

Precipio, Inc.  
Form DEF 14A  
May 29, 2018

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**SCHEDULE 14A INFORMATION**

**Proxy Statement Pursuant to Section 14(a) of the  
Securities Exchange Act of 1934 (Amendment No. )**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

Precipio, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

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(1) Title of each class of securities to which transaction applies:

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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(1) Amount previously paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:



**4 Science Park**

**New Haven, Connecticut 06511**

May 29, 2018

Dear Stockholder:

You are cordially invited to attend our 2018 Annual Meeting of Stockholders, which will be held at our principal executive offices, 4 Science Park, New Haven, Connecticut, on Friday, June 15, 2018 at 9:30 a.m. local time.

At the 2018 Annual Meeting, stockholders will be asked to vote on each of the six proposals set forth in the Notice of Annual Meeting of Stockholders and the proxy statement, which describe the formal business to be conducted at the 2018 Annual Meeting and follow this letter.

It is important that your shares are represented and voted at the 2018 Annual Meeting regardless of the size of your holdings. Whether or not you plan to attend the 2018 Annual Meeting, please complete, sign, date and return the accompanying proxy card in the enclosed postage-paid envelope or vote electronically via the Internet or by telephone, if permitted by the broker or other nominee that holds your shares. Voting electronically, by telephone, or by returning your proxy card in advance of the 2018 Annual Meeting does not deprive you of your right to attend the 2018 Annual Meeting.

If you have any questions concerning the 2018 Annual Meeting and you are the stockholder of record of your shares, please contact Precipio's CEO Ilan Danieli at (203) 787 7888 ex. 536. If your shares are held by a broker or other nominee (that is, in "street name"), please contact your broker or other nominee for questions concerning the 2018 Annual Meeting.

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Thank you for your continued support. We look forward to seeing those of you who will be able to attend the 2018 Annual Meeting.

Sincerely yours,  
/S/ ILAN DANIELI  
Ilan Danieli  
Chief Executive Officer

**4 Science Park**

**New Haven, Connecticut 06511**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

Notice is hereby given that the 2018 Annual Meeting of Stockholders of Precipio, Inc. (the “Company”) will be held at our principal executive offices, 4 Science Park New Haven Connecticut, on Friday, June 15, 2018 at 9:30 a.m. local time, for the following purposes:

- (1) To elect Michael A. Luther, Ph.D. and Mark Rimer as Class III directors for terms to expire in 2021;
- (2) To hold an advisory (non-binding) vote to approve named executive compensation;
- (3) To hold an advisory (non-binding) vote on the frequency of future advisory votes on executive compensation;
- (4) To ratify the appointment of Marcum LLP as our independent registered public accounting firm for the year ending December 31, 2018;

To approve, for purposes of complying with applicable NASDAQ Listing Rules, the potential issuance of more than 20% of the Company’s common stock pursuant to a certain securities purchase agreement dated April 20, (5) 2018 (the “Agreement”) with certain investors whose names are set out in the Agreement pursuant to which the Company may issue up to approximately \$3,296,703.30 in 8% Senior Secured Convertible Promissory Notes with 100% common stock warrant coverage (the “Convertible Note Transaction”);

To approve, for purposes of complying with applicable NASDAQ Listing Rules, the potential issuance of more than 20% of the Company’s common stock to certain of the Company’s creditors and/or holders of claims against (6) the Company in exchange for cancellation of indebtedness of the Company to such creditors and/or claim holders (“Settlement Issuances Transaction”); and

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- (7) To transact such other business as may properly come before the 2018 Annual Meeting or any adjournment or postponement thereof.

Only stockholders of record at the close of business on May 23, 2018 are entitled to notice of, and to vote at, the 2018 Annual Meeting.

By Order of the Board of Directors  
/S/ ILAN DANIELI  
Ilan Danieli, *Chief Executive Officer*

Connecticut

May 29, 2018

***Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to be held on June 15, 2018:*** This Proxy Statement, the accompanying form of proxy card and our Annual Report on Form 10-K for the fiscal year ended December 31, 2017, including financial statements, are available on the Internet at <http://precipiodx.com>. Under rules issued by the Securities and Exchange Commission (the “SEC”), we are providing access to our proxy materials both by sending you this full set of proxy materials and by notifying you of the availability of our proxy materials on the Internet. The information contained on or that may be obtained from our website is not, and shall not be, deemed to be, a part of this Proxy Statement. You can review filings we make with the SEC at its website ([www.sec.gov](http://www.sec.gov)), including our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports electronically filed or furnished pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Our Code of Conduct and Ethics and the charters of our Nominating and Governance Committee, Audit Committee, and Compensation Committee of the Board of Directors may be accessed within the Investor Relations section of our website.



**4 Science Park**

**New Haven, Connecticut 06511**

**PROXY STATEMENT**

**for**

**ANNUAL MEETING OF STOCKHOLDERS**

**of**

**PRECIPIO, INC.**

**GENERAL INFORMATION**

We are sending this Proxy Statement to you in connection with our request for your proxy to use at the 2018 Annual Meeting of Stockholders (the “Annual Meeting”) of Precipio, Inc. (the “Company”), to be held on June 15, 2018 at 9:30 a.m., local time, at our offices located at 4 Science Park New Haven, Connecticut 06511. Only stockholders of record as of the close of business on May 23, 2018 (the “Record Date”) are entitled to vote at the Annual Meeting. This Proxy Statement, along with the Notice of the Annual Meeting, the Annual Report to Stockholders and a proxy card are being first mailed to stockholders on or about May 29, 2018.

Your proxy is being solicited by the Board of Directors of the Company (the “Board”) and will give each member of the Board and our Chief Executive Officer the power to vote on your behalf at the Annual Meeting. All shares of the Company’s voting stock represented by properly executed and unrevoked proxies will be voted by a member of the Board or the Chief Executive Officer in accordance with the directions given by those proxies. Where no instructions

are indicated, the Board or the Chief Executive Officer will vote as follows: (1) **“FOR”** the elections of Michael A. Luther, Ph.D. and Mark Rimer as Class III directors for terms to expire in 2021 (**“Proposal One”**), (2) **“FOR”** the approval, on an advisory (non-binding) basis, of the compensation of our named executive officers, as set forth in this Proxy Statement (**“Proposal Two”**), (3) **“FOR”** the approval on an advisory (non-binding) vote on the frequency of future advisory votes on executive compensation (**“Proposal Three”**); (4) **“FOR”** the ratification of the appointment of Marcum LLP as our independent registered public accounting firm for the year ending December 31, 2018 (**“Proposal Four”**); (5) **“FOR”** the approval, for purposes of complying with applicable NASDAQ Listing Rules, of the potential issuance of more than 20% of the Company’s common stock in respect of Convertible Note Transaction (**“Proposal Five”**) and **“FOR”** the approval, for purposes of complying with applicable NASDAQ Listing Rules, of the potential issuance of more than 20% of the Company’s common stock to certain of the Company’s creditors and/or holders of claims against the Company in exchange for cancellation of indebtedness of the Company to such creditors and/or claim holders (**“Settlement Issuances Transaction”**) (**“Proposal Six”**) (Proposals One to Six shall jointly be referred to herewith as the **“Proposals”**). In addition, the Board believes outstanding voting shares owned by current executive officers and directors of the Company will be voted **“FOR”** each of the Proposals.

You may revoke your proxy at any time before it is exercised by a member of the Board or the Chief Executive Officer at the Annual Meeting. If you decide to do this, you will need to give the Secretary of the Company written notice that you want to revoke the proxy or you can submit a new proxy to the Secretary, or submit a new vote electronically via the Internet or by telephone. In addition, if you attend the Annual Meeting in person, you may withdraw your proxy and vote in person. Stockholders entitled to vote and represented by properly executed, returned and unrevoked proxies will be considered present at the Annual Meeting for purposes of establishing a quorum. This includes shares for which votes are withheld, abstentions are cast or there are broker non-votes. The holders of our common stock representing at least a majority of our voting stock issued and outstanding on the Record Date must be present at the Annual Meeting, either in person or by proxy, in order for there to be a quorum.

Under rules that govern banks, brokers and others who have record ownership of company stock held in brokerage accounts for their clients who beneficially own the shares, these banks, brokers and other such holders who do not receive voting instructions from their clients have the discretion to vote uninstructed shares on certain matters (“discretionary matters”) but do not have discretion to vote uninstructed shares as to certain other matters (“non-discretionary matters”). A broker may return a proxy card on behalf of a beneficial owner from whom the broker has not received voting instructions that casts a vote with regard to discretionary matters but expressly states that the broker is not voting as to non-discretionary matters. The broker’s inability to vote with respect to the non-discretionary matters for which the broker has not received voting instructions from the beneficial owner is referred to as a “broker non-vote.”

Under rules related to discretionary voting and broker non-votes, banks, brokers and other such record holders are no longer permitted to vote the uninstructed shares of their customers on a discretionary basis in the election of directors or on executive compensation program matters. Because broker non-votes are not considered under Delaware law to be entitled to vote at the Annual Meeting, they will have no effect on the outcome of the vote on Proposal One (election of the Class III directors), Proposal Two (advisory (non-binding) vote to approve named executive compensation), Proposal Three (advisory (non-binding) vote on the frequency of future advisory votes on executive compensation), Proposal Five (approval, in compliance with applicable NASDAQ Listing Rules, of the potential issuance of more than 20% of the Company’s common stock in respect of the Convertible Note Transaction) and Proposal Six (approval, for purposes of complying with applicable NASDAQ Listing Rules, of the potential issuance of more than 20% of the Company’s common stock to certain of the Company’s creditors and/or holders of claims against the Company in exchange for cancellation of indebtedness of the Company to such creditors and/or claim holders (“Settlement Issuances Transaction”). As a result, if you hold your shares in street name and you do not instruct your bank, broker or other such holder how to vote your shares for Proposals One through Three and Proposals Five and Six, no votes will be cast on your behalf on these proposals. **Therefore, it is critical that you indicate your vote on these proposals if you want your vote to be counted.** Proposal Four (ratification of the appointment of Marcum LLP as our independent registered public accounting firm for the year ending December 31, 2018) should be considered a routine matter. Therefore, your broker will be able to vote on this proposal even if it does not receive instructions from you, so long as it holds your shares in its name.

## Required Votes

On the Record Date there were 19,668,572 issued and outstanding shares of our common stock. Each share of common stock is entitled to one vote on each matter to be voted on at the Annual Meeting.

***Proposal One – Election of Michael A. Luther, Ph.D. and Mark Rimer as Class III directors for terms to expire in 2021.*** The directors must be elected by a plurality vote. Our stockholders do not have the right to cumulate votes in the election of directors. If a stockholder votes to “abstain” with respect to this proposal, such stockholder’s shares will not be voted with respect to this proposal. Broker non-votes and withheld votes will not be counted as votes cast for this proposal and as such will have no impact on the outcome of this proposal.

***Proposal Two – Approval, on an advisory basis (non-binding), of the compensation of our named executive officers, as set forth in this Proxy Statement.*** The affirmative vote of a majority of the voting power present in person or represented by proxy held by the holders of our common stock at the Annual Meeting is required to approve, on an advisory basis, the compensation of our named executive officers, as set forth in this Proxy Statement. Abstentions will be counted as votes against this proposal. Broker non-votes will not be counted as votes cast for this proposal.

***Proposal Three – Approval, on an advisory basis (non-binding), on the frequency of future advisory votes on executive compensation, as set forth in this Proxy Statement.*** The affirmative vote of a majority of the voting power present in person or represented by proxy held by the holders of our common stock at the Annual Meeting is required to approve, on an advisory basis, the frequency of future advisory votes on executive compensation, as set forth in this Proxy Statement. Abstentions will be counted as votes against this proposal. Broker non-votes will not be counted as votes cast for this proposal.

***Proposal Four – Ratification of the appointment of Marcum LLP as our independent registered public accounting firm for the year ending December 31, 2018.*** The affirmative vote of a majority of the voting power present in person or represented by proxy held by the holders of our common stock at the Annual Meeting is required to ratify the appointment of Marcum LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2018. Abstentions will be counted as votes against this proposal. Broker non-votes will have no effect on the outcome of this proposal.

