UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

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

FOR THE QUARTERLY PERIOD ENDED September 30, 2020

OR

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

FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission File Number: **001-37523**

PURPLE INNOVATION, INC.
(Exact name of registrant as specified in its charter)

Delaware	**47-4078206**
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)

4100 NORTH CHAPEL RIDGE ROAD, SUITE 200
LEHI, UTAH 84043
(Address of principal executive offices, including zip code)

(801) 756-2600
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A Common Stock, par value $0.0001 per share	PRPL	The NASDAQ Stock Market LLC
Warrants to purchase one-half of one share of Class A Common Stock	PRPLW	The NASDAQ Stock Market LLC

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule12b-2 of the Exchange Act.

Large accelerated filer ☐
Non-accelerated filer ☑

Accelerated filer ☐
Smaller reporting company ☑
Emerging growth company ☑

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

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

As of November 9, 2020, 60,934,097 shares of the registrant's Class A common stock, $0.0001 par value per share, and 577,792 shares of the registrant's Class B common stock, $0.0001 par value per share, were outstanding.

PURPLE INNOVATION, INC.

QUARTERLY REPORT ON FORM 10-Q

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In this Quarterly Report on Form 10-Q, references to "dollars" and "$" are to United States ("U.S.") dollars.

We have a number of trademarks registered with the U.S. Patent and Trademark Office, including EquaPressure®, WonderGel® and EquaGel® (for cushions), and Purple® (the logo and standard character mark), Gel Matrix®, Somnigel® (for mattresses and pillows as well as plasticized elastomeric gel), Intellipillow® (for pillows) No Pressure® and Hyper-Elastic Polymer® (for plasticized elastomeric gel and certain types of products, including mattresses); the color "purple" (for mattresses); the Purple Powerbase® (for foundations); and Purple Pay®; . We also have a number of common law trademarks, including Harmony™, Purple +™, Purple Plus™, Furple™, Purple Premier™, Softstrech™, Purple Duvet™, Purple Sheets™, Purple Plush™, Dreams on Dreams™, PRPL™, True Comfort™, Take Comfort™, Find Comfort™, Purple Powerbase™, Purple Powerbase Premier™, Purple Powerbase Plus™, Purple Glove™, Eidertech™, Purple Grid™, Mattress Max™, WonderGel Original™, WonderGel Extreme™, DoubleGel™, DoubleGel Plus™, DoubleGel Ultra™, Roll n' Go™, Fold N' Go™, Purple Bed™, Purple Top™, Purple Pillow™, Portable Purple™, Everywhere Purple™, Simply Purple™, Lite Purple™, Royal Purple™, Double Purple™, Deep Purple™, Ultimate Purple™, Purple Back™, EquaGel Straight Comfort™, EquaGel General™, EquaGel Protector™ and EquaGel Adjustable™. Many of the common law marks have registrations pending with the USPTO and other international jurisdictions. Solely for convenience, we refer to our trademarks in this Quarterly Report without the ™ or ® symbol, but such references are not intended to indicate that we will not assert, to the fullest extent under applicable law, our rights to our trademarks.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

PURPLE INNOVATION, INC.

Condensed Consolidated Balance Sheets
(In thousands, except par value)
(Unaudited)

	September 30, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	$ 97,955	$ 33,478
Accounts receivable, net	21,894	28,692
Inventories, net	50,775	47,628
Prepaid inventory	1,888	879
Other current assets	8,443	3,442
Total current assets	180,955	114,119
Property and equipment, net	44,983	31,979
Intangible assets, net	9,620	1,101
Deferred income taxes	205,486	—
Other long-term assets	1,586	525
Total assets	$ 442,630	$ 147,724
Liabilities and Stockholders' Equity (Deficit)		
Current liabilities:		
Accounts payable	$ 61,961	$ 50,240
Accrued sales returns	10,285	7,271
Accrued compensation	12,515	7,954
Customer prepayments	6,207	6,258
Accrued sales tax	7,327	5,602
Accrued rebates and allowances	7,232	5,311
Other current liabilities	7,995	4,229
Total current liabilities	113,522	86,865
Long-term debt, related-party	—	35,399
Long-term debt, net of current portion	41,911	—
Warrant liabilities	64,930	21,622
Tax receivable agreement liability, net of current portion	168,328	—
Other long-term liabilities, net of current portion	12,375	8,570
Total liabilities	401,066	152,456
Commitments and contingencies (Note 11)		
Stockholders' equity (deficit):		
Class A common stock; $0.0001 par value, 210,000 shares authorized; 53,787 issued and outstanding at September 30, 2020 and 22,494 issued and outstanding at December 31, 2019	5	2
Class B common stock; $0.0001 par value, 90,000 shares authorized; 605 issued and outstanding at September 30, 2020 and 31,394 issued and outstanding at December 31, 2019	—	3
Additional paid-in capital	44,032	5,990
Accumulated deficit	(2,517)	(8,349)
Total stockholders' equity (deficit)	41,520	(2,354)
Noncontrolling interest	44	(2,378)
Total equity (deficit)	41,564	(4,732)
Total liabilities and stockholders' equity (deficit)	$ 442,630	$ 147,724

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

PURPLE INNOVATION, INC.

Condensed Consolidated Statements of Operations
(In thousands, except per share amounts)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenues, net	$ 187,111	$ 117,406	$ 474,582	$ 304,058
Cost of revenues	98,857	64,523	251,515	174,323
Gross profit	88,254	52,883	223,067	129,735
Operating expenses:				
Marketing and sales	51,206	34,055	127,313	94,039
General and administrative	11,087	6,745	27,312	19,243
Research and development	1,687	1,070	4,712	3,004
Total operating expenses	63,980	41,870	159,337	116,286
Operating income	24,274	11,013	63,730	13,449
Other income (expense):				
Interest expense	(1,232)	(1,356)	(4,045)	(3,801)
Other income, net	3	138	109	373
Loss on extinguishment of debt	(5,782)	—	(5,782)	(6,299)
Change in fair value – warrant liabilities	(17,971)	(1,384)	(43,308)	(3,372)
Tax receivable agreement expense	(567)	—	(33,512)	—
Total other expense, net	(25,549)	(2,602)	(86,538)	(13,099)
Net income (loss) before income taxes	(1,275)	8,411	(22,808)	350
Benefit from income taxes	106	—	35,818	—
Net income (loss)	(1,169)	8,411	13,010	350
Net income (loss) attributable to noncontrolling interest	(147)	6,817	7,178	224
Net income (loss) attributable to Purple Innovation, Inc.	$ (1,022)	$ 1,594	$ 5,832	$ 126
Net income (loss) per share:				
Basic	$ (0.02)	$ 0.18	$ 0.18	$ 0.01
Diluted	$ (0.02)	$ 0.16	$ 0.16	$ 0.01
Weighted average common shares outstanding:				
Basic	44,266	8,828	32,117	8,576
Diluted	44,266	52,793	36,628	52,454

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

PURPLE INNOVATION, INC.

