial condition and results of operations of Heska Corporation, to the best of my knowledge.

Dated: February 28, 2020

By: /s/ Catherine Grassman  
Name: CATHERINE GRASSMAN  
Title: Executive Vice President, Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to Heska Corporation and will be retained by Heska Corporation and furnished to the Securities and Exchange Commission or its staff upon request.