***Proposal Five – Approval of potential issuance of more than 20% of the Company’s common stock for the purposes of compliance with applicable NASDAQ Listing Rules in respect of the Convertible Note Transaction.*** The affirmative vote of a majority of the voting power present in person or represented by proxy held by the holders of our common stock at the Annual Meeting is required to approve the potential issuance of more than 20% of the Company’s common stock for the purposes of compliance with applicable NASDAQ Listing Rules in respect of the Transaction. Abstentions will be counted as votes against this proposal. Broker non-votes will not be counted as votes cast for this proposal.

***Proposal Six – Approval of potential issuance of more than 20% of the Company’s common stock for the purposes of compliance with applicable NASDAQ Listing Rules in respect of the Settlement Issuances Transaction.*** The affirmative vote of a majority of the voting power present in person or represented by proxy held by the holders of our common stock at the Annual Meeting is required to approve the potential issuance of more than 20% of the Company’s common stock for the purposes of compliance with applicable NASDAQ Listing Rules in respect of the Settlement Issuances Transaction. Abstentions will be counted as votes against this proposal. Broker non-votes will not be counted as votes cast for this proposal.

## **VOTING SECURITIES AND BENEFICIAL OWNERSHIP BY PRINCIPAL STOCKHOLDERS, DIRECTORS AND OFFICERS**

### **Beneficial Ownership of Common Stock**

On the Record Date there were 19,668,572 issued and outstanding shares of our common stock.

The following table provides information known to the Company with respect to beneficial ownership of the Company’s common stock by its directors, by its named executive officers, by all of its current executive officers and directors as a group, and by each person the Company believes beneficially owns more than 5% of its outstanding common stock as of April 13, 2018. Percentage ownership calculations for beneficial ownership for each person or entity are based on 19,668,572 shares outstanding as of April 13, 2018. The number of shares beneficially owned by each person or group as of April 13, 2018 includes shares of the Company’s common stock that such person or group had the right to acquire on or within 60 days after April 13, 2018, including, but not limited to, upon the exercise of options, warrants to purchase common stock or the conversion of securities into common stock. Except as otherwise indicated in the table below, addresses of named beneficial owners are in care of Precipio, Inc., 4 Science Park, New Haven, CT 06511. Beneficial ownership information of persons other than our current executive officers and directors is based on available information including, but not limited to, Schedules 13D, 13F or 13G filed with the Securities

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and Exchange Commission (the “SEC”) or information supplied by these persons.

Name of Beneficial Owner	Number of Shares Beneficially Owned	Percent of Class
Randal J. Kirk (1)	1,768,915	8.8 %
Executive Officers and Directors:		
Ilan Danieli (2)	169,714	*
Carl R. Iberger (3)	17,060	*
Jeffrey Cossman, M.D. (4)	15,776	*
Dr. Michael A. Luther (5)	16,110	*
David S. Cohen (6)	1,086,647	5.5 %
Samuel Riccitelli (4)	15,776	*
Mark Rimer (7)	1,252,673	6.3
Douglas Fisher, M.D. (4)	15,776	*
All executive officers and directors as a group (8 persons) (8)	2,589,532	13.1 %

\* Represents beneficial ownership of less than 1% of the shares of Common Stock.

- (1) Consists of (i) 1,359,121 shares of Common Stock and (ii) 409,794 shares of Common Stock issuable upon exercise of warrants to purchase shares of Common Stock that are currently exercisable. Based solely on information provided to the Company by the stockholder and disclosed in a Schedule 13D/A filed on September 5, 2017. The total of the shares of Common Stock and the warrants to purchase shares of Common Stock are held by the following companies: Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, Third Security Incentive 2010 LLC and Third Security Staff 2014 LLC. These companies are managed by Third Security, LLC, which is managed by Randal J. Kirk. Mr. Randal J. Kirk could be deemed to have indirect beneficial ownership of these shares. The business address of these beneficial owners is 1881 Grove Avenue, Radford, Virginia 24141.
- (2) Consists of 169,714 shares of Common Stock owned by IDP Holdings, LLC. Mr. Danieli is the sole member and manager of IDP Holdings, LLC.
- (3) Consists of 17,060 shares of Common Stock owned by Mr. Iberger.
- (4) Consists of 15,776 shares of Common Stock issuable upon the exercise of stock options that are exercisable or will become exercisable within 60 days after April 13, 2018.
- (5) Consists of 16,110 shares of Common Stock issuable upon the exercise of stock options that are exercisable or will become exercisable within 60 days after April 13, 2018.

- (6) Consists of (i) 860,881 shares of Common Stock; (ii) 210,379 shares of Common Stock issuable upon exercise of warrants to purchase shares of Common Stock that are currently exercisable; and (iii) 15,387 shares of Common Stock issuable upon the exercise of stock options that are exercisable or will become exercisable within 60 days after April 13, 2018. Based on information provided to the Company by the stockholder and disclosed in a Schedule 13G filed on July 11, 2017. The business address for David S. Cohen is 299 Bishop Avenue, Bridgeport, Connecticut 06610.

- (7) Consists of (i) 686,874 shares of Common Stock held by Chenies Investor LLC; (ii) 340,913 shares of Common Stock held by Chenies Management LLC; (iii) 4,179 shares of Common Stock held by Precipio Employee Holdings, LLC; (iv) warrants to purchase 175,390 shares of Common Stock held by Chenies Investor LLC; (v) warrants to purchase 29,541 shares of Common Stock held by Chenies Management LLC; and (vi) 15,776 shares of Common Stock issuable upon the exercise of stock options that are exercisable or will become exercisable within 60 days after April 13, 2018 held directly by Mr. Rimer. Mr. Rimer is managing member of Chenies Investor LLC and Chenies Management LLC. Based on information provided to the Company by the stockholder and disclosed in a Schedule 13D/A filed on October 17, 2017.

- (8) Includes shares which may be acquired by executive officers and directors as a group within 60 days after April 13, 2018 through the exercise of stock options or warrants.

## **PROPOSAL ONE: ELECTION OF DIRECTORS**

### **Board of Directors and Committees**

Our Board consists of seven directors. The Board is divided into three classes with directors in each class serving for a term of three years. The terms of office of the current Class I, Class II and Class III directors will expire in 2019, 2020 and 2018, respectively. Our directors are elected by the holders of our common stock. There are two directors in each of Class I and Class III and three directors in Class II.

Ilan Danieli and David Cohen are Class I directors, Samuel Riccitelli, Douglas Fisher, M.D. and Jeffrey Cossman, M.D. are Class II directors and Michael A. Luther, Ph.D. and Mark Rimer are Class III directors.

The Board has nominated Michael A. Luther, Ph.D. and Mark Rimer for election by the stockholders as the Class III directors to serve three-year terms expiring in 2021. Each of the nominated directors has expressed his intention to continue to serve on the Board if elected. There are no arrangements or understandings between each of the directors and any other person pursuant to which they were selected as nominees.



Our Amended and Restated Bylaws provide that directors are elected by a plurality vote. Therefore, our directors will be elected as if they are the nominees receiving the highest number of affirmative votes. This means that votes withheld and broker non-votes with respect to the election of the directors will have no effect on the election of such directors. If one of the directors is unable to serve as a director, the Board may nominate a substitute nominee. In that case, the Board will vote all valid proxies that voted in favor of the director that is unable to serve, for the election of the substitute nominee.

Certain biographical information regarding our director nominees and directors continuing in office after the Annual Meeting, including their ages as of May 23, 2018 and the dates that they were first elected to our Board, is set forth below. In each individual's biography we have highlighted specific experience, qualifications, and skills that have led the Board to conclude that such individual is a valued member of our Board. In addition to these specific attributes, all of our directors have significant expertise in one or more areas of importance to our business and have high-level managerial experience in relatively complex organizations or are accustomed to dealing with complex problems. We believe all of our directors are individuals of high character and integrity, are able to work well with others, and have sufficient time to devote to the affairs of our company.

**The Board of Directors recommends that you vote "FOR" the director nominees named in Proposal One.**

### **Vote Required**

The directors must be elected by the affirmative vote of a plurality of the outstanding common stock. Our stockholders do not have the right to cumulate votes in the election of directors. If a stockholder votes to "abstain" with respect to this proposal, such stockholder's shares will not be voted with respect to this proposal. Broker non-votes and withheld votes will not be counted as votes cast for this proposal and as such will have no impact on the outcome of this proposal.

**Information about our Board of Directors**

<b>NAME</b>	<b>AGE</b>	<b>Position</b>	<b>Board member since year</b>	<b>Term expiry</b>
Ilan Danieli	46	Chief Executive Officer and Director	2017	2019
Michael Luther, Ph.D.	61	Director, Member of Audit Committee and Compensation Committee	2014	2018
David Cohen	59	Director	2017	2019
Douglas Fisher, M.D.	41	Director, Member of the Compensation Committee and Audit Committee	2017	2020
Jeffrey Cossman, M.D.	70	Director, Member of the Compensation Committee and the Nominating and Corporate Governance Committee	2017	2020
Samuel Riccitelli	59	Chairman, Director, Member of the Audit Committee and the Nominating and Corporate Governance Committee	2017	2020
Mark Rimer	36	Director, Member of the Compensation Committee and the Nominating and Corporate Governance Committee	2017	2018

***Samuel Riccitelli***

Mr. Riccitelli has been an independent consultant since February 2017. Mr. Riccitelli served as President and Chief Executive Officer from October 2012 to February 2017 and on the Board of Directors since June 2014 of Miragen Therapeutics, Inc. (formerly Signal Genetics, Inc.), a publicly traded molecular diagnostic company. From July 2011 to October 2012, Mr. Riccitelli was an independent consultant. From October 2001 to June 2011, he served as the Executive Vice President and Chief Operating Officer of Genoptix, Inc., a publicly traded diagnostic services company focused on the needs of community hematologists and oncologists. From 1995 to 2001, he served in a number of research and development and general management leadership positions for Becton, Dickinson and Company. From 1989 to 1994, he served in several positions at Puritan-Bennett Corporation, including, most recently, as general manager. Mr. Riccitelli has served as a member of the board of directors of Orthopediatrics, Inc. since December 2017. Mr. Riccitelli also served on the Board of Directors of Exagen Diagnostics, Inc. from October 2011 to September 2014. He received a B.A. in Biology from Washington and Jefferson College and a M.S. Eng. degree from The University of Texas in Mechanical & Biomedical Engineering. Mr. Riccitelli was appointed as director of the Company since the Merger on June 2017. We believe Mr. Riccitelli's deep experience in the diagnostics field, chiefly as COO of Genoptix, one of the industry's leading diagnostic companies; as well as his experience as CEO of Signal Genetics, a publicly-traded diagnostics company, provides substantial executive experience in both the industry, and knowledge of public markets.

***Mark Rimer***

Mr. Rimer has been a partner at Kuzari Group, a boutique private investment group with a broad mandate to invest in full or partial buy-outs, growth capital, and venture capital across a broad range of industries since September 2009. Mr. Rimer serves on the Board of Directors of several companies, including Precipio, and is actively involved in business development roles at numerous portfolio companies. Prior to joining Kuzari, Mr. Rimer worked for a London-based private equity group, RP Capital Group, managing a number of investments across several emerging markets. Mr. Rimer is a Chartered Accountant, earned an undergraduate degree in Politics and Economics from Bristol University and an MBA from the NY Stern School of Business. Mr. Rimer was appointed as director of the Company in March 2012. Mr. Rimer has been an investor in Precipio from its inception. He brings with him not only a strong financial, accounting and investment background, but also a deep familiarity with the Company's business model and its evolution over the years.

***Jeffrey Cossman, M.D.***

Dr. Cossman was a founder of and served as Chief Executive Officer and Chairman of the Board at United States Diagnostic Standards, Inc. from 2009 to 2014, and as a member of the Board of The Personalized Medicine Coalition from 2008 to 2014. Prior to that, he served as Chief Scientific Officer and as member of the Board of Directors of The Critical Path Institute, and as Medical Director of Gene Logic, Inc. He was Professor and Chairman of the Department of Pathology at Georgetown University Medical Center where he held the Oscar Benwood Hunter Chair of Pathology and he served as Senior Investigator in Hematopathology at the National Cancer Institute. He is currently a medical advisor to Epigenomics AG. Dr. Cossman holds a B.S. from the University of Michigan and an M.D. from the University of Michigan Medical School. He is board-certified in pathology and trained in pathology and hematopathology at the University of Michigan, Stanford University and the National Institutes of Health. Dr. Cossman was appointed as director of the Company since September 2017. The Board believes that, as former chair of the department of pathology of Georgetown University, a premier academic institution, Dr. Cossman provides significant insight and guidance as to how the company should execute on its model. Furthermore, his experience in the molecular field is significant to the Company's strategy.