Condensed Consolidated Statements of Stockholders' Equity (Deficit)
(In thousands)
(Unaudited)

	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated Equity (Deficit)	Total Stockholders' Equity (Deficit)	Noncontrolling Interest	Total Equity (Deficit)
	Shares	Par Value	Shares	Par Value					
Balance – December 31, 2019	22,494	$ 2	31,394	$ 3	$ 5,990	$ (8,349)	$ (2,354)	$ (2,378)	$ (4,732)
Net income	—	—	—	—	—	8,835	8,835	11,166	20,001
Stock-based compensation	—	—	—	—	250	—	250	—	250
Exchange of stock	1,124	—	(1,124)	—	—	—	—	—	—
Exercise of warrants	1	—	—	—	12	—	12	—	12
Tax Receivable Agreement liability	—	—	—	—	(221)	—	(221)	—	(221)
Accrued distributions	—	—	—	—	(196)	—	(196)	—	(196)
Issuance of common stock	3	—	—	—	—	—	—	—	—
Impact of transactions affecting NCI	—	—	—	—	120	—	120	(120)	—
Balance – March 31, 2020	23,622	$ 2	30,270	$ 3	$ 5,955	$ 486	$ 6,446	$ 8,668	$ 15,114
Net income (loss)	—	—	—	—	—	(1,981)	(1,981)	(3,841)	(5,822)
Stock-based compensation	—	—	—	—	962	—	962	—	962
Exchange of stock	12,760	1	(12,760)	(1)	—	—	—	—	—
Exercise of warrants	1	—	—	—	11	—	11	—	11
Exercise of stock options	5	—	—	—	(61)	—	(61)	—	(61)
Tax Receivable Agreement liability	—	—	—	—	(45,045)	—	(45,045)	—	(45,045)
Deferred income taxes	—	—	—	—	56,636	—	56,636	—	56,636
Accrued distributions	—	—	—	—	(4,327)	—	(4,327)	—	(4,327)
Issuance of common stock	80	1	—	—	—	—	1	—	1
Impact of transactions affecting NCI	—	—	—	—	6,453	—	6,453	(6,453)	—
Balance – June 30, 2020	36,468	$ 4	17,510	$ 2	$ 20,584	$ (1,495)	$ 19,095	$ (1,626)	$ 17,469
Net income (loss)	—	—	—	—	—	(1,022)	(1,022)	(147)	(1,169)
Stock-based compensation	—	—	—	—	347	—	347	—	347
Exchange of stock	16,905	2	(16,905)	(2)	—	—	—	—	—
Exercise of warrants	266	—	—	—	706	—	706	—	706
Exercise of stock options	184	—	—	—	1,394	—	1,394	—	1,394
Tax Receivable Agreement liability	—	—	—	—	(89,677)	—	(89,677)	—	(89,677)
Deferred income taxes	—	—	—	—	112,670	—	112,670	—	112,670
Accrued distributions	—	—	—	—	(176)	—	(176)	—	(176)
Forfeiture of unvested common stock	(36)	(1)	—	—	1	—	—	—	—
Impact of									

transactions affecting NCI	—	—	—	—	(1,817)	—	(1,817)	1,817	—
Balance – September 30, 2020	53,787	$ 5	605	$ —	$ 44,032	$ (2,517)	$ 41,520	$ 44	$ 41,564

	Class A Common Stock		Class B Common Stock		Additional Paid-in	Accumulated	Total Stockholders'	Noncontrolling	Total
	Shares	Par Value	Shares	Par Value	Capital	Deficit	Deficit	Interest	Deficit
Balance – December 31, 2018	9,731	$ 1	44,071	$ 4	$ 3,655	$ (4,322)	$ (662)	$ (1,349)	$ (2,011)
Net loss	—	—	—	—	—	(130)	(130)	(590)	(720)
Stock-based compensation	—	—	—	—	73	—	73	—	73
Balance – March 31, 2019	9,731	$ 1	44,071	$ 4	$ 3,728	$ (4,452)	$ (719)	$ (1,939)	$ (2,658)
Net loss	—	—	—	—	—	(1,338)	(1,338)	(6,003)	(7,341)
Stock-based compensation	—	—	—	—	6,733	—	6,733	—	6,733
Repurchase of stock options	—	—	—	—	(97)	—	(97)	—	(97)
Issuance of common stock	96	—	—	—	—	—	—	—	—
Balance – June 30, 2019	9,827	$ 1	44,071	$ 4	$ 10,364	$ (5,790)	$ 4,579	$ (7,942)	$ (3,363)
Net income	—	—	—	—	—	1,594	1,594	6,817	8,411
Stock-based compensation	—	—	—	—	2,935	—	2,935	—	2,935
Conversion of stock	677	—	(677)	—	—	—	—	—	—
Forfeiture of unvested common stock	(3)	—	(7)	—	—	—	—	—	—
Impact of transactions affecting NCI	—	—	—	—	(7,551)	—	(7,551)	7,551	—
Balance – September 30, 2019	10,501	$ 1	43,387	$ 4	$ 5,748	$ (4,196)	$ 1,557	$ 6,426	$ 7,983

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

PURPLE INNOVATION, INC.

Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2020	**2019**
Cash flows from operating activities:		
Net income	$ 13,010	$ 350
Adjustments to reconcile net income to net cash from operating activities:		
Depreciation and amortization	6,366	2,492
Non-cash interest	2,973	2,439
Paid-in-kind interest	(6,616)	—
Loss on extinguishment of debt	5,782	6,299
Loss on change in fair value - warrant liabilities	43,308	3,372
Tax receivable agreement expense	33,512	—
Stock-based compensation	1,559	9,740
Deferred income taxes	(35,818)	—
Changes in operating assets and liabilities:		
Decrease (increase) in accounts receivable	6,798	(16,446)
Increase in inventories	(3,147)	(11,878)
Increase in prepaid inventory and other assets	(5,740)	(2,935)
Increase in accounts payable	9,678	11,102
Increase (decrease) in accrued sales returns	3,014	(163)
Increase in accrued compensation	4,561	2,830
Increase (decrease) in customer prepayments	(51)	170
Decrease in income tax payable	(567)	—
Increase in other accrued liabilities	8,840	8,472
Net cash provided by operating activities	87,462	15,844
Cash flows from investing activities:		
Purchase of property and equipment	(14,194)	(5,657)
Investment in intangible assets	(10,890)	(246)
Net cash used in investing activities	(25,084)	(5,903)
Cash flows from financing activities:		
Proceeds from related-party debt	—	10,000
Proceeds from long-term debt	45,000	—
Proceeds from exercise of option and warrants	2,124	—
Repurchase of stock options	—	(97)
Payment on related-party debt	(37,497)	—
Payments for debt issuance costs	(2,460)	(758)
Distributions to members	(5,006)	—
Principal payments on capital lease obligations	(62)	(25)
Net cash provided by financing activities	2,099	9,120
Net increase in cash	64,477	19,061
Cash, beginning of the period	33,478	12,232
Cash, end of the period	$ 97,955	$ 31,293
Supplemental disclosures of cash flow information:		
Cash paid during the period for interest	$ 954	$ 1,364
Cash paid during the period for income taxes	$ 2,422	$ —
Supplemental schedule of non-cash investing and financing activities:		
Property and equipment included in accounts payable	$ 2,786	$ 155
Equipment acquired through capital lease	$ 147	$ 386
Non-cash leasehold improvements	$ 615	$ —
Tax Receivable Agreement liability	$ 134,943	$ —
Deferred income taxes	$ 169,306	$ —

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

PURPLE INNOVATION, INC.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Organization

The Company's mission is to help people feel and live better through innovative comfort solutions.

Purple Innovation, Inc. collectively with its subsidiary (the "Company" or "Purple Inc.") is a digitally-native vertical brand founded on comfort product innovation with premium offerings. The Company designs and manufactures a variety of innovative, branded and premium comfort products, including mattresses, pillows, cushions, bases, sheets, and other products. The Company markets and sells its products through its direct-to-consumer ("DTC") online channels, retail brick-and-mortar wholesale partners, third-party online retailers and its Company factory outlet and showrooms.

The Company was incorporated in Delaware on May 19, 2015 as a special purpose acquisition company under the name of Global Partnership Acquisition Corp ("GPAC") for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination involving the Company and one or more businesses. On February 2, 2018, the Company consummated a transaction structured similar to a reverse recapitalization (the "Business Combination") pursuant to which the Company acquired a portion of the equity of Purple Innovation, LLC ("Purple LLC"). At the closing of the Business Combination (the "Closing"), the Company became the sole managing member of Purple LLC, and GPAC was renamed Purple Innovation, Inc.