***Douglas Fisher, M.D.***

Dr. Fisher is currently an Executive in Residence at InterWest Partners LLC, a venture capital firm, where he has worked since March 2009. Dr. Fisher also works and serves as the Chief Business Officer at Sera Prognostics, Inc. since January 2015. Prior to joining InterWest, Dr. Fisher served as Vice President of New Leaf Venture Partners LLC, a private equity and venture capital firm, from January 2006 to March 2009. Prior to joining New Leaf, Dr. Fisher was a project leader with The Boston Consulting Group, Inc., a global management consulting firm, from November 2003 to February 2006. He currently serves on the board of Obalon Therapeutics, Inc., Gynesonics, Inc. and Indi Molecular, Inc., and previously served on the board of QuatRx Pharmaceuticals Company, Cardiac Dimensions, PMV Pharmaceuticals, Inc. and Sera Prognostics, Inc. Dr. Fisher holds an A.B. and a B.S. from Stanford University, an M.D. from the University of Pennsylvania School of Medicine and an MBA from The Wharton School of Business at the University of Pennsylvania. Mr. Fisher was appointed as director of the Company since September 2017. Dr. Fisher's diverse background as both a physician, and an investor in biotech markets, is extremely beneficial to the Board in planning the Company's strategic growth and how to approach and manage the financial markets

***David Cohen***

Mr. Cohen is the Chief Operating Officer and co-owner of Standard Oil of Connecticut, Inc., the largest independent petroleum retailing company in Connecticut. He founded several highly successful ventures, including: Standard Security Systems, a provider of electronic security services; ResCom Energy, a multi-state supplier of deregulated electricity; Moneo Technology Solutions, a provider of security and network infrastructure solutions; and My Gene

Counsel, a cancer bioinformatics company. Mr. Cohen is also a highly experienced investor in numerous start-up and early stage businesses. He currently serves on the Boards of: eBrevia, Emme Controls, Foresite MSP, My Gene Counsel, The Platt & LaBonia Company, and Sirona Medical Technologies. Mr. Cohen holds a B.A. from Harvard College and an MBA from the Harvard Business School. Mr. Cohen was appointed as director of the Company since November 2017. Mr. Cohen brings to the Board a wealth of experience as a serial entrepreneur that has built several successful companies, as well as a strong investment track record. Mr. Cohen has been an early-stage investor in Precipio and brings his deep familiarity of the business to help guide management and the Board in its strategy.

***Michael A Luther, Ph.D.***

Dr. Luther has served as President and Chief Executive Officer of Bantam Pharmaceutical, LLC, a pharmaceutical company focused on the discovery and development of compounds to treat cancer with a focus on RNA translation, since March 2016. From October 2013 to October 2015, Dr. Luther was Senior Vice President and General Manager, Discovery and Development Services, at Albany Molecular Research, Inc. (NASDAQ: AMRI), a global contract research and manufacturing organization offering drug discovery, development and manufacturing services, where he was responsible for the strategic, operational and business development activities for Albany Molecular Research, Inc.'s global discovery and development divisions. From August 2012 to September 2013, Dr. Luther was Corporate Vice President of Global Discovery Research Services at Charles River Laboratories (NYSE: CRL), a global provider of products and services to pharmaceutical and biotechnology companies, government agencies and academic institutions, where he served as the general manager of the firm's discovery business unit, including developing and implementing strategic and operating plans.

Prior to his role at Charles River, from March 2009 to August 2012, he was President and a member of the Board of Directors of the David H. Murdock Research Institute, a non-profit contract research organization located in Kannapolis, North Carolina, where he led and directed all activities of the institute, including applied research and development activities. From November 2006 to March 2009, Dr. Luther held the position of Vice President and Site Head at Merck Frosst, a pharmaceutical company in Montreal, Canada, focused on the delivery of Phase I product candidates from target to clinic for novel therapeutics in respiratory and metabolic disorders. Prior to Merck Frosst, from 1991 to 2006, he held positions of increasing responsibilities at GlaxoSmithKline, a global healthcare company that researches and develops a broad range of innovative medicines and brands, culminating in his appointment as Vice President, High Throughput Biology.

Dr. Luther holds a Bachelor of Science degree in Biology and Chemistry from North Carolina State University, a Master in Business Administration from Duke University, Fuqua School of Business, and a Ph.D. in Biophysical Chemistry from Saint Louis University School of Medicine. He served as a member of the Board of Directors of Islet Sciences, Inc., a biopharmaceutical company (OTC: ISLT), from March 2014 to June 2015. The Board selected Dr. Luther to serve as a director because it believes he possesses valuable experience in the healthcare and pharmaceutical industries and extensive strategic, scientific and business experience in such industries, which brings a unique and valuable perspective to the Board. Dr. Luther was appointed as director of the Company since April 2014.

***Ilan Danieli***

Mr. Danieli was the founder of Precipio Diagnostics LLC and has been its chief executive officer since 2011. Mr. Danieli assumed the role of Director of Precipio, Inc. at the time of the Merger. With over 20 years managing small and medium-size companies, some of his previous experiences include COO of Osiris, a publicly-traded company

based in New York City with operations in the US, Canada, Europe and Asia; VP of Operations for Laurus Capital Management, a multi-billion dollar hedge fund; and various other entrepreneurial ventures. Mr. Danieli holds an MBA from the Darden School at the University of Virginia, and a BA in Economics from Bar-Ilan University in Israel.

### **Code of Business Conduct and Ethics**

Our Board has adopted a code of ethical conduct that applies to our principal executive officer, principal financial officer and senior financial management. This code of ethical conduct is embodied within our Code of Business Conduct and Ethics, which applies to all persons associated with our Company, including our directors, officers and employees (including our principal executive officer, principal financial officer, principal accounting officer and controller). The Code of Business Conduct and Ethics is available in the Investor Relations section of our website at [www.precipiodx.com](http://www.precipiodx.com). In order to satisfy our disclosure requirements under Item 5.05 of Form 8-K, we will disclose amendments to, or waivers of, certain provisions of our Code of Business Conduct and Ethics relating to our chief executive officer, chief financial officer, chief accounting officer, controller or persons performing similar functions on our website promptly following the adoption of any such amendment or waiver. The Code provides that any waivers of, or changes to, the Code that apply to the Company's executive officers or directors may be made only by the Audit Committee. In addition, the Code includes updated procedures for non-executive officer employees to seek waivers of the Code.

## Corporate Governance

Our Board has determined that having an independent director serve as the Chairperson of the Board is in the best interests of our stockholders. Our Chairperson of the Board is Samuel Riccitelli. Ilan Danieli, CEO, is the only member of our Board who is not an independent director. We believe that this leadership structure enhances the accountability of our CEO to the Board and strengthens the Board's independence from management. While both Mr. Riccitelli and Mr. Danieli are actively engaged in significant matters affecting our Company, such as long-term strategy, we believe splitting these leadership positions enables Mr. Danieli to focus his efforts on running our business and managing our Company while permitting Mr. Riccitelli to focus on the governance of our Company, including Board oversight.

### Director Attendance at Meetings

Our Board conducts its business through meetings of our Board, both in person and telephonic, and actions taken by written consent in lieu of meetings. During the year ended December 31, 2017, our Board held four meetings. All directors attended at least 75% of the meetings of our Board and of the committees of our Board on which they served during 2017.

Our Board encourages all directors to attend our annual meetings of stockholders unless it is not reasonably practicable for a director to do so.

### *Committees of our Board of Directors*

Our Board has established and delegated certain responsibilities to its standing Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee.

### *Audit Committee*

We have a separately designated standing Audit Committee established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Audit Committee's primary duties and responsibilities include monitoring the integrity of our financial statements, monitoring the independence and



performance of our external auditors, and monitoring our compliance with applicable legal and regulatory requirements. The functions of the Audit Committee also include reviewing periodically with our independent registered public accounting firm the performance of the services for which they are engaged, including reviewing the scope of the annual audit and its results, reviewing with management and the auditors the adequacy of our internal accounting controls, reviewing with management and the auditors the financial results prior to the filing of quarterly and annual reports, reviewing fees charged by our independent registered public accounting firm and reviewing any transactions between our Company and related parties. Our independent registered public accounting firm reports directly and is accountable solely to the Audit Committee. The Audit Committee has the sole authority to hire and fire the independent registered public accounting firm and is responsible for the oversight of the performance of their duties, including ensuring the independence of the independent registered public accounting firm. The Audit Committee also approves in advance the retention of, and all fees to be paid to, the independent registered public accounting firm. The rendering of any auditing services and all non-auditing services by the independent registered public accounting firm is subject to prior approval of the Audit Committee.

The Audit Committee operates under a written charter which is available in the Investor Relations section of our website at [www.precipiodx.com](http://www.precipiodx.com). The Audit Committee is required to be composed of directors who are independent under the rules of the SEC and the listing standards of The NASDAQ Stock Market LLC (“NASDAQ”).

The current members of the Audit Committee are directors Mr. Riccitelli, the Chairperson of the Audit Committee, Dr. Fisher and Dr. Luther, all of whom have been determined by the Board to be independent under the NASDAQ listing standards and rules adopted by the SEC applicable to audit committee members. The Board has determined that Mr. Riccitelli, Dr. Fisher and Dr. Luther each qualifies as an “audit committee financial expert” under the rules adopted by the SEC and the Sarbanes Oxley Act of 2002. The Audit Committee met one time during 2017 and did not take any actions by written consent.

## REPORT OF THE AUDIT COMMITTEE

The Company's management is responsible for the preparation of the Company's financial statements and for maintaining an adequate system of internal controls and processes for that purpose. Marcum LLP ("Marcum") acts as the Company's independent registered public accounting firm and they are responsible for conducting an independent audit of the Company's annual financial statements in accordance with auditing standards generally accepted in the United States of America and issuing a report on the results of their audit. The Audit Committee is responsible for providing independent, objective oversight of both of these processes.

The Audit Committee has reviewed and discussed the Company's audited financial statements for the year ended December 31, 2017 with management of the Company and with representatives of Marcum. The Audit Committee's discussions with Marcum also included the matters required by Auditing Standard No. 16, *Communications with Audit Committees*, as adopted by the Public Company Accounting Oversight Board (PCAOB). In addition, the Audit Committee received the written disclosures and the letter from Marcum required by applicable requirements of the PCAOB regarding its communications with the Audit Committee concerning independence, and has discussed with Marcum its independence from the Company and its management.

Based on the foregoing, the Audit Committee has recommended to the Board of Directors, and the Board of Directors has approved, that the audited financial statements of the Company for the year ended December 31, 2017 be included in the Company's Annual Report on Form 10-K for filing with the SEC.

**Samuel Riccitelli**  
**Douglas Fisher, M.D.**  
**Dr. Michael Luther**

### Compensation Committee

The primary duties and responsibilities of our standing Compensation Committee are to review, modify and approve the overall compensation policies for the Company, including the compensation of the Company's Chief Executive Officer and other senior management; establish and assess the adequacy of director compensation; and approve the adoption, amendment and termination of the Company's stock option plans, pension and profit sharing plans, bonus plans and similar programs. The Compensation Committee may delegate to one or more officers the authority to make grants of options and restricted stock to eligible individuals other than officers and directors, subject to certain limitations. Additionally, the Compensation Committee has the authority to form subcommittees and to delegate authority to any such subcommittee. The Compensation Committee also has the authority, in its sole discretion, to select, retain and obtain, at the expense of the Company, advice and assistance from internal or external legal,

accounting or other advisors and consultants. Moreover, the Compensation Committee has sole authority to retain and terminate any compensation consultant to assist in the evaluation of director, Chief Executive Officer or senior executive compensation, including sole authority to approve such consultant's reasonable fees and other retention terms, all at the Company's expense.

The Compensation Committee operates under a written charter which is available on our website at [www.precipiodx.com](http://www.precipiodx.com). All members of the Compensation Committee must satisfy the independence requirements of NASDAQ applicable to compensation committee members.

The Compensation Committee currently consists of directors Dr. Luther, Mr. Rimer, Dr. Cossman and Dr. Fisher. Dr. Luther was Chairperson of the Compensation Committee from the Merger date to February 8, 2018. On February 8, 2018, Dr. Fisher was appointed Chairperson of the Compensation Committee. Each of the Compensation Committee members has been determined by the Board to be independent under NASDAQ listing standards applicable to compensation committee members. The Compensation Committee met two times during 2017 and did not take any actions by written consent.

*Nominating and Corporate Governance Committee*

The Nominating and Corporate Governance Committee identifies, reviews and evaluates candidates to serve on the Board; reviews and assesses the performance of the Board and the committees of the Board; and assesses the independence of our directors. The Nominating and Corporate Governance Committee is also responsible for reviewing the composition of the Board's committees and making recommendations to the entire Board regarding the chairpersonship and membership of each committee. In addition, the Nominating and Corporate Governance Committee is responsible for developing corporate governance principles and periodically reviewing and assessing such principles, as well as periodically reviewing the Company's policy statements to determine their adherence to the Company's Code of Business Conduct and Ethics.

The Nominating and Corporate Governance Committee has adopted a Director Nominees Consideration Policy, whereby Board candidates are identified primarily through suggestions made by directors, management and stockholders of the Company. We have implemented no material changes to the procedures by which stockholders may recommend nominees for the Board. The Nominating and Corporate Governance Committee will consider director nominees recommended by stockholders that are submitted in writing to the Company's Corporate Secretary in a timely manner and which provide necessary biographical and business experience information regarding the nominee. The Nominating and Corporate Governance Committee does not intend to alter the manner in which it evaluates candidates, including the criteria considered by the Nominating Committee, based on whether or not the candidate was recommended by a stockholder. The Board does not prescribe any minimum qualifications for director candidates, and all candidates for director will be evaluated based on their qualifications, diversity, age, skill and such other factors as deemed appropriate by the Nominating and Corporate Governance Committee given the current needs of the Board, the committees of the Board and the Company. Although the Nominating and Corporate Governance Committee does not have a specific policy on diversity, it considers the criteria noted above in selecting nominees for directors, including members from diverse backgrounds who combine a broad spectrum of experience and expertise. Absent other factors which may be material to its evaluation of a candidate, the Nominating and Corporate Governance Committee expects to recommend to the Board for selection incumbent directors who express an interest in continuing to serve on the Board. Following its evaluation of a proposed director's candidacy, the Nominating and Corporate Governance Committee will make a recommendation as to whether the Board should nominate the proposed director candidate for election by the stockholders of the Company.

The Nominating and Corporate Governance Committee operates under a written charter which is available on our website at [www.precipiidx.com](http://www.precipiidx.com). No member of the Nominating and Corporate Governance Committee may be an employee of the Company and each member must satisfy the independence requirements of NASDAQ and the SEC.

The Nominating and Corporate Governance Committee currently consists of directors Dr. Cossman, Mr. Riccitelli and Mr. Rimer, each of whom has been determined by the Board to be independent under NASDAQ listing standards. The Nominating and Corporate Governance Committee did not meet or take any actions by written consent during 2017.

Oversight of Risk Management

Risk is inherent with every business, and how well a business manages risk can ultimately determine its success. We face a number of risks, including economic risks, financial risks, legal and regulatory risks and others, such as the impact of competition. Management is responsible for the day-to-day management of the risks that we face, while our Board, as a whole and through its committees, has responsibility for the oversight of risk management. In its risk oversight role, our Board is responsible for satisfying itself that the risk management processes designed and implemented by management are adequate and functioning as designed. Our Board assesses major risks facing our Company and options for their mitigation in order to promote our stockholders' interests in the long-term health of our Company and our overall success and financial strength. A fundamental part of risk management is not only understanding the risks a company faces and what steps management is taking to manage those risks, but also understanding what level of risk is appropriate for us. The involvement of our full Board in the risk oversight process allows our Board to assess management's appetite for risk and also determine what constitutes an appropriate level of risk for our Company. Our Board regularly includes agenda items at its meetings relating to its risk oversight role and meets with various members of management on a range of topics, including corporate governance and regulatory obligations, operations and significant transactions, risk management, insurance, pending and threatened litigation and significant commercial disputes.

While our Board is ultimately responsible for risk oversight, various committees of our Board oversee risk management in their respective areas and regularly report on their activities to our entire Board. In particular, the Audit Committee has the primary responsibility for the oversight of financial risks facing our Company. The Audit Committee's charter provides that it will discuss our major financial risk exposures and the steps we have taken to monitor and control such exposures. Our Board has also delegated primary responsibility for the oversight of all executive compensation and our employee benefit programs to the Compensation Committee. The Compensation Committee strives to create incentives that encourage a level of risk-taking behavior consistent with our business strategy.

We believe the division of risk management responsibilities described above is an effective approach for addressing the risks facing our Company and that our Board's leadership structure provides appropriate checks and balances against undue risk taking.

#### **Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Exchange Act and the rules of the SEC require our directors, certain officers and beneficial owners of more than 10% of our outstanding common stock to file reports of their ownership and changes in ownership of our common stock with the SEC. We believe all Section 16 reports were filed in a timely manner during 2017.

#### **Review and Approval of Related Person Transactions**

We recognize that related person transactions can present potential or actual conflicts of interest and create the appearance that our decisions are based on considerations which may not be in our best interests or the best interests of our stockholders. Accordingly, as a general matter, we prefer to avoid related person transactions. Nevertheless, we recognize that there are situations where related person transactions may be in, or may not be inconsistent with, our best interests. Pursuant to the Audit Committee Charter, the Audit Committee is responsible for reviewing and overseeing related-party transactions as required by NASDAQ and SEC rules. Related persons include our directors, executive officers, 5% beneficial owners of our common stock or their respective immediate family members. Our Board will also review related party transactions in accordance with applicable law and the provisions of our Third Amended and Restated Certificate of Incorporation, as amended.

In addition, our Audit Committee has adopted a written Related Party Transactions Policy. Under our Related Party Transactions Policy, if any director or executive officer or any immediate family member or related entity of a related person proposes to enter into a transaction, or if the Company proposes to enter into a transaction with a 5% beneficial

owner of our common stock, then, prior to entering into such transaction, the related person must notify the Company's Compliance Officer (currently, the Chief Financial Officer) and provide sufficient knowledge regarding the proposed transaction as is reasonably available to assist the Compliance Officer in determining whether approval of the Audit Committee is required. The Audit Committee must review and consider any proposed related person transaction, and the Audit Committee will only approve the transactions it deems are fair to and in the best interests of the Company. Additionally, the Audit Committee may ratify transactions that were previously unapproved if it finds the transactions are fair to and in the best interests of the Company.

## **Director Independence**

Our Company is governed by our Board. Currently, each member of our Board, other than Ilan Danieli, Chief Executive Officer, is an independent director and all standing committees of our Board are composed entirely of independent directors, in each case under NASDAQ's independence definition applicable to boards of directors. For a director to be considered independent, our Board must determine that the director has no relationship which, in the opinion of our Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Members of the Audit Committee also must satisfy a separate SEC independence requirement, which provides that they may not accept directly or indirectly any consulting, advisory or other compensatory fee from us or any of our subsidiaries other than their directors' compensation. In addition, under SEC rules, an Audit Committee member who is an affiliate of the issuer (other than through service as a director) cannot be deemed to be independent. In determining the independence of members of the Compensation Committee, NASDAQ listing standards require our Board to consider certain factors, including but not limited to: (1) the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by us to the director, and (2) whether the director is affiliated with us, one of our subsidiaries or an affiliate of one of our subsidiaries. Under our Compensation Committee Charter, members of the Compensation Committee also must qualify as "outside directors" for purposes of Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code"), and as "non-employee directors" for purposes of Rule 16b-3 under the Exchange Act. The independent members of the Board are Dr. Michael Luther, Jeffrey Cossman, M.D., Douglas Fisher, M.D., David Cohen, Mark Rimer and Samuel Riccitelli.

## **Information Regarding Executive Officers**

Our executive officers, their ages as of May 23, 2018 and their respective positions are as follows:

### ***Ilan Danieli, Founder & Chief Executive Officer, age 46***

Mr. Danieli was the founder of Precipio Diagnostics LLC and was the Chief Executive Officer of Precipio Diagnostics LLC since 2011. Mr. Danieli assumed the role of Chief Executive Officer of Precipio, Inc. at the time of the Merger. With over 20 years managing small and medium-size companies, some of his previous experiences include COO of Osiris, a publicly-traded company based in New York City with operations in the US, Canada, Europe and Asia; VP of Operations for Laurus Capital Management, a multi-billion dollar hedge fund; and in various other entrepreneurial ventures. Ilan holds an MBA from the Darden School at the University of Virginia, and a BA in Economics from Bar-Ilan University in Israel.

### ***Carl R. Iberger, Chief Financial Officer, age 65***

Mr. Iberger was named Chief Financial Officer in October 2016. For the years 1990 through 2015, Mr. Iberger held the positions of Chief Financial Officer and Executive Vice President at Dianon Systems, DigiTrace Care Services and SleepMed, Inc. Mr. Iberger has significant diagnostic healthcare experience in mergers and acquisitions, private equity transactions, public offerings and executive management in high growth environments. Mr. Iberger holds a Masters Degree in Finance from Hofstra University and a Bachelor of Science Degree in Accounting from the University of Connecticut.

## **Family Relationships**

There are no family relationships between or among any of our executive officers or directors.



## **PROPOSAL TWO**

### **CONDUCT AN ADVISORY VOTE TO APPROVE NAMED EXECUTIVE COMPENSATION**

As required by Section 14A of the Exchange Act, we are providing our stockholders with the opportunity to approve, on a non-binding, advisory basis, the compensation of our named executive officers as disclosed in this Proxy Statement in accordance with the compensation disclosure rules of the SEC.

The advisory vote on executive compensation is a non-binding vote on the compensation of the Company's "Named Executive Officers," as described in the Compensation Discussion and Analysis section, the tabular disclosure regarding such compensation, and the accompanying narrative disclosure, set forth in this Proxy Statement. The advisory vote on executive compensation is not a vote on the Company's general compensation policies, compensation of the Company's Board of Directors, or the Company's compensation policies as they relate to risk management. The Dodd-Frank Act requires the Company to hold the advisory vote on executive compensation at least once every three years.

Our compensation policies are designed to align our key executives' compensation with both our business objectives and the interests of our stockholders. We also seek to provide compensation policies that attract, motivate and retain key executives who are critical to our success. A significant portion of the compensation we provide to our key executives is directly related to our financial performance and stockholder value.

We recommend that our stockholders review the application of our compensation philosophy and the elements of compensation provided to each named executive officer as reflected in the discussion and tables included in the "Executive Compensation" section of this Proxy Statement below.

We believe our executive compensation policies are designed appropriately and are functioning as intended to produce long-term value for our stockholders. Accordingly, we are asking our stockholders to approve the overall application of our compensation policies to our named executive officers through this advisory vote. The vote on this resolution is not intended to address any specific element of compensation, but rather the overall compensation of our named executive officers and the policies and procedures described in this Proxy Statement.

For the reasons stated above, the Board recommends that our stockholders vote "for" the following advisory resolution at our Annual Meeting:

**“RESOLVED**, that the compensation paid to the Company’s named executive officers, as disclosed in the proxy statement for the 2018 Annual Meeting of Stockholders of the Company pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the Executive Compensation, compensation tables and related narrative discussion, is hereby **APPROVED** on an advisory, non-binding basis.”

The affirmative vote of a majority of the voting power present in person or represented by proxy held by the holders of our common stock at the Annual Meeting is required to approve this advisory resolution. Because this proposal is advisory, the results of the vote on this proposal will not be binding on our Board, Compensation Committee or our management. To the extent there is any significant vote against the compensation of our named executive officers as disclosed in this Proxy Statement, however, the Compensation Committee will evaluate whether any actions are necessary in the future to address those concerns.

**The Board of Directors recommends that you vote “FOR” Proposal Two.**

**Vote Required**

The affirmative vote of the holders of a majority of the shares present and entitled to vote on the proposal at the Annual Meeting is required to approval this proposal. Abstentions will have the same effect as voting against the proposal and broker non-votes will have no effect upon the proposal.