As the sole managing member of Purple LLC, Purple Inc. through its officers and directors is responsible for all operational and administrative decision making and control of the day-to-day business affairs of Purple LLC without the approval of any other member.

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The Company consists of Purple Inc. and its consolidated subsidiary, Purple LLC. Pursuant to the Business Combination described in Note 3—*Business Combination*, Purple Inc. acquired approximately 18% of the common units of Purple LLC, while InnoHold, LLC ("InnoHold") retained approximately 82% of the common units in Purple LLC. As of September 30, 2020, Purple Inc. held approximately 99% of the common units of Purple LLC and other Purple LLC Class B Unit holders held approximately 1% of the common units in Purple LLC.

The Business Combination was structured similar to a reverse recapitalization. The historical operations of Purple LLC are deemed to be those of the Company. Thus, the financial statements included in this report reflect (i) the historical operating results of Purple LLC prior to the Business Combination; (ii) the combined results of the Company following the Business Combination; (iii) the assets and liabilities of Purple LLC at their historical cost; and (iv) the Company's equity and earnings per share for all periods presented.

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") and applicable rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting and reflect the financial position, results of operations and cash flows of the Company. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. As such, these unaudited condensed consolidated financial statements should be read in conjunction with the 2019 audited financial statements and accompanying notes included in the Company's Annual Report on Form 10-K filed March 9, 2020. The unaudited condensed consolidated financial statements were prepared on the same basis as the audited financial statements and, in the opinion of management, reflect all adjustments (all of which were considered of normal recurring nature) considered necessary to present fairly the Company's financial results. The results of the three and nine months ended September 30, 2020 are not necessarily indicative of the results to be expected for the fiscal year ending December 31, 2020 or for any other interim period or other future year.

COVID-19 Pandemic Developments

The COVID-19 pandemic has impacted many aspects of our operations, directly and indirectly, including disruption of our employees, consumer behavior, distribution and logistics, our suppliers, and the market overall. The scope and nature of these impacts continue to evolve. In light of the COVID-19 pandemic, we have taken a number of precautionary measures to manage our resources and mitigate the adverse impact of the pandemic, which is intended to help minimize the risk to our Company, employees, customers, and the communities in which we operate. Employees at the Company's headquarters and certain other employees have been asked to work from home where possible, with only limited access given to employees to work in the office when necessary. For roles that require employees to be on-site, such as our manufacturing facility and distribution center, we mandate protective equipment be worn, perform temperature testing at the start of each shift and again during the shift, contact trace when risk of exposure is known, stagger shifts to reduce concentration of employees, follow social distancing guidelines and sanitize daily including complete weekly anti-viral fumigation. The State of Utah, where all of our manufacturing operations currently take place, has experienced a significant resurgence of COVID-19 cases. If the State of Utah, as part of efforts to control the resurgence of COVID-19, requires us to close our facilities temporarily or to reduce the number of employees working in our manufacturing at a given time, our business and operations could be significantly adversely affected.

Despite the ongoing challenges from COVID-19, the Company has been able to capitalize on the opportunities created by this situation. We continue to serve our customers through our Direct to Consumer ("DTC") channel, which has remained strong throughout the year as consumer demand for our premium, differentiated product offerings shifted to our DTC channel. We continue to focus our efforts in our DTC core competencies resulting in a continued strength in DTC channel sales across all of our product categories throughout the quarter. This increase in demand was a contributing factor to DTC net revenue growth of approximately 97% over the prior year third quarter. There can be no assurance that this trend of strong demand through our DTC channel will continue. We initially experienced a sharp decline in the wholesale side of our business as temporary shutdowns of non-essential businesses and shelter-at-home directives occurred in most U.S. states. As the shutdowns were lifted and stores began to open again, demand through the wholesale channel increased such that our net revenue from wholesale customers this quarter is up approximately 7% over the prior year third quarter. As of November 9, 2020 we have our factory outlet and all of our showrooms open and servicing our customers. We recently opened two new showrooms and have two more planned to open by the end of the year. However, due to recent resurgence of COVID-19, we may be required to close our factory outlet and showrooms in the future. We have signed a new lease for a manufacturing facility in Georgia and are proceeding with the buildout and purchasing of equipment to begin production.

This increase in demand allowed us to work through a portion of our on-hand inventory and required us to ramp up production. We continue to take advantage of our vertically integrated business model to adjust production schedules to leverage inventory on hand and manage labor costs. We also continue to dynamically adjust our significant discretionary online advertising spend in response to any changes in DTC trends as they develop.

Our supply chain has not been significantly affected by COVID-19. Suppliers in China were temporarily closed as a result of the pandemic, but we had sufficient inventory on hand. These suppliers have resumed production and are able to supply materials as needed. Most of our domestic suppliers are able to continue operations and provide necessary materials when needed. We have experienced some constraints from certain suppliers due to our increased production to meet demand. We have also experienced some shipping delays in the delivery of our product to our customers. This is due to the increased nationwide demand placed on delivery companies.

Although the Company has taken measures to protect the business, we cannot predict the specific duration for which these precautionary measures will stay in effect, and we may elect or need to take additional measures as the information available to us continues to develop, including with respect to our employees, manufacturing facilities and distribution center, and relationships with our suppliers and customers. Subject to certain assumptions regarding the duration and severity of the COVID-19 pandemic, and government, consumer, and our responses thereto, based on our current projections we believe our cash on hand, ongoing cash generated from e-commerce, liquidity available under our new line of credit, and continuing resumption and ramp up of store operations and our wholesale business, will be sufficient to cover our working capital requirements and anticipated capital expenditures for the next 12 months. However, the extent to which the COVID-19 pandemic and our precautionary measures in response thereto may impact our business will depend on future developments, which are highly uncertain and cannot be precisely predicted at this time.

Variable Interest Entities

Purple LLC is a variable interest entity ("VIE"). The Company determined that it is the primary beneficiary of Purple LLC as it is the sole managing member and has the power to direct the activities most significant to Purple LLC's economic performance as well as the obligation to absorb losses and receive benefits that are potentially significant. At September 30, 2020, Purple Inc. had approximately a 99% economic interest in Purple LLC and consolidated 100% of Purple LLC's assets, liabilities and results of operations in the Company's unaudited condensed consolidated financial statements contained herein. At September 30, 2020, other parties owned approximately 1% of the economic interest in Purple LLC; however, the other parties have disproportionally fewer voting rights, and are shown as the noncontrolling interest ("NCI") holder of Purple LLC. For further discussion see Note 13 — *Stockholders' Equity.*

Reclassification

Certain amounts in the prior period financial statements have been reclassified to conform to the presentation of the current period financial statements. These reclassifications had no effect on the previously reported net loss.

Use of Estimates

The preparation of the unaudited condensed consolidated financial statements requires management to make estimates and assumptions that affect the amounts reported in the unaudited condensed consolidated financial statements and accompanying notes. The Company regularly makes significant estimates and assumptions including, but not limited to, estimates that affect the Company's revenue recognition, accounts receivable and allowance for doubtful accounts, valuation of inventories, cost of revenues, sales returns, warranty returns, the recognition and measurement of loss contingencies, warrant liabilities, estimates of current and deferred income taxes, deferred income tax valuation allowances and amounts associated with the Company's Tax Receivable Agreement with InnoHold (the "Tax Receivable Agreement" or "TRA"). Predicting future events is inherently an imprecise activity and, as such, requires the use of judgment. The Company bases its estimates on historical experience and on various other assumptions believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results could differ materially from those estimates.