## **PROPOSAL THREE**

### **ADVISORY VOTE ON FREQUENCY OF**

### **FUTURE NAMED EXECUTIVE OFFICER COMPENSATION VOTES**

This Proposal Three allows our stockholders the opportunity to indicate how frequently we should seek an advisory vote on the compensation of our named executive officers (i.e. the “say-on-pay” vote), such as Proposal Two included on the prior section of this Proxy statement. By voting on this Proposal Three, Stockholders may indicate whether they would prefer an advisory vote on named executive officer compensation every year, every two years, or every three years. We are required to solicit stockholder votes on the frequency of future say-on-pay proposals at least once every six years, although we may seek stockholder input more frequently.

Our Board of Directors has determined that an advisory vote on executive compensation that occurs every three years is the most appropriate alternative for our Company, and therefore our Board of Directors recommends that you vote for a three-year interval as the frequency for future advisory votes on executive compensation.

We believe that the structure of executive compensation arrangements should be in place for a number of years between stockholder advisory votes, in order to allow the Board of Directors and stockholders time to evaluate the effectiveness of those arrangements. A vote every three years will also allow stockholders to better judge our executive compensation program with respect to our long-term performance.

You may cast your vote on your preferred voting frequency by choosing the option of one year, two years or three years, or abstain from voting when you indicate your preference in response to the resolution set forth below. While this vote is advisory, and not binding on the Board of Directors, the Board of Directors will carefully consider the outcome of the vote in determining the frequency of future advisory votes on named executive officer compensation.

Stockholders will be asked at the Annual Meeting to approve the following resolution pursuant to this Proposal Three:

“**RESOLVED**, that the stockholders of the Company vote in favor of a non-binding, advisory vote to hold the say-on-pay vote at an annual meeting of stockholders every three years.”

### **Vote Required**

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The affirmative vote of the holders of a majority of the shares present and entitled to vote on the proposal at the Annual Meeting is required to approval this proposal. Abstentions will have the same effect as voting against the proposal and broker non-votes will have no effect upon the proposal.

**EXECUTIVE COMPENSATION****Summary Compensation Table**

The following table sets forth compensation awarded to, paid to or earned by our “named executive officers” for services rendered during fiscal years 2017 and 2016.

<b>Name and Principal Position</b>	<b>Year</b>	<b>Salary (\$)</b>	<b>Option Awards (\$)</b>	<b>(1) All Other Compensation (\$)</b>	<b>Total (\$)</b>
Ilan Danieli Chief Executive Officer	(2) 2017	250,000	106,666	11,979	(3) 368,645
	2016	200,000	-	17,234	(4) 217,234
Carl R. Iberger Chief Financial Officer	(5) 2017	200,000	106,666	-	306,666
	2016	53,750	-	-	53,750

(1) The amounts in this column reflect the aggregate grant date fair value of the stock option awards granted during the respective fiscal year as computed in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 718, excluding the effect of estimated forfeitures. The amounts shown do not correspond to the actual value that will be recognized by the named executive officer. The assumptions used in the calculation of these amounts are included in Note 13 “Equity Incentive Plan” to the consolidated financial statements for the year ended December 31, 2017 contained in our Annual Report on Form 10-K, as filed with the SEC on April 13, 2018.

(2) Mr. Danieli was appointed our Chief Executive Officer effective as of June 29, 2016. No employment contract has been executed at the time of this filing. Prior to the merger, Mr. Danieli was the Chief Executive Officer of Precipio Diagnostics, Inc. since November 2011.

(3) Amounts paid to Mr. Danieli in 2017 consisted of \$11,979 in health insurance.

(4) Amounts paid to Mr. Danieli in 2016 consisted of \$13,634 in health insurance and \$3,600 in other compensation.

<sup>(5)</sup> Mr. Iberger was appointed our Chief Financial Officer effective June 29, 2017. Prior to the merger, Mr. Iberger was the Chief Financial Officer of Precipio Diagnostics, Inc. since October 1, 2016.

**2017 Grants of Option Plan-Based Awards**

The following table sets forth certain information with respect to grants of plan-based awards in fiscal year 2017 to our named executive officers and directors. The stock option awards granted in fiscal year 2017 were granted under the Company's 2017 Stock Option and Incentive Plan, as amended (the "2017 Plan"). During the year ended December 31, 2017, no other equity awards were granted to our named executive officers and directors. See the notes below the table for details on option vesting schedules.

<b>Name</b>	<b>Grant Date</b>	<b>All Other Option Awards: Number of Securities Underlying Options (#)</b>	<b>Exercise or Price of Option Awards (\$/sh) <sup>(1)</sup></b>	<b>Grant Date Fair Value of Option Awards (\$) <sup>(2)</sup></b>
Ilan Danieli Stock options <sup>(3)</sup>	9/26/17	66,666	1.87	106,666
Carl R. Iberger Stock options <sup>(3)</sup>	9/26/17	66,666	1.87	106,666

<sup>(1)</sup> The exercise price of the stock awards represent the fair market value of our common stock on the date of grant as defined in the 2017 Plan.

<sup>(2)</sup> The amount in this column reflects the aggregate grant date fair value of each stock award granted to our named executive officers and directors during the fiscal year as computed in accordance with ASC 718, excluding the effect of estimated forfeitures. The amounts shown do not correspond to the actual value that will be recognized by the named executive officer. The assumptions used in the calculation of these amounts are included in Note 13 "Equity Incentive Plan" to the consolidated financial statements for the year ended December 31, 2017 contained in our Annual Report on Form 10-K, as filed with the SEC on April 13, 2018.

<sup>(3)</sup> 25% of the options shall vest on the first anniversary of the Grant and thereafter the remainder shall vest by 36 equal monthly installments (total of 4 years) and so long as the executive officer remains an employee of the Company or a Subsidiary on such dates.

**Outstanding Equity Awards at Fiscal 2017 Year-End**

The following table provides certain information concerning outstanding option awards and SARs held by our named executive officers as of December 31, 2017. As of December 31, 2016, no other equity awards granted to our named executive officers were outstanding.

Name	SARs and Option Award Grant Date	Stock Option Awards		Options Exercise Price (\$)	Option Expiration Date
		Number of Securities Underlying Unexercised Options (#) (Unexercisable)	Number of Securities Underlying Exercised Options (#)		
Ilan Danieli	9/26/2017	0	66,666	1.87	9/26/2027
Carl Iberger	9/26/2017	0	66,666	1.87	9/26/2027

(1) The award vests over a four year period. Twenty-five per cent of the options vest on the first anniversary of the Grant and thereafter the remainder shall vest by 36 equal monthly installments (total of 4 years) and so long as the executive officer remains an employee of the Company or a Subsidiary on such dates.



### **Fiscal Year 2017 Option Exercises and Stock Vested**

No stock options were exercised by either of our named executive officers during fiscal year 2017.

### **Agreements with Our Named Executive Officers**

No employment agreements have been entered into for Ilan Danieli, Chief Executive Officer, or Carl Iberger, Chief Financial Officer, as of the date of this filing. The Company intends to enter into employment agreements with the named officers but no date has been established by the Board of Directors at this time.

### **Compensation Risk Analysis**

We have reviewed our material compensation policies and practices for all employees and have concluded that these policies and practices are not reasonably likely to have a material adverse effect on us. While risk-taking is a necessary part of growing a business, our compensation philosophy is focused on aligning compensation with the long-term interests of our stockholders as opposed to rewarding short-term management decisions that could pose long-term risks.

## **DIRECTOR COMPENSATION**

It is our Board's general policy that compensation for independent directors should be a mix of cash and equity-based compensation. As part of a director's total compensation, and to create a direct linkage between corporate performance and stockholder interests, our Board believes that a meaningful portion of a director's compensation should be provided in, or otherwise based on, the value of appreciation in our common stock.

Our Board has the authority to approve all compensation payable to our directors, although our Compensation Committee is responsible for making recommendations to our Board regarding this compensation. Additionally, our Chief Executive Officer may also make recommendations or assist our Compensation Committee in making recommendations regarding director compensation. Our Board and Compensation Committee annually review our

director compensation.

*Cash Compensation*

Directors who are also our employees are not separately compensated for serving on the Board other than reimbursement for out-of-pocket expenses related to attendance at Board and committee meetings. Independent directors are paid an annual retainer of \$20,000 and receive reimbursement for out-of-pocket expenses related to attendance at Board and committee meetings. Independent directors serving on any committee of the Board are paid an additional annual retainer of \$2,500 unless they are also a chairperson of a committee. The chairperson of the Audit Committee receives an additional annual retainer of \$8,000 and the chairperson of any other committee receives an additional annual retainer of \$4,000.

In 2017, the directors were granted a non-qualified option to purchase 7,000 shares of our common stock. The options vest in full on the third anniversary of the grant date. A Complete list of the grants is set and their terms are set out below.

### Director Summary Compensation Table

The following table provides information regarding our compensation for non-employee directors during the year ended December 31, 2017. Directors who are our employees did not receive compensation for serving on the Board or its committees in fiscal year 2017.

Name	Fees Earned or Paid in Cash <sup>(3)</sup> (\$)	Option Awards (\$) <sup>(1)</sup>	Total (\$)
Samuel Riccitelli	44,000	11,200	55,200
David Cohen	30,000	8,190	38,190
Michael A. Luther, Ph.D.	45,000	11,200	56,200
Douglas Fisher	42,000	11,200	53,200
Mark Rimer	39,000	11,200	50,200
Jeffrey Cossman	42,000	11,200	53,200
Robert M. Patzig <sup>(2)</sup>	30,000	11,200	41,200

(1) The amounts reflected in this column reflect the grant date fair value of each option award granted during 2017, as determined in accordance with FASB ASC Topic 718. Actual table with grant dates and details appear below.

(2) Mr. Patzig resigned from the Board effective November, 8 2017, and the option awards included in this table were canceled as of that date.

(3) Directors are accruing cash compensation and no compensation has been paid to date.

Name	Grant Date	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Price of Option Awards (\$/sh) <sup>(1)</sup>	Grant Date Fair Value of Option Awards (\$) <sup>(2)</sup>
Riccitelli Samuel				
Stock options <sup>(4)</sup>	9/26/17	7,000	1.87	11,200
Douglas Fisher				
Stock options <sup>(4)</sup>	9/26/17	7,000	1.87	11,200
Mark Rimer				
	9/26/17	7,000	1.87	11,200

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Stock options

(4)

Michael

Luther

Stock options 9/26/17 7,000

1.87

11,200

(4)

Jeffrey

Cossaman

Stock options 9/26/17 7,000

1.87

11,200

(4)

David Cohen

Stock options 11/8/17 7,000

1.36

8,190

(4)

**Equity Compensation Plan Information**

The following equity compensation plan information summarizes plans and securities approved and not approved by security holders as of December 31, 2017.

PLAN CATEGORY	(a) <b>Number of securities to be issued upon exercise of outstanding options, warrants and rights</b>	(b) <b>Weighted-average exercise price of outstanding options, warrants and rights</b>	(c) <b>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a) )</b>	
Equity compensation plans approved by security holders	236,484	(1) \$ 7.12	441,334	(2)
Equity compensation plans not approved by security holders	—	—	—	
Total	236,484	\$ 7.12	441,334	

(1) Includes shares of our common stock issuable upon exercise of options to purchase common stock awarded under our 2006 Plan and 2017 Plan.

(2) All shares of our common stock available for future issuance are from our 2017 Plan. The 2006 Plan was terminated as to future awards on July 12, 2016.

**PROPOSAL FOUR**

**RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED**

**PUBLIC ACCOUNTING FIRM**

Our Audit Committee has appointed Marcum LLP (“Marcum”) as our independent registered public accounting firm for the year ending December 31, 2018. The Board recommends that stockholders vote for the ratification of such appointment. In the event of a negative vote on such ratification, the Board and Audit Committee will reconsider the selection, though a change will not necessarily be made. Even if the appointment is ratified, the Audit Committee may, in its discretion, direct the appointment of a different independent registered accounting firm at any time during the year if it determines that such a change would be in our stockholders’ best interests.

**The Board of Directors recommends that you vote “FOR” Proposal Four.**

**Independent Registered Public Accounting Firm**

On July 9, 2017 the Audit Committee, acting on behalf of the Board, appointed Marcum as the Company’s independent registered public accounting firm.

We expect a representative of Marcum to be present in person or by telephone at the Annual Meeting and available to respond to appropriate questions. Marcum will also have the opportunity to make a statement if they desire to do so.

The following table shows information about fees that were billed or were expected to be billed by Marcum for the fiscal years ended 2017 and 2016:

	2017	2016
Audit fees	\$353,790	\$203,000
Audit-related fees	9,015	7,965
Tax fees	3,560	24,065
All other fees	—	—
Total fees	\$366,365	\$235,030

***Audit Fees.*** Audit fees consist of services rendered for the audit of our financial statements.

***Audit-Related Fees.*** Audit-Related Fees consist of fees for assurance and related services that are reasonably related to the performance of the audit and the review of our financial statements and which are not reported under Audit Fees.

***Tax Fees.*** Tax services consist primarily of planning, advice and compliance, or return preparation, for U.S. federal, state and local, as well as international jurisdictions.

***All Other Fees.*** None.

#### **Pre-Approval of Audit and Non-Audit Services**

Under the Audit Committee Charter, the Audit Committee is required to pre-approve all audit and non-audit services to be provided to us by our independent registered public accounting firm and its member firms. All services provided by our independent registered public accounting firm in 2017 were pre-approved by the Audit Committee.

## PROPOSAL FIVE

### STOCKHOLDERS APPROVAL PRIOR TO THE ISSUANCE OF SECURITIES IN CONNECTION WITH A TRANSACTION

As disclosed in the Company's Form 8-K filed on April 23, 2018 and amended on April 26, 2018, the Company entered into a securities purchase agreement (the "Agreement") with certain investors (the "Investors"), pursuant to which the Company may issue up to approximately \$3,296,703.30 in Senior Secured Convertible Promissory Notes with 100% common stock warrant coverage (the "Transaction"). The Transaction consists of unregistered Senior Secured Convertible Notes (the "Notes"), bearing interest at a rate of 8.00% annually and an original issue discount of 9%. The initial Senior Secured Convertible Notes are convertible at a price of \$0.50 per share, provided that if the Notes are not repaid within 180 days, the conversion price will be adjusted to 80% of the lowest volume weighted average price during the prior 10 days, subject to a minimum conversion price of \$0.30 per share. The Transaction consists of a number of drawdowns. The initial closing provided the Company with \$1,660,000 of gross proceeds for the issuance of Notes with an aggregate principal of \$1,824,176. Subject to prior stockholder approval, the Investors will fund an additional \$348,099 for Notes with an aggregate principal of \$382,526 and the Company will have the option to draw down two additional tranches of \$495,950 each (\$545,000 principal amount of Notes), 120 days following the initial closing and 150 days following the initial closing.

The Notes are payable by the Company on the earlier of (i) the one year anniversary after the initial closing date or (ii) upon the closing of a qualified offering, namely the Company raising gross proceeds of at least \$7,000,000 (the "Maturity Date"). As part of the Transaction, the Investors also received warrants to purchase Common Stock of the Company (the "Warrants") that provided the Investor with the right to purchase 100% coverage shares of the Company's common stock exercisable at a 150% premium to the conversion price on the initial closing date. 50% of such Warrants have a 5-year term and 50% have a one year term.

The Company intends to use the net proceeds from the Transaction for general corporate purposes, including, but not limited to, growth of the Company's sales force and business development team, progression of the Company's product development and working capital.

NASDAQ Listing Rule 5635(d) requires stockholder approval prior to the issuance of securities in connection with a transaction (or a series of related transactions) other than a public offering involving the sale, issuance or potential issuance of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance (the "20% Threshold"). To comply with NASDAQ Listing Rules, the Notes contain a limitation on the maximum number of shares of Common Stock issuable upon conversion of the Notes and exercise of the Warrants until we obtain approval from our stockholders of issuances of Common Stock in excess of the maximum number of shares issuable under NASDAQ Listing Rule 5635(d) (the "Stockholder Approval").



The shares of Common Stock issuable upon exercise of the Warrants were not included in determining whether the number of shares issuable in the Transaction was greater than the 20% Threshold because the Warrants are not exercisable for six months following the Transaction.

The foregoing descriptions of the Securities Purchase Agreement, the Notes and the Warrants do not purport to be complete and are qualified in their entirety by reference to the full text of the transaction documents, copies of which are attached to this Proxy Statement as Annexure A, Annexure B and Annexure C, respectively.

### **Why We Are Seeking Your Approval**

We are seeking your approval of the Transaction so that we will no longer be bound by the restriction on issuances of equity securities contained in the Securities Purchase Agreement and the Notes and to ensure our compliance with NASDAQ's Listing Rules. As provided for in the Securities Purchase Agreement, subject to prior stockholder approval, the Investors will fund an additional \$348,099 for Notes with an aggregate principal of \$382,526 and we will have the option to draw down two additional tranches of \$495,950 each (\$545,000 principal amount of Notes), 120 days following the initial closing and 150 days following the initial closing. Until we obtain Stockholder Approval of the Transaction under the Securities Purchase Agreement, we will not be able to drawdown on additional funding from the Investors and we may have to restrict or cease our operations. As disclosed in our public filings with the SEC, we will need additional financing to continue operations.

### **Recommendation of the Board of Directors**

**The Board of Directors recommends that the stockholders vote "FOR" Proposal Five.**

### **Required Vote**

A quorum being present, the approval of the issuance of securities in connection with the Transaction requires the affirmative vote of a majority of the shares of our Common Stock present in person or by proxy at the Meeting and entitled to vote thereon as of the Record Date. Abstentions will have the effect of a vote AGAINST the proposal. Broker non-votes will have no effect on the proposal.

## **PROPOSAL SIX**

### **STOCKHOLDERS APPROVAL PRIOR TO THE ISSUANCE OF SECURITIES TO CREDITORS OF AND/OR HOLDERS OF CLAIMS AGAINST THE COMPANY IN EXCHANGE FOR CANCELLATION OF INDEBTEDNESS**

The Company is seeking approval by its stockholders of the potential issuance of shares of its Common Stock in excess of 20% of the number of shares of Common Stock outstanding to certain of the Company's creditors and/or holders of claims against the Company in exchange for cancellation of indebtedness of the Company to such creditors and/or claim holders (the "Settlement Issuances"). As of the date hereof, the Company has not negotiated the terms of, or entered into any agreements with its creditors or claim holders with respect to, any such issuance of shares. The issuance of shares to creditors and/or claim holders would be pursuant to the Company's registration statement on Form S-1, if and when declared effective, and would be subject to the following limitations: the price per share of Common Stock would be at least \$0.30; the aggregate maximum dollar amount of such issuances would be no greater than \$1,500,000; there will be no discount to the market price of the Company's Common Stock hence the price per share of Common Stock would be no less than \$0.30; the maximum number of shares that the Company would issue is 5,000,000 shares; and the Settlement Issuances would be made within three months of the date of the 2018 Annual Meeting of Stockholders (i.e., by September 15, 2018). Subject to the foregoing limitations, the actual price per share and dollar amount of indebtedness to be cancelled would at the discretion of the Company's Board of Directors. The ability of the Company to issue shares of Common Stock in lieu of making cash payments to its creditors would improve the Company's ability to meet its debt obligations and pay its liabilities, and therefore to achieve its business plan and generate value for its stockholders.

#### **Why We Are Seeking Your Approval**

NASDAQ Listing Rule 5635(d) requires stockholder approval prior to the issuance of securities in connection with a transaction (or a series of related transactions) other than a public offering involving the sale, issuance or potential issuance of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance (the "20% Threshold").

We are seeking your approval of the Settlement Issuances in order to enable us to conserve cash and direct our resources towards growth and improve our ability to meet our debt obligations and pay our liabilities in a manner that may be less dilutive than raising capital on the open market and to ensure our compliance with NASDAQ's Listing Rules. Until we obtain stockholder approval of the Settlement Issuances, we will not be able to issue shares of Common Stock to creditors and/or claim holders in excess of the 20% Threshold, we may be unable to meet our debt obligations and pay our liabilities, and we may have to restrict or cease our operations.

**Recommendation of the Board of Directors**

**The Board of Directors recommends that the stockholders vote “FOR” Proposal Six.**

**Required Vote**

A quorum being present, the approval of the Settlement Issuances Transaction requires the affirmative vote of a majority of the shares of our Common Stock present in person or by proxy at the Meeting and entitled to vote thereon as of the Record Date. Abstentions will have the effect of a vote AGAINST the proposal. Broker non-votes will have no effect on the proposal.

## **CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS**

We have been a party to the following transactions since January 1, 2017 in which the amount involved exceeded or will exceed \$120,000, and in which any director, executive officer or holder of more than 5% of any class of our voting stock, or any member of the immediate family of or entities affiliated with any of them, had or will have a material interest.

Between March 2017 and June 2017, Mr. Cohen, a member of our Board of Directors, purchased convertible promissory notes, or the Notes, from us in an aggregate principal amount of \$225,000 and bearing interest at 8% per year. In connection with the closing of our underwritten public offering in August 2017, or the Offering, the aggregate principal amount under the Notes, together with approximately \$50,000 in accrued interest and a redemption payment in accordance with the terms of the Notes, converted into 110,027 shares of our common stock and warrants to purchase 110,027 shares of our common stock.

In connection with the Merger with Precipio Diagnostics, LLC in June 2017, we issued to Mr. Cohen 562,708 shares of our common stock and 158,940 shares of our Series A Senior Convertible Preferred Stock, or Series A Preferred Stock, in respect of the units of Precipio Diagnostics, LLC held by Mr. Cohen. In June 2017, Mr. Cohen also purchased 26,764 shares of Series A Preferred Stock for approximately \$100,000. In connection with the closing of the Offering, all of our Series A Preferred Stock converted into shares of common stock, including shares of Series A Preferred Stock issued to the holders of Series A Preferred Stock as the Series A Preferred Payment (as defined in our Certificate of Designation of Series A Senior Convertible Preferred Stock), and we issued warrants to purchase shares of our common stock to the former holders of Series A Preferred Stock as consideration for the conversion of their shares of Series A Preferred Stock into shares of common stock. As a result of the foregoing transactions, we issued to Mr. Cohen 188,146 shares of our common stock and warrants to purchase 92,852 shares of common stock.

Between March 2017 and June 2017, Mr. Rimer, a member of our Board of Directors and an affiliate (“Mr. Rimer”), purchased convertible promissory notes, or the Notes, from us in an aggregate principal amount of \$75,000 and bearing interest at 8% per year. In connection with the closing of our underwritten public offering in August 2017, or the Offering, the aggregate principal amount under the Notes, together with approximately \$17,000 in accrued interest and a redemption payment in accordance with the terms of the Notes, converted into 29,880 shares of our common stock and warrants to purchase 29,880 shares of our common stock.

In connection with the Merger with Precipio Diagnostics, LLC in June 2017, we issued to Mr. Rimer 963,857 shares of our common stock and 257,147 shares of our Series A Senior Convertible Preferred Stock, or Series A Preferred Stock, in respect of the units of Precipio Diagnostics, LLC held by Mr. Rimer. In June 2017, Mr. Rimer also

purchased 69,586 shares of Series A Preferred Stock for approximately \$260,000. In connection with the closing of the Offering, all of our Series A Preferred Stock converted into shares of common stock, including shares of Series A Preferred Stock issued to the holders of Series A Preferred Stock as the Series A Preferred Payment (as defined in our Certificate of Designation of Series A Senior Convertible Preferred Stock), and we issued warrants to purchase shares of our common stock to the former holders of Series A Preferred Stock as consideration for the conversion of their shares of Series A Preferred Stock into shares of common stock. As a result of the foregoing transactions, we issued to Mr. Cohen 332,909 shares of our common stock and warrants to purchase 166,454 shares of common stock. In addition, in connection with the Merger, the Company issued Mr. Rimer Side Warrants to purchase an aggregate of 91,429 shares of the Company's common stock at an exercise price of \$7.00 per share (subject to adjustment).

## **VOTING AND PROXY PROCEDURES**

We request that you vote your shares by proxy following the methods as instructed by the notice: over the Internet, by telephone or by mail. If you choose to vote by mail, your shares will be voted in accordance with your voting instructions if the proxy card is received prior to or at the Annual Meeting. If you sign and return your proxy card but do not give voting instructions, your shares will be voted FOR all of the Proposals (1) to (6) above.

### **Voting by Proxy Over the Internet or by Telephone**

Stockholders whose shares are registered in their own names may vote by proxy by mail, over the Internet or by telephone. Instructions for voting by proxy over the Internet or by telephone are set forth on the notice of proxy materials. The Internet and telephone voting facilities will close at 11:59 p.m. Eastern Time on June 14,. The notice will also provide instructions on how you can elect to receive future proxy materials electronically or in printed form by mail. If you choose to receive future proxy materials electronically, you will receive an email with instructions containing a link to future proxy materials and a link to the proxy voting site. Your election to receive proxy materials electronically or in printed form by mail will remain in effect until you terminate such election.