Revenue Recognition

In May 2014, in addition to several amendments issued during 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-09, Revenue from Contracts with Customers (Topic 606). Topic 606 outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. The Company adopted this ASU effective January 1, 2019 on a modified retrospective basis. Adoption of this standard did not result in significant changes to the Company's accounting policies, business processes, systems or controls, or have a material impact on the Company's financial position, results of operations, or cash flows. As such, the Company did not record a cumulative adjustment to the opening equity balance of accumulated deficit as of January 1, 2019. However, additional disclosures have been added in accordance with the requirements of Topic 606 and are reflected in Note 4 – *Revenue from Contracts with Customers.*

The Company markets and sells its products through direct-to-consumer online channels, traditional wholesale partners, third-party online retailers, the Company factory outlet and Company showrooms. Revenue is recognized when the Company satisfies its performance obligations under the contract which is transferring the promised products to the customer. This principle is achieved in the following steps:

Identify the contract with the customer. A contract with a customer exists when (i) the Company enters into an enforceable contract with a customer that defines each party's rights regarding the goods to be transferred and identifies the payment terms related to these goods, (ii) the contract has commercial substance and, (iii) the Company determines that collection of substantially all consideration for the goods that are transferred is probable based on the customer's intent and ability to pay the promised consideration. The Company does not have significant costs to obtain contracts with customers.

Identify the performance obligations in the contract. The Company's contracts with customers do not include multiple performance obligations to be completed over a period of time. The performance obligations generally relate to delivering products to a customer, subject to the shipping terms of the contract. The Company has made an accounting policy election to account for shipping and handling activities performed after a customer obtains control of the goods, including "white glove" delivery services, as activities to fulfill the promise to transfer the goods. The Company does not offer extended warranty or service plans. The Company does not provide an option to its customers to purchase future products at a discount and therefore there are no material option rights.

Determine the transaction price. Payment for sale of products through the direct-to-consumer online channels and third-party online retailers is collected at point of sale in advance of shipping the products. Amounts received for unshipped products are recorded as customer prepayments. Payment by traditional wholesale customers is due under customary fixed payment terms. None of the Company's contracts contain a significant financing component. Revenue is recorded at the net sales price, which includes estimates of variable consideration such as product returns, volume rebates, and other adjustments. The estimates of variable consideration are based on historical return experience, historical and projected sales data, and current contract terms. Variable consideration is included in revenue only to the extent that it is probable that a significant reversal of the revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Taxes collected from customers relating to product sales and remitted to governmental authorities are excluded from revenues.

Allocate the transaction price to performance obligations in the contract. The Company's contracts with customers do not include multiple performance obligations. Therefore, the Company recognizes revenue upon transfer of the product to the customer's control at contractually stated pricing.

Recognize revenue when or as we satisfy a performance obligation. The Company satisfies performance obligations at a point in time upon either shipment or delivery of goods, in accordance with the terms of each contract with the customer. With the exception of third-party "white glove" delivery and certain wholesale partners, revenue generated from product sales is recognized at shipping point, the point in time the customer obtains control of the products. Revenue generated from sales through third-party "white glove" delivery is recognized at the point in time when the product is delivered to the customer. Revenue generated from certain wholesale partners is recognized at a point in time when the product is delivered to the wholesale partner's warehouse. The Company does not have service revenue.

Debt Issuance Costs and Discounts

Debt issuance costs and discounts that relate to borrowings are presented in the balance sheet as a direct deduction from the carrying amount of the related debt liability and are amortized into interest expense using an effective interest rate over the duration of the debt. Debt issuance costs for the revolving line of credit facility available from the 2020 Credit Agreement are carried as an asset and amortized to interest expense on a straight-line basis over the term of the line of credit facility. Refer to Note 8 – *Debt*.

Warrant Liabilities

The Company accounts for warrant liabilities under the provisions of ASC 480 - *Distinguishing Liabilities from Equity*. ASC 480 requires the recording of certain liabilities at their fair value. Changes in the fair value of these liabilities are recognized in earnings. The Incremental Loan Warrants issued in conjunction with the Amended and Restated Credit Agreement contain a warrant repurchase provision which, upon an occurrence of a fundamental transaction as defined in the warrant agreement, could give rise to an obligation of the Company to pay cash to the warrant holders. In addition, other provisions may require the exercise price of the warrants to be reduced. The Company has determined that the fundamental transaction provisions require the warrants to be accounted for as a liability at fair value on the date of the transaction, with changes in fair value recognized in earnings. The Company uses the Monte Carlo Simulation of a Geometric Brownian Motion stock path model to determine the fair value of the liability. The model uses key assumptions and inputs such as exercise price, fair market value of common stock, risk free interest rate, warrant life, expected volatility and the probability of the warrant re-price. Refer to Note 9 – *Warrant Liabilities*.

Fair Value Measurements

The Company uses the fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, essentially an exit price, based on the highest and best use of the asset or liability. The levels of the fair value hierarchy are:

Level 1—Quoted market prices in active markets for identical assets or liabilities;

Level 2—Significant other observable inputs (e.g. quoted prices for similar items in active markets, quoted prices for identical or similar items in markets that are not active, inputs other than quoted prices that are observable, such as interest rate and yield curves, and market-corroborated inputs); and

Level 3—Unobservable inputs in which there is little or no market data, which require the reporting unit to develop its own assumptions.

The classification of fair value measurements within the established three-level hierarchy is based upon the lowest level of input that is significant to the measurements. Financial instruments, although not recorded at fair value on a recurring basis include cash and cash equivalents, receivables, accounts payable, accrued expenses and the Company's debt obligations. The carrying amounts of cash and cash equivalents, receivables, accounts payable and accrued expenses approximate fair value because of the short-term nature of these accounts. The fair value of the Company's debt instrument is estimated to be its face value based on the contractual terms of the debt instrument and market-based expectations. The warrant liability is a Level 3 instrument and uses an internal model to estimate fair value using certain significant unobservable inputs which requires determination of relevant inputs and assumptions. Accordingly, changes in these unobservable inputs may have a significant impact on fair value. Such inputs include risk free interest rate, expected average life, expected dividend yield, and expected volatility. These Level 3 liabilities would decrease (increase) in value based upon an increase (decrease) in risk free interest rate and expected dividend yield. Conversely, the fair value of these Level 3 liabilities would generally increase (decrease) in value if the expected average life or expected volatility were to increase (decrease).

Income Taxes

In calculating the provision for interim income taxes, in accordance with ASC Topic 740, an estimated annual effective tax rate is applied to year-to-date ordinary income. At the end of each interim period, the Company estimates the effective tax rate expected to be applicable for the full fiscal year. This differs from the method utilized at the end of an annual period.

For annual periods, the Company accounts for income taxes using the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. In assessing the realizability of deferred tax assets, management considers whether it is more-likely-than-not that the deferred tax assets will be realized. Deferred tax assets and liabilities are calculated by applying existing tax laws and the rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in the year of the enacted rate change. Our effective tax rate is primarily impacted by the allocation of income taxes to the noncontrolling interest and changes in our valuation allowance.

The Company accounts for uncertainty in income taxes using a recognition and measurement threshold for tax positions taken or expected to be taken in a tax return, which are subject to examination by federal and state taxing authorities. The tax benefit from an uncertain tax position is recognized when it is more likely than not that the position will be sustained upon examination by taxing authorities based on technical merits of the position. The amount of the tax benefit recognized is the largest amount of the benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The effective tax rate and the tax basis of assets and liabilities reflect management's estimates of the ultimate outcome of various tax uncertainties. The Company recognizes penalties and interest related to uncertain tax positions within the provision (benefit) for income taxes line in the accompanying consolidated statements of operations. As of the third quarter of 2020, no uncertain tax positions have been recorded. The Company will continue to monitor this position each interim period.

The Company files U.S. federal and certain state income tax returns. The income tax returns of the Company are subject to examination by U.S. federal and state taxing authorities for various time periods, depending on those jurisdictions' rules, generally after the income tax returns are filed.

Net Income (Loss) Per Share

The two-class method of computing net income (loss) per share is required for entities that have participating securities. The two-class method is an earnings allocation formula that determines net income (loss) per share for participating securities according to dividends declared (or accumulated) and participation rights in undistributed earnings. The Company's Class B Stock has no economic interest in the earnings of the Company, resulting in the two-class method not being applicable as of September 30, 2020 or in prior periods. Basic net income (loss) per common share is calculated by dividing net income (loss) attributable to common shareholders by the weighted average number of shares of Class A Stock outstanding each period. Diluted net income (loss) per share adds to those shares the incremental shares that would have been outstanding and potentially dilutive assuming exchanges of the Company's outstanding warrants, stock options and Class B Stock for Class A Stock, and the vesting of unvested and restricted Class A Stock. An anti-dilutive impact is an increase in net income per share or a reduction in net loss per share resulting from the conversion, exercise or contingent issuance of certain securities.

The Company uses the "if-converted" method to determine the potential dilutive effect of conversions of its outstanding Class B Stock, and the treasury stock method to determine the potential dilutive effect of its outstanding warrants and stock options exercisable for shares of Class A Stock and the vesting of unvested and restricted Class A Stock.

Recent Accounting Pronouncements

New Lease Guidance

In February 2016, the FASB issued ASU No. 2016-02, "Leases," and in March 2019, the FASB issued ASU No. 2019-01, "Leases: Codification Improvements", which updated the accounting guidance related to leases to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. They also clarify implementation issues. These updates are effective for public companies for annual periods beginning after December 15, 2018, including interim periods therein. The Company is allowed to use the private company adoption timelines, and therefore the standard is effective for the Company for its annual period beginning January 1, 2020, and interim periods within annual periods beginning January 1, 2021. The standard is to be applied utilizing a modified retrospective approach, with early adoption permitted. We are in the process of implementing a new lease accounting system in connection with the adoption. While we expect a material impact to our consolidated balance sheet as a result of the adoption of this new guidance, we continue to evaluate the effect of the new standard on our consolidated financial statements and related disclosures. We also expect that adoption of the new guidance will require changes to our internal controls over financial reporting.

Simplifying the Accounting for Income Taxes

In December 2019, the FASB issued ASU No. 2019-12, Simplifying the Accounting for Income Taxes (ASU No. 2019-12). The new guidance eliminates certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. The new guidance also simplifies aspects of the accounting for franchise taxes and enacted changes in tax laws or rates and clarifies the accounting for transactions that result in a step-up in the tax basis of goodwill. The guidance is effective for fiscal years beginning after December 15, 2020 and for interim periods within those fiscal years. Early adoption is permitted. The Company is currently evaluating the impact of adopting ASU 2019-12.

New Internal-Use Software Guidance

In August 2018, the FASB issued ASU 2018-15, Intangibles - Goodwill and Other - Internal-Use Software (Subtopic 350) ("ASU 2018-15"). The objective of ASU 2018-15 is to align the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with those incurred to develop or obtain internal-use software. The guidance is effective for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years. Early adoption is permitted. The amendments can be applied either retrospectively or prospectively. We do not expect the adoption of this standard to have a material impact on our consolidated financial statements.

Measurement of Credit Losses

In June 2016, the FASB issued ASU No. 2016-13, "Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments" ("ASU 2016-13"), which was further updated and clarified by the FASB through issuance of additional related ASUs. This guidance replaces the existing incurred loss impairment guidance and establishes a single allowance framework for financial assets carried at amortized cost based on expected credit losses. The estimate of expected credit losses requires the incorporation of historical information, current conditions, and reasonable and supportable forecasts. These updates are effective for public companies, excluding Smaller Reporting Companies ("SRC"), for annual periods beginning after December 15, 2019, including interim periods therein. The standard is effective for all other entities for annual periods beginning after December 15, 2022, including interim periods therein. The standard is effective for our interim and annual financial periods beginning January 1, 2023. This standard is to be applied utilizing a modified retrospective approach. We are currently evaluating the impact of this standard on our accounts receivable, cash and cash equivalents, and any other financial assets measured at amortized cost and do not expect that adoption will have a material impact on our consolidated financial statements or related disclosures.

3. Business Combination

On February 2, 2018, upon consummation of the Business Combination, Purple LLC merged with and into a wholly owned subsidiary of GPAC (PRPL Acquisition, LLC), with Purple LLC being the survivor in that merger pursuant to an Agreement and Plan of Merger (the "Merger Agreement"), by and among GPAC, PRPL Acquisition, LLC, a Delaware limited liability company and a wholly owned subsidiary of GPAC ("Merger Sub"), Purple LLC and InnoHold. In connection with the Closing, GPAC was renamed "Purple Innovation, Inc." and its articles of incorporation were amended to rename its common stock to Class A common stock ("Class A Stock") and created a new class of stock named Class B common stock ("Class B Stock") of which 44.1 million shares of Class B Stock were issued to InnoHold (refer to Note 13 — *Stockholders' Equity* for a description of the Class A Stock and Class B Stock).

Additionally, at the Closing, 9.7 million Class A Units of Purple LLC were issued and are solely held by Purple Inc. They are voting common units entitled to share in the profits and losses of Purple LLC and receive distributions as declared by Purple LLC's manager. Approximately 44.1 million Class B Units of Purple LLC were issued to InnoHold, who had limited voting rights in Purple LLC and was entitled to share in the profits and losses of Purple LLC and to receive distributions as declared by Purple LLC's manager. InnoHold subsequently transferred a portion of its shares and units to permitted transfers and exchanged its remaining shares for Class A Stock that it sold. As of September 30, 2020, 0.6 million Class B Units of Purple LLC remain outstanding, all held by other parties. The amended operating agreement appoints Purple Inc. as the sole managing member of Purple LLC. As the sole managing member, Purple Inc. has the sole voting interest in and control of the management and operations of Purple LLC, including when it had only a minority economic interest in Purple LLC.

4. Revenue from Contracts with Customers

The Company markets and sells its products through direct-to-consumer online channels, traditional wholesale partners, third-party online retailers and Company factory outlet and showrooms. Revenue is recognized when the Company satisfies its performance obligations under the contract which is transferring the promised products to the customer as described in Note 2 – *Summary of Significant Accounting Policies*.

Contract Balances

Payment for sale of products through the direct-to-consumer online channels, third-party online retailers and Company factory outlet and showrooms is collected at point of sale in advance of shipping the products. Amounts received for unshipped products are recorded as customer prepayments. Customer prepayments were $6.2 million at September 30, 2020 and $6.3 million at December 31, 2019. During the nine months ended September 30, 2020, the Company recognized $6.3 million of revenue that was deferred in customer prepayments at December 31, 2019.

Disaggregated Revenue

The following table presents the Company's revenue disaggregated by sales channel and product (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
Channel	**2020**	**2019**	**2020**	**2019**
Direct-to-consumer	$ 134,252	$ 67,950	$ 360,119	$ 185,109
Wholesale partner	52,859	49,456	114,463	118,949
Revenues, net	$ 187,111	$ 117,406	$ 474,582	$ 304,058

	Three Months Ended September 30,		Nine Months Ended September 30,	
Product	**2020**	**2019**	**2020**	**2019**
Bedding	$ 172,806	$ 110,332	$ 437,809	$ 283,844
Other	14,305	7,074	36,773	20,214
Revenues, net	$ 187,111	$ 117,406	$ 474,582	$ 304,058

The Company sells products through two channels: Direct-to-Consumer and Wholesale. The Direct-to-Consumer channel includes product sales through various direct-to-consumer channels including the Company outlet and showrooms. The Wholesale channel includes all product sales to traditional third-party retailers for their in store and online channels. The Company classifies products into two major categories: Bedding and Other. Bedding products include mattresses, platforms, adjustable bases, mattress protectors, pillows and sheets. Other products include cushions and various other products.

5. Inventories

Inventories consist of the following (in thousands):

	September 30, 2020	December 31, 2019
Raw materials	$ 21,116	$ 16,220
Work-in-process	3,292	2,713
Finished goods	26,924	29,485
Inventory obsolescence reserve	(557)	(790)
Inventories, net	$ 50,775	$ 47,628

6. Property and Equipment

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

	September 30, 2020	December 31, 2019
Equipment	$ 27,139	$ 19,761
Equipment in progress	11,518	5,278
Leasehold improvements	8,353	7,040
Furniture and fixtures	5,141	4,252
Office equipment	2,555	1,523
Equipment under capital lease	809	662
Total property and equipment	55,515	38,516
Accumulated depreciation and amortization	(10,532)	(6,537)
Property and equipment, net	$ 44,983	$ 31,979

The Company recorded depreciation and amortization related to property and equipment of $1.4 million and $0.9 million during the three months ended September 30, 2020 and 2019, respectively. Depreciation and amortization related to property and equipment of $4.0 million and $2.4 million were recorded during the nine months ended September 30, 2020 and 2019, respectively.

7. Other Current Liabilities

Other current liabilities consist of the following (in thousands):

	September 30, 2020	December 31, 2019
Warranty accrual – current portion	$ 2,015	$ 1,567
Long-term debt – current portion	2,001	$ —
Insurance financing	1,414	350
Website commissions	991	897
Tax Receivable Agreement liability – current portion	629	501
Accrued rent – current portion	298	—
All other current liabilities	647	914
Total other current liabilities	$ 7,995	$ 4,229

8. Debt

Long-Term Debt, Related-Party

Long-term debt, related-party consists of the following (in thousands):

	September 30, 2020	December 31, 2019
Long-term debt, related-party	$ —	$ 39,202
Less: unamortized debt issuance costs and discounts	—	(3,803)
Total long-term debt, related-party	$ —	$ 35,399

Credit Agreement

On February 2, 2018, Purple LLC entered into a Credit Agreement (the "Credit Agreement") with Coliseum Capital Partners, L.P. ("CCP"), Blackwell Partners LLC – Series A ("Blackwell") and Coliseum Co-invest Debt Fund, L.P. ("CDF" and together with CCP and Blackwell, the "Lenders"), pursuant to which the Lenders agreed to make a loan in an aggregate principal amount of $25.0 million. The Credit Agreement was closed and funded in connection with the Closing on February 2, 2018. In conjunction with the Credit Agreement, Global Partner Sponsor I LLC (the "Sponsor") agreed to assign to the Lenders an aggregate of 2.5 million warrants to purchase 1.3 million shares of its Class A Stock. The Credit Agreement was amended and restated on January 28, 2019 as discussed below.

Amended and Restated Credit Agreement

On January 28, 2019, Purple LLC entered into a First Amendment to the Credit Agreement (the "First Amendment") with the Lenders. In the First Amendment, Purple LLC agreed to enter into the Amended and Restated Credit Agreement, under which two of the Lenders ("Incremental Lenders") agreed to provide an incremental loan of $10.0 million such that the total amount of principal indebtedness provided to Purple LLC is increased to $35.0 million. A stockholder meeting was held on February 25, 2019 at which time a majority of non-interested stockholders voted in favor of this transaction. The Amended and Restated Credit Agreement, and each of the related documents, was accordingly closed, and the incremental $10.0 million loan was funded on February 26, 2019, and the Company issued to the Incremental Lenders 2.6 million warrants to purchase 2.6 million shares of the Company's Class A Stock at a price of $5.74 per share, subject to certain adjustments. Among other things, the terms of the Amended and Restated Credit Agreement extends the maturity date for all loans under the Credit Agreement to five years from closing of the incremental loan, lowers the amount allowed for an asset-based loan to $10.0 million, revises certain restrictive covenants to make them more applicable to the Company's current business, provides the ability for the Company to request additional loans from the Lenders not to exceed $10 million and other closing conditions, representations, warranties and covenants customary for a transaction of this type. All indebtedness under the Amended and Restated Credit Agreement bears interest at 12.0% per annum and is payable on the last business day of each fiscal quarter, provided that Purple LLC will be required to pay up to an additional 4.0% of interest per annum if it fails to meet certain EBITDA thresholds and an additional 2.0% of interest per annum if the Company is not in material compliance with the Sarbanes-Oxley Act of 2002. In addition, Purple LLC may elect for interest in excess of 5.0% per annum to be capitalized and added to the principal amount. Any principal pre-payments in the first year are subject to a make-whole payment, while principal pre-payments in years two through four are subject to certain pre-payment penalties. The Amended and Restated Credit Agreement provided for certain remedies to the Lenders in the event of customary events of default and provides for standard indemnification of the Lenders.

In conjunction with the incremental loan under the Amended and Restated Credit Agreement, the Company paid fees and debt issuance costs in the amount of $0.5 million and $0.3 million, respectively. Additionally, the $4.9 million fair value of the 2.6 million warrants at the time of issuance was included as a component of the loss on extinguishment of debt.

On March 27, 2020, the Company entered into the First Amendment to the Amended and Restated Credit Agreement with the Lenders. The purpose of this Amendment is to allow the Company to defer the remaining 5% of interest for the quarterly payments due March 31 and June 30, 2020 in an effort to reduce its cash disbursements during the COVID-19 impact. Pursuant to the Amendment, the Company was allowed to defer and capitalize the full amount of the interest payments due on March 31, 2020 and June 30, 2020. The Company accounted for the amendment as a modification of existing debt in accordance with ASC 470 - *Debt*.

Interest expense related to the Amended and Restated Credit Agreement was $1.0 million and $1.4 million for the three months ended September 30, 2020 and 2019, respectively, and $3.8 million and $3.8 million for the nine months ended September 30, 2020 and 2019, respectively.

Retirement of Amended and Restated Credit Agreement

On September 3, 2020, the Company retired all indebtedness related to Purple LLC's original Credit Agreement dated as of February 2, 2018, as amended and restated in the Amended and Restated Credit Agreement dated February 26, 2019, and as further amended by the First Amendment to Amended and Restated Credit Agreement dated as of March 27, 2020, the Second Amendment to Amended and Restated Credit Agreement dated as of May 15, 2020, and the Waiver and Consent to Amended and Restated Credit Agreement dated as of August 20, 2020. The total amount paid for the retirement of the debt was $45.0 million comprised of $35.0 million original principal, $6.6 million of paid-in-kind interest, $2.5 million in a prepayment fee and $0.9 million in accrued interest.

Loss on Extinguishment of Debt

In February 2019, the Company accounted for the debt restructuring under the Amended and Restated Credit Agreement in accordance with ASC 470 - *Debt*. The Company determined that there are separate lenders for purposes of determining if there was an extinguishment or modification. The amended debt terms with CDF were not determined to be substantial and therefore the existing debt attributable to CDF was accounted for as a modification of debt. The amended debt terms with the Incremental Lenders were determined to be substantially different terms from their existing debt and therefore required to be accounted for as an extinguishment of their existing debt. Accordingly, the Company recognized a loss on the extinguishment of their existing debt of approximately $6.3 million for the three and nine months ended March 31, 2019. This is a non-cash expense primarily associated with the recognition of related unamortized debt discount and debt issuance costs and the fair value of the incremental warrants issued.

In September 2020, the Company accounted for the debt retirement of the Amended and Restated Credit Agreement in accordance with ASC 470 - *Debt*. The Company determined that there are separate lenders and substantially different terms for the debt and therefore required to be accounted for as an extinguishment of debt. Accordingly, the Company recognized a loss on the extinguishment of their existing debt of approximately $5.8 million for the three and nine months ended September 20, 2020 primarily associated with the $2.5 million in prepayment fee and $3.3 million in the recognition of related unamortized debt discount and debt issuance costs.

Long-Term Debt

Long-term debt consists of the following (in thousands):

	September 30, 2020	December 31, 2019
2020 Credit Agreement Term Loan	$ 45,000	$ —
Less: unamortized debt issuance costs	(1,088)	—
Less: current portion of long-term debt	(2,001)	—
Total long-term debt	$ 41,911	$ —

2020 Credit Agreement

On September 3, 2020, the Company entered into a Credit Agreement (the "2020 Credit Agreement") by and between Purple LLC and KeyBank National Association and a group of financial institutions. The 2020 Credit Agreement provides for a $45.0 million term loan and a $55.0 million revolving line of credit.

The borrowing rates for the term loan will be based on Purple LLC's leverage ratio, as defined in the Credit Agreement, and can range from LIBOR plus 3.00 percent to 3.75 percent with a LIBOR minimum of 0.50 percent. The initial borrowing rate is LIBOR plus 3.00 percent, which is 3.50 percent. The term loan will be repaid according to a five-year amortization schedule and may be prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. There may be mandatory prepayment obligations based on excess cash flow.

Pursuant to a Pledge and Security Agreement between Purple LLC, KeyBank, and the Company, Purple LLC's obligations under the 2020 Credit Agreement are secured by a perfected first-priority security interest in the assets of Purple LLC and the Company. The Pledge and Security Agreement contains a pledge, as security for its guaranty, all of its ownership interests in Purple LLC. The 2020 Credit Agreement provides for standard events of default such as for non-payment and failure to perform or observe covenants. The Credit Agreement contains standard indemnifications benefitting the Lenders.

The 2020 Credit Agreement also contains representations, warranties and certain covenants of Purple LLC and the Company. While any amounts are outstanding under the 2020 Credit Agreement, Purple LLC is subject to a number of affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, subject to certain exceptions. In particular, Purple LLC is (i) subject to annual capital expenditure limits that can be adjusted based on the Company achieving certain Net Leverage Ratio thresholds as provided in the 2020 Credit Agreement, (ii) restricted from incurring additional debt up to certain amounts, subject to limited exceptions, as set forth in the Credit Agreement, and (iii) maintain minimum Consolidated Net Leverage Ratio and Fixed Charge Coverage Ratio (as those terms are defined in the Credit Agreement) thresholds at certain measurement dates. Purple LLC is also restricted from paying dividends or making other distributions or payments on its capital stock, subject to limited exceptions. If the Company or Purple LLC fail to perform their obligations under these and other covenants, or should any event of default occur, the revolving loan commitments under the Credit Agreement may be terminated and any outstanding borrowings, together with accrued interest, under the 2020 Credit Agreement could be declared immediately due and payable.

The Company has a $55.0 million revolving credit facility initially established under the 2020 Credit Agreement. The revolving line of credit has a term of five years and carries the same interest provisions as the term debt. There is a commitment fee to be paid quarterly calculated based on the applicable margin applied to the unused total revolving commitment. The agreement for this revolving credit facility contains customary covenants specified in the contractual agreement. The agreement also contains customary events of default. As of September 30, 2020, there was no balance outstanding on the revolving credit facility. The foregoing summary of the 2020 Credit Agreement does not purport to be compete and is subject to, and qualified in its entirety by, the full text of the 2020 Credit Agreement, which is attached as Exhibit 10.5 to this report and is incorporated by reference herein.

The Company incurred $2.5 million in debt issuance costs for the 2020 Credit Agreement. These costs related to the entire credit arrangement and therefore must be allocated between the term loan and the revolving line of credit. Accordingly, $1.1 million of the debt issuance costs relate to the term debt and are presented in the balance sheet as a direct deduction from the carrying amount of the debt liability. The amount is amortized into interest expense using an effective interest rate over the duration of the debt. The remaining $1.4 million of the debt issuance costs relate to the revolving line of credit facility carried as an asset and amortized to interest expense on a straight-line basis over the term of the revolving credit facility.

Guaranty

In connection with the Company's entry into the 2020 Credit Agreement and the revolving credit facility, the Company entered into the Guaranty, pursuant to which the Company agreed to an unconditional guaranty of the payment of all obligations and liabilities of Purple LLC under the Credit Agreement and the other Loan Documents. The foregoing summary of the Guaranty does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Guaranty, which is attached as Exhibit 10.7 to this report and is incorporated by reference herein.

Intellectual Property Security Agreements

In connection with the Company's entry in the 2020 Credit Agreement and revolving credit facility, the Company and Purple LLC entered into a Collateral Assignment of Patents, Collateral Assignment of Trademarks, and Collateral Assignment of Copyrights, pursuant to which they granted to the Agent, on behalf of the Secured Creditors (as defined therein), a security interest in all of the intellectual property of the Company and Purple LLC that constitutes collateral under the 2020 Credit Agreement and revolving credit facility. The foregoing summary of the Collateral Assignment of Patents, Collateral Assignment of Trademarks, and Collateral Assignment of Copyrights does not purport to be complete and is subject to, and qualified in its entirety by, the full text of such agreements, which are attached as Exhibits 10.8, 10.9, and 10.10, respectively, to this report and are incorporated by reference herein.

9. Warrant Liabilities

The Incremental Loan Warrants issued in conjunction with the Amended and Restated Credit Agreement contain a warrant repurchase provision which, upon an occurrence of a fundamental transaction, as defined in the warrant agreement, could give rise to an obligation of the Company to pay cash to the warrant holders. In addition, upon the occurrence of any of the following events: (1) a fundamental transaction; (2) acquisition of 25% or more of the total voting power of all the securities of the entity by any one person or group of affiliated persons or entities; (3) Tony Pearce or Terry Pearce individually or together ceasing to beneficially own at least 50% of the voting securities of the Company; or (4) the Board of Directors ceasing to be comprised of a majority of independent directors as defined under NASDAQ rules, the exercise price of the warrant will be reduced by a value based upon a formula model established in the agreement. The formula model is a Black Scholes valuation model which would use the following inputs: (1) share price would be the greater of the volume weighted average price ("VWAP") of the common stock for the prior 30 days before the applicable event date or the VWAP of the trading day immediately preceding the event date; (2) exercise price of $5.74, unless previously adjusted under other terms of the warrant; (3) volatility would be the greater of 100% and the historical volatility of the Company's common stock for the ninety days preceding the date of the triggering event; and (4) the assumed risk-free interest rate shall correspond to the US Treasury rate for a period equal to the remaining term of this warrant. In May 2020, Tony Pearce or Terry Pearce individually or together ceased to beneficially own at least 50% of the voting securities of the Company. As a result, the exercise price of the warrants were reduced to $0, based on the formula established in the agreement.

The Company has determined that the fundamental transaction provisions require the warrants to be accounted for as a liability at fair value on the date of the transaction under guidance prescribed in ASC 480 - *Distinguishing Liabilities from Equity*. The liability for the warrants is subsequently re-measured to fair value at each reporting date with changes in the fair value included in earnings.

The Company determined the fair value of the Incremental Loan Warrants to be $64.9 million and $21.6 million on September 30, 2020 and December 31, 2019, respectively using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model with the following assumptions:

	September 30, 2020	December 31, 2019
Trading price of common stock on measurement date	$ 24.86	$ 8.71
Exercise price	$ —	$ 5.74
Risk free interest rate	0.16%	1.69%
Warrant life in years	3.4	4.2
Expected volatility	51.30%	36.82%
Expected dividend yield	—	—
Probability of an event causing a warrant re-price	100.00%	95.00%

The Company recorded a $18.0 million and $1.4 million loss on the increase in fair value of the Incremental Loan Warrants for the three months ended September 30, 2020 and 2019, respectively. The Company recorded a $43.3 million and $3.4 million loss on the increase in fair value of the Incremental Loan Warrants for the nine months ended September 30, 2020 and 2019, respectively.

10. Other Long-Term Liabilities

Other long-term liabilities consist of the following (in thousands):

	September 30, 2020	December 31, 2019
Warranty accrual	$ 7,499	$ 4,621
Deferred rent expense	6,680	5,115
Capital leases	577	488
Other long-term liabilities	55	—
Total other long-term liabilities	14,811	10,224
Less: current portion of long-term liabilities	(2,436)	(1,654)
Other long-term liabilities, net of current portion	$ 12,375	$ 8,570

11. Commitments and Contingencies

Required Member Distributions

Prior to the Business Combination and pursuant to the then applicable First Amended and Restated Limited Liability Company Agreement (the "First Purple LLC Agreement"), Purple LLC was required to distribute to its members an amount equal to 45 percent of Purple LLC's net taxable income following the end of each fiscal year. The First Purple LLC Agreement was amended and replaced by the Second Amended and Restated Limited Liability Company Agreement (the "Second Purple LLC Agreement") on February 2, 2018 as part of the Business Combination. The Second Purple LLC Agreement was amended and replaced by the Third Amended and Restated Limited Liability Company Agreement (the "Third Purple LLC Agreement") on September 3, 2020 prior to retiring the debt owed under the Amended and Restated Credit Agreement and entering into the 2020 Credit Agreement and revolving credit facility. The Second Purple LLC Agreement and the Third Purple LLC Agreement do not include any mandatory distributions, other than tax distributions. No distributions were made under the Second Purple LLC Agreement in 2019. During the nine months ended September 30, 2020, the Company has paid out $5.0 million in tax distributions under the Second Purple LLC Agreement.

Service Agreement

In October 2017, the Company entered into an electric service agreement with the local power company. The agreement provided for the construction and installation of certain utility improvements to provide increased power capacity to the manufacturing and warehouse facility in Grantsville, Utah. The Company prepaid $0.5 million related to the improvements and agreed to a minimum contract billing amount over a 15-year period based on regulated rate schedules and changes in actual demand during the billing period. The agreement includes an early termination clause that requires the Company to pay a pro-rata termination charge if the Company terminates within the first 10 years of the service start date. The original early termination charge was $1.3 million and is reduced annually on a straight-line basis over the 10-year period. During 2018, the utility improvements construction was completed and were made available to the Company. As of September 30, 2020, the early termination penalty was $0.9 million and the Company expects to fulfill its commitments under the agreement in the normal course of business, and as such, no liability has been recorded.

Operating Leases

The Company leases various office and warehouse facilities under non-cancellable operating leases.

Office and manufacturing space for its facility in Alpine, Utah is leased from TNT Holdings an entity under common control with InnoHold, which was historically the majority and controlling owner of Purple LLC. The lease was originally entered into in 2010, but in October 2017 was amended with a lease term of 10 years that expires in September 2027 with an early-out clause without penalties after 5 years and includes an option for a 5-year extension.

The Company leases a facility located in Grantsville, Utah for use primarily as manufacturing and warehouse space. The lease was entered into in August 2016 with a lease term of 66 months and expires in January 2022 with two 5-year extension options. The Company also leases another facility in Grantsville, Utah for use as temporary warehouse space. The lease was entered into in May 2019 with a lease term of 4 months which expired in August 2019 with a holdover option on a month to month basis.

In June 2019, the Company entered into a lease for Corporate office and showroom space in Lehi, Utah with a lease term of 10 years, an option to early terminate after the eighty-fourth calendar month, and an option for two 5-year extensions. The Lehi lease commenced in November 2019 and the Company moved its headquarters into the building in February 2020. In addition, in November 2019, the Company entered into an amendment to the Lehi lease for additional office space.

During 2019 and 2020, the Company entered into numerous leases for a Factory Outlet and Company showrooms, which have various commencement dates, with lease terms of 3 to 36 months with various renewal options.

In July 2020, the Company entered into a lease for a new facility in McDonough, Georgia. The Company immediately commenced preparing the building for use as a manufacturing, distribution and office facility and expects it to be fully operational in 2021. The term of the Lease is 128 months including an eight-month free rent period, which will commence upon completion of the landlord's work on the Company's space in the building. The Company anticipates the landlord's work to be completed by the middle of first quarter 2021. The lease also provides the Company with an option to extend the Lease term for two additional five-year periods. The lease also provides the Company with signage rights and a right of first refusal on other contiguous space.

The Company recognizes rent expense on lease payments, including those with rent escalations and rent-free periods, on a straight-line basis over the expected lease term. During the three months ended September 30, 2020 and 2019, the Company recognized rent expense in the amount of $1.6 million and $0.8 million, respectively. During the nine months ended September 30, 2020 and 2019, the Company recognized rent expense in the amount of $4.2 million and $2.6 million, respectively. At September 30, 2020, the Company had deferred rent of $6.7 million, of which $0.3 million is short-term and included in other current liabilities and $6.4 million is long-term and included in other long-term liabilities on the accompanying balance sheets. At December 31, 2019, the Company had deferred rent of $5.1 million all of which is long-term and included in other long-term liabilities on the accompanying balance sheets.

Purchase Agreement

In February 2018, the Company entered into a purchase contract with a supplier of mineral oil that includes a minimum purchase commitment over a two-year period. In April 2019, the contract was amended to provide for a minimum purchase commitment over a four-year period ending in April 2023. In exchange, the Company is offered a further discount per gallon. As of September 30, 2020, approximately $6.2 million remains on the purchase contract. Based on current usage rates, the Company expects to fulfill its commitments under the agreement in the normal course of business, and as such, no liability has been recorded.

Indemnification Obligations

From time to time, the Company enters into contracts that contingently require it to indemnify parties against claims. These contracts primarily relate to provisions in the Company's services agreements with related parties that may require the Company to indemnify the related parties against services rendered; and certain agreements with the Company's officers and directors under which the Company may be required to indemnify such persons for liabilities. In connection with the closing of the Business Combination, to secure the payment of a certain portion of specified post-closing indemnification rights of the Company under the Merger Agreement, 0.5 million shares of Class B Stock and 0.5 million Class B Units otherwise issuable to InnoHold as equity consideration were deposited in an escrow account for up to three years from the Closing pursuant to a contingency escrow agreement. In September 2020, an amendment to the escrow agreement was signed whereby the 0.5 million shares of Class B Stock and 0.5 million Class B Units held in escrow were exchanged for $5.0 million to be held in escrow. As of September 30, 2020, the Company has estimated amounts totalling $4.2 million would qualify for indemnification if actually incurred. No claims have yet been submitted by the Company and $5.0 million remains deposited in an escrow account.

Subscription Agreement and Preemptive Rights

In February 2018, in connection with the Business Combination, the Company entered into a subscription agreement with CCP and Blackwell, pursuant to which CCP and Blackwell agreed to purchase from the Company an aggregate of 4.0 million shares of Class A Stock at a purchase price of $10.00 per share (the "Coliseum Private Placement"). In connection with the Coliseum Private Placement, the Sponsor assigned (i) an aggregate of 1.3 million additional shares of Class A Stock to CCP and Blackwell and (ii) an aggregate of 3.3 million warrants to purchase 1.6 million shares of Class A Stock to CCP, Blackwell, and CDF. The subscription agreement provides CCP and Blackwell with preemptive rights with respect to future sales of the Company's securities. It also provides them with a right of first refusal with respect to certain debt and preferred equity financings by the Company. The Company also entered into a registration rights agreement with CCP, Blackwell, and CDF, providing for the registration of the shares of Class A Stock issued and assigned to CCP and Blackwell in the Coliseum Private Placement, as well as the shares of Class A Stock underlying the warrants received by CCP, Blackwell and CDF. The Company has filed a registration statement with respect to such securities.

Rights of Securities Holders

The holders of certain Warrants exercisable into Class A Stock and certain other unregistered