If your shares are held in street name, the voting instruction form sent to you by your broker, bank or other nominee should indicate whether the institution has a process for beneficial holders to provide voting instructions over the Internet or by telephone. A number of banks and brokerage firms participate in a program that also permits stockholders whose shares are held in street name to direct their vote over the Internet or by telephone. If your bank or brokerage firm gives you this opportunity, the voting instructions from the bank or brokerage firm that accompany this Proxy Statement will tell you how to use the Internet or telephone to direct the vote of shares held in your account. If your voting instruction form does not include Internet or telephone information, please complete and return the voting instruction form in the self-addressed, postage-paid envelope provided by your broker. Stockholders who vote by proxy over the Internet or by telephone need not return a proxy card or voting instruction form by mail, but may incur costs, such as usage charges, from telephone companies or Internet service providers.

### **Revocability of Proxies**

Any proxy may be revoked at any time before it is exercised by filing an instrument revoking it with the Company's secretary or by submitting a duly executed proxy bearing a later date prior to the time of the Annual Meeting. Stockholders who have voted by proxy over the Internet or by telephone or have executed and returned a proxy and who then attend the Annual Meeting and desire to vote in person are requested to notify the Company's secretary in writing prior to the time of the Annual Meeting. We request that all such written notices of revocation to the Company be addressed to Carl Iberger, Secretary, c/o Precipio, Inc., at the address of our principal executive offices at 4 Science Park, New Haven, CT 06511. Our telephone number is (203) 787-7888. Stockholders may also revoke their proxy by entering a new vote over the Internet or by telephone.

### **SOLICITATION OF PROXIES**

This solicitation is made on behalf of the Board of Directors. We will bear the costs of preparing, mailing, online processing and other costs of the proxy solicitation made by the Board of Directors. Certain of our officers and employees may solicit the submission of proxies authorizing the voting of shares in accordance with the recommendations of the Board of Directors. Such solicitations may be made by telephone, facsimile transmission or personal solicitation. No additional compensation will be paid to such officers, directors or regular employees for such services. We will reimburse banks, brokerage firms and other custodians, nominees and fiduciaries for reasonable out-of-pocket expenses incurred by them in sending proxy material to stockholders.

## **IMPORTANT NOTICE REGARDING DELIVERY OF STOCKHOLDER DOCUMENTS**

### **Householding of Proxy Materials**

We have adopted a procedure approved by the SEC known as “householding.” This procedure allows multiple stockholders residing at the same address the convenience of receiving a single copy of our Notice, Annual Report and proxy materials, as applicable. This allows us to save money by reducing the number of documents we must print and mail, and helps protect the environment as well.

Householding is available to both registered stockholders (i.e., those stockholders with certificates registered in their name) and street name holders (i.e., those stockholders who hold their shares through a brokerage).



## **Registered Stockholders**

If you are a registered stockholder and have consented to our mailing of proxy materials and other stockholder information only to one account in your household, as identified by you, we will deliver or mail a single copy of our Annual Report and proxy materials, as applicable, for all registered stockholders residing at the same address. Your consent will be perpetual unless you revoke it, which you may do at any time by contacting the Householding Department of Broadridge Financial Solutions, Inc., at 51 Mercedes Way, Edgewood, NY 11717, or by calling 1-800-690-6903. If you revoke your consent, we will begin sending you individual copies of future mailings of these documents within 30 days after we receive your revocation notice. If you received a household mailing this year, and you would like to receive additional copies of our Annual Report and proxy materials, as applicable, please submit your request to our Secretary at the address of our principal executive offices at 4 Science Park, New Haven, CT 06511, who will promptly deliver the requested copy.

Registered stockholders who have not consented to householding will continue to receive copies of annual reports and proxy materials for each registered stockholder residing at the same address. As a registered stockholder, you may elect to participate in householding and receive only a single copy of annual reports or proxy materials for all registered stockholders residing at the same address by contacting Broadridge as outlined above.

## **Street Name Holders**

Stockholders who hold their shares through a brokerage may elect to participate in householding or revoke their consent to participate in householding by contacting their respective brokers.

## **Stockholder Proposals to be Presented at the Next Annual Meeting**

Any stockholder who meets the requirements of the proxy rules under the Exchange Act may submit proposals to the Board of Directors to be presented at the next annual meeting. Such proposals must comply with the requirements of Rule 14a-8 under the Exchange Act and must be submitted in writing by notice delivered or mailed by first-class United States mail, postage prepaid, to our Secretary at our principal executive offices at the address set forth above and must be received not later than January 29, 2019. If the date of the annual meeting is moved by more than 30 days from the date contemplated at the time of the previous year's proxy statement, then notice must be received within a reasonable time before we begin to print and send proxy materials in order to be considered for inclusion in the proxy materials to be disseminated by the Board of Directors for such annual meeting. We will publicly announce the deadline for submitting a proposal in a press release or in a document filed with the SEC.

Our Amended and Restated Bylaws also provide for separate notice procedures to recommend a person for nomination as a director or to propose business to be considered by stockholders at a meeting. To be considered timely under these provisions, the stockholder's notice must be received by our Secretary at our principal executive offices at the address set forth above (i) no later than 35 days prior to the date of the annual meeting; provided, however, that if less than 35 days' notice of a meeting of stockholders is given to the stockholders, such notice must be made or delivered to our Secretary not later than the close of business on the seventh day following the day on which the notice of a meeting was mailed; and (ii) in the case of a special meeting of stockholders, no later than the close of business on the tenth day following the day on which notice of the date of the meeting was mailed. Our Amended and Restated Bylaws also specify requirements as to the form and content of a stockholder's notice.

The Board of Directors, a designated committee thereof or the chairman of the meeting may refuse to acknowledge the introduction of any stockholder proposal if it is not made in compliance with the applicable notice provisions.

By Order of the Board of Directors  
/S/ ILAN DANIELI  
*Ilan Danieli, Chief Executive Officer*

New Haven, Connecticut

May 29, 2018

*Annex A*

**Securities Purchase Agreement**

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this “Agreement”) is dated as of April 20, 2018, between Precipio, Inc., a Delaware corporation (the “Company”) and the investors set forth in Schedule A attached hereto (each a “Purchaser” and collectively, the “Purchasers”).

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Rule 506 promulgated thereunder, the Company desires to issue and sell to the Purchasers, and the Purchasers, severally and not jointly, desire to purchase from the Company, securities of the Company as more fully described in this 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 Purchaser agree as follows:

ARTICLE I  
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement: (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Notes (as defined herein), and (b) the following terms have the meanings set forth in this Section 1.1:

“Acquiring Person” shall have the meaning ascribed to such term in Section 4.7.

“Action” shall have the meaning ascribed to such term in Section 3.1(j).

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Board of Directors” means the board of directors of the Company.

“Business Day” means any day except any Saturday, any Sunday, any day which is 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.

“Closing” means the closing of a purchase and sale of the Securities pursuant to Section 2.1.

“Closing Date” means the Trading Day on which all of the Transaction Documents with respect to a particular Closing have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers’ obligations to pay the relevant Subscription Amount and (ii) the Company’s obligations to deliver the corresponding Securities, in each case, have been satisfied or waived.

“Closing Statement” means the Closing Statement in the form on Annex A attached hereto.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common shares of the Company, par value \$0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Company Counsel” means Goodwin Procter LLP, with offices located at 620 Eight Avenue, New York, NY 10018.

“Disclosure Schedules” shall have the meaning ascribed to such term in Section 3.1.

“Effective Date” means the earliest of the date that (a) a Registration Statement has been declared effective by the Commission, (b) all of the Registrable Securities have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with current public information required under Rule 144 and without volume or manner-of-sale restrictions or (c) following the six-month anniversary of the Closing Date, provided that a holder of Registrable Securities is not an Affiliate of the Company, all of the Registrable Securities may be sold pursuant to an exemption from registration under Section 4(1) of the Securities Act without volume or manner-of-sale restrictions and Company counsel has delivered to the Transfer Agent a standing written unqualified opinion that resales may then be made by such holders of the Registrable Securities pursuant to such exemption which opinion shall be in form and substance reasonably acceptable to such holders.

“Evaluation Date” shall have the meaning ascribed to such term in Section 3.1(p).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Exercise Price” shall have the meaning ascribed to such term in the Warrants.

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended.

“GAAP” shall have the meaning ascribed to such term in Section 3.1(h).

“Indebtedness” shall have the meaning ascribed to such term in Section 3.1(y).

“Intellectual Property Rights” shall have the meaning ascribed to such term in Section 3.1(m).

“Legend Removal Date” shall have the meaning ascribed to such term in Section 4.1(c).

“Liens” means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Material Adverse Effect” shall have the meaning assigned to such term in Section 3.1(b).

“Material Permits” shall have the meaning ascribed to such term in Section 3.1(l).

“Maximum Rate” shall have the meaning ascribed to such term in Section 5.16.

“Notes” means up to \$3,296,703.30 principal amount of the 8% Senior Secured Convertible Promissory Notes, issued by the Company to the Purchasers hereunder, in the form of Exhibit A attached hereto.

“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.

“Purchaser Party” shall have the meaning ascribed to such term in Section 4.10.

“Registration Statement” means a registration statement under the Securities Act covering the resale of the Underlying Shares by the Purchaser as provided for herein.

“Required Approvals” shall have the meaning ascribed to such term in Section 3.1(e).

“Required Minimum” means, as of any date, 250% of the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Underlying Shares.

“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 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“SEC Reports” shall have the meaning ascribed to such term in Section 3.1(h).



“Securities” means the Notes, the Warrants and the Underlying Shares.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Security Agreement” means the Security Agreement entered into between the Company and the Purchasers as of the Closing Date.

“Short Sales” means all “short sales” as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include any sale of Securities pursuant to Rule 144).

“Subscription Amount” means the aggregate amount to be paid for Notes and Warrants purchased hereunder as specified below each Purchaser’s name on the signature page of this Agreement and next to the heading “Subscription Amount,” in United States dollars and in immediately available funds.

“Subsidiary” means any subsidiary of the Company as set forth in the SEC Reports and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange or the OTCB Bulletin Board (or any successors to any of the foregoing).

“Transaction Documents” means this Agreement, the Notes, the Warrants, the Security Agreement all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Transaction Offer” shall have the meaning set forth in Section 4.14.

“Transfer Agent” means Wells Fargo Shareowner Services, the current transfer agent of the Company, with a mailing address of 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120, and any successor transfer agent of the Company.

“Underlying Shares” means the shares of Common Stock issuable upon exercise of the Warrants.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market other than the OTC Bulletin Board, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the OTC Bulletin Board is the Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board, (c) if the Common Stock is not then listed or quoted for trading on a Trading Market and if prices for the Common Stock are then reported in the “Pink Sheets” published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of a majority in interest of the aggregate principal amount of the then outstanding Notes and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Warrants” means the Common Stock purchase warrants to be issued by the Company to the Purchasers hereunder, in the form of Exhibit C attached hereto.

## ARTICLE II PURCHASE AND SALE

2.1 Closing. Subject to the satisfaction of the conditions to closing set forth herein, an initial closing shall take place with respect to the lesser principal amount of Notes as shall equal (i) \$2,180,000, or (ii) such principal amount of Notes which when fully converted to Common Stock in accordance with the terms of the Note, inclusive of interest payable thereon, shall not exceed 19.9% of the outstanding number of shares of Common Stock of the Company on the initial closing date hereof (the “19.9% Limit”). Any principal amount of Notes and Warrants not purchased as a result of the 19.9% Limit shall be purchased by the Purchasers within three (3) business days after shareholders of the Company shall have approved the transactions contained herein as required by the rules and regulations of the Nasdaq Stock Market (“Shareholder Approval”). The purchase and sale of Notes and Warrants, in the amounts and to the Purchasers listed on **Schedule A** attached hereto shall take place at the offices of counsel to the Purchasers, Sichenzia Ross Ference Kesner LLP at 1185 Avenue of the Americas, New York, NY 10036 or such other location as the parties shall mutually agree at such time as the Company and the Purchasers mutually agree upon orally or in writing (which time and place are designated as the “Closing”). Each Purchaser shall deliver to the Company, via wire transfer with immediately available funds an amount equal to the Subscription Amount applicable to the Closing as set forth on the signature page hereto executed by each such Purchaser and the Company and the Purchasers shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon receipt of the funds, the Company shall deliver to the respective purchasers the Note and Warrants, as determined pursuant to Section 2.2.

Provided that (i) Shareholder Approval has been obtained, (ii) no Event of Default (as defined in the Notes) shall have occurred, unless waived by the Holder (as defined in the Notes), (iii) the closing price of shares of the Company’s

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Common Stock as reported on the Trading Market for the 20 Trading Days immediately preceding a proposed Closing shall be above \$.20, (iv) the average daily volume of the Common Stock as reported by the Trading Market for the 20 Trading Days immediately preceding a proposed Closing shall be greater than \$150,000 and (v) the Company provides three (3) Business Days written notice of its desire to sell additional notes, then:

(a) The Purchasers will purchase an additional \$545,000 principal amount of Notes, together with Warrants, on the 120<sup>th</sup> day following the initial Closing Date; and

(b) The Purchasers will purchase an additional \$545,000 principal amount of Notes, together with Warrants, on the 150<sup>th</sup> day following the initial Closing Date.

## 2.2 Deliveries.

(a) On or prior to the Closing Date pursuant to Section 2.1, the Company shall deliver or cause to be delivered to the Purchasers this Agreement duly executed by the Company. In addition, on or prior to the Closing Date held pursuant to Section 2.1, the Company shall deliver or cause to be delivered to each Purchaser the following:

(i) a Note with a principal amount equal to the relevant Subscription Amount, registered in the name of the applicable Purchaser;

(ii) a Warrant with a term of five years exercisable for such number of shares of Common Stock equal to the following: (a) the number of shares of Common Stock issuable upon conversion of the Note, multiplied by (b) 50%;

(iii) a Warrant with a term of one year exercisable for such number of shares of Common Stock equal to the following: (a) the number of shares of Common Stock issuable upon conversion of the Note, multiplied by (b) 50%;

(iv) the Security Agreement;

(v) a certificate evidencing the formation and good standing of the Company in such entity's jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of the Closing Date;

(vi) a certificate, executed by the Secretary of the Company and dated as of the Closing Date, as to (i) the resolutions as adopted by the Company's board of directors in a form reasonably acceptable to the Purchasers, (ii) the

Certificate of Incorporation of the Company, and (iii) the Bylaws of the Company, each as in effect at the Closing;  
and

(vii) a legal opinion in form and substance acceptable to the Purchasers.

(b) On or prior to the Closing Date pursuant to Section 2.1, each Purchaser shall deliver or cause to be delivered to the Company this Agreement duly executed by the Purchaser.

2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with any Closing are subject to the following conditions being met:

(i) the accuracy in all material respects on the applicable Closing Date of the representations and warranties of the applicable Purchaser contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of the applicable Purchaser required to be performed at or prior to an applicable Closing Date shall have been performed; and

(iii) the delivery by the applicable Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The respective obligations of each Purchaser hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects when made and on the applicable Closing Date of the representations and warranties of the Company contained herein (unless such representation or warranty is made as of a specific date therein);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the applicable Closing Date shall have been performed; and

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;

(iv) from the date hereof to the relevant Closing Date, trading in the Common Stock shall not have been suspended by the Commission or any Trading Market (except as previously disclosed in the SEC Reports) and, at any time prior to the Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of the Purchaser, makes it impracticable or inadvisable to purchase the Securities at the Closing.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except as set forth in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, the Company hereby makes the following representations and warranties to each Purchaser as of the date hereof and at each Closing Date:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company are set forth on Schedule 3.1(a)(i). Except as set forth on Schedule 3.1(a)(ii), the Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. If the Company has no subsidiaries, all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded.



(b) Organization and Qualification. The Company and each of the 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, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted except where the failure to be in good standing would not have a Material Adverse Effect. Neither the Company nor any Subsidiary is in material violation nor material default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the 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, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect").

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (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.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not: (i) conflict with or violate any material provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, 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 is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as are waived or could not reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. Other than as set forth on Schedule 3.1(e), the Company is not required to obtain any consent, waiver, 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 or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.6 of this Agreement, (ii) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Securities and the listing of the Underlying Shares for trading thereon in the time and manner required thereby, and (iii) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Underlying Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents.

(g) Capitalization. The capitalization of the Company is as set forth on Schedule 3.1(g), which Schedule 3.1(g) shall also include the number of shares of Common Stock reserved for issuance and shares of Common Stock owned beneficially, and of record, by Affiliates of the Company as of the date hereof. Except as set forth on Schedule 3.1(g), the Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. Except as set forth on Schedule 3.1(g), 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. Except as set forth on Schedule 3.1(g) or as a result of the purchase and sale of the Securities, 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 Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. Except as set forth on Schedule 3.1(g), the issuance and sale of the Securities 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 duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all 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. Except as set forth on Schedule 3.1(g), no further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. Except as set forth on Schedule 3.1(g), 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 knowledge of the Company, between or among any of the Company's stockholders.

(h) SEC Reports: Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) of the Exchange Act, for the two years 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”). As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and 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 the light of the circumstances under which they were made, not misleading. The 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. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“GAAP”), 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 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: Undisclosed Events, Liabilities or Developments. Except as set forth on Schedule 3.1(i), since the date of the latest audited financial statements included within the SEC Reports, except as specifically disclosed in a subsequent SEC Report filed prior to the date hereof: (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any 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 disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (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 and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least one Trading Day prior to the date that this representation is made.

(j) Litigation. Except as set forth on Schedule 3.1(j) or in the SEC Reports, there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an “Action”) which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Except as set forth on Schedule 3.1(j) or in the SEC Reports, neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) Compliance. Except as set forth in the SEC Reports or on Schedule 3.1(l), neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(l) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect (“Material Permits”), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(m) Intellectual Property. The Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights as described in the SEC Reports as necessary or required for use in connection with their respective businesses and which the failure to so have could have a Material Adverse Effect (collectively, the “Intellectual Property Rights”). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the SEC Reports, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(n) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage at least equal to the aggregate Subscription Amount. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(o) Transactions With Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from providing for the borrowing of money from or lending of money to, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of \$120,000 other than for: (i) payment of salary or consulting fees for services rendered, reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(p) Sarbanes-Oxley: Internal Accounting Controls. Except as set forth in the SEC Reports, as of December 31, 2017, the Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of the Closing Date and that are applicable to the Company. Except as set forth in the SEC Reports, the Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as set forth in the SEC Reports, the Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. The Company's certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and the Subsidiaries as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Except as set forth on Schedule 3.1(p), since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

(q) Certain Fees. With the exception of the commission payable to Euro Pacific Capital, Inc., no brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiaries to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(r) Private Placement. Assuming the accuracy of each Purchaser's representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchaser as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(s) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.





- (t) Registration Rights. Other than as disclosed in the SEC Reports, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company or any Subsidiaries.
- (u) Listing and Maintenance Requirements. The 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, or which to its knowledge is likely to have the effect of, terminating 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. Except as set forth in the SEC Reports, the Company has not, in the 12 months preceding the date hereof, received notice from any Trading Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. Except as set forth in the SEC Reports, the Company is in compliance with all such listing and maintenance requirements.
- (v) Application of Takeover Protections. The Company and the Board of Directors 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 certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchaser as a result of the Purchaser and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchaser's ownership of the Securities.
- (w) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided the Purchaser or its agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Purchaser will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchaser regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement and incorporated into the SEC Reports taken as a whole do not contain any untrue statement of a material fact or omit 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 and when made, not misleading. The Company acknowledges and agrees that the Purchaser makes no nor has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.
- (x) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances

that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(y) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

(z) No General Solicitation. Neither the Company nor 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. The Company has offered the Securities for sale only to the Purchaser and certain other “accredited investors” within the meaning of Rule 501 under the Securities Act.

(aa) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(bb) Accountants. The Company’s accounting firm is Marcum. To the knowledge and belief of the Company, such accounting firm: (i) is a registered public accounting firm as required by the Exchange Act and (ii) shall express its opinion with respect to the financial statements to be included in the Company’s Annual Report for the fiscal year ended December 31, 2017.

(cc) No Disagreements with Accountants and Lawyers. Except as set forth in the SEC Reports, there are no disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is unaware of any reason why its accountants or lawyers could not assist the Company with its obligations under any of the Transaction Documents.

(dd) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that the Purchasers are each acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that the Purchasers are not acting as financial advisors or fiduciaries of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by the Purchasers or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to each Purchaser's purchase of the Securities. The Company further represents to the Purchasers that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives. It is understood and acknowledged by the Company that (i) following the public disclosure of the transactions contemplated by the Transaction Documents, in accordance with the terms thereof, none of the Purchasers have been asked by the Company or any of its Subsidiaries to agree, nor has any Purchaser agreed with the Company or any of its Subsidiaries, to desist from effecting any transactions in or with respect to (including, without limitation, purchasing or selling long) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the Securities for any specified term; (ii) any Purchaser, and counterparties in "derivative" transactions to which any such Purchaser is a party, directly or indirectly, presently may have a "short" position in the Common Stock which was established prior to such Purchaser's knowledge of the transactions contemplated by the Transaction Documents; and (iii) each Purchaser shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction. The Company further understands and acknowledges that following the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the Press Release (as defined below) one or more Purchasers may engage in hedging and/or trading activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value and/or number of Conversion Shares deliverable with respect to the Securities are being determined and such hedging and/or trading activities, if any, can reduce the value of the existing stockholders' equity interest in the Company both at and after the time the hedging and/or trading activities are being conducted. The Company acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the Notes, Warrants or any other Transaction Document or any of the documents executed in connection herewith or therewith.

(ee) Regulation M Compliance. The Company has not, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (iii) and (iv), compensation paid to the Company's placement agent in connection with the placement of the Securities.

(ff) Stock Option Plans. Each compensatory stock option granted by the Company to a consultant or employee of the Company was granted (i) in accordance with the terms of the applicable stock option plan of the Company and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects..



(gg) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

(hh) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended.

(ii) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(jj) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(kk) Management. Except as set forth in Schedule 3.1(kk) hereto, during the past five-year period, no current officer or director or, to the knowledge of the Company, no current ten percent (10%) or greater stockholder of the Company or any of its Subsidiaries has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding or a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such person from, or otherwise limiting, the following activities:

- (1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the United States Commodity Futures Trading Commission or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;
- (2) Engaging in any particular type of business practice; or
- (3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;
- (iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such person to engage in any activity described in the preceding sub paragraph, or to be associated with persons engaged in any such activity;
- (v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or
- (vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended or vacated.
- (II) No Disqualification Events. With respect to Securities to be offered and sold hereunder in reliance on Rule 506(b) under the 1933 Act (“**Regulation D Securities**”), none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering contemplated hereby, any beneficial owner of 20% or more of the Company’s outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale (each, an “**Issuer Covered Person**” and, together, “**Issuer Covered Persons**”) is subject to any of the “Bad Actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the 1933 Act (a “**Disqualification Event**”), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Purchasers a copy of any disclosures provided thereunder.



(mm) Other Covered Persons. The Company is not aware of any Person (other than the Placement Agent) that has been or will be paid (directly or indirectly) remuneration for solicitation of Purchasers or potential purchasers in connection with the sale of the Securities.

3.2 Representations and Warranties of each Purchaser. Each Purchaser hereby represents and warrants, severally and not jointly, as of the date hereof and as of the Closing Date on which such Purchaser is purchasing Securities to the Company as follows (unless as of a specific date therein):

(a) Organization: Authority. If the Purchaser is an entity, the Purchaser is an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. If the Purchaser is an entity, the execution and delivery of the Transaction Documents and performance by the Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of the Purchaser. Each Transaction Document to which it is a party has been duly executed by the Purchaser, and when delivered by the Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of the Purchaser, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (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.

(b) Own Account. Each 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 Securities as principal 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 law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law. The Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchaser Status. At the time the Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it exercises any Warrants it will be either: (i) an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act or (ii) a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act.

(d) Experience of the Purchaser. Each 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. The 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.

(e) Reliance on Exemptions. Each 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, acknowledgments 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.

(f) Information. Each Purchaser and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by such Purchaser. Each Purchaser understands that its investment in the Securities involves a high degree of risk. Such Purchaser has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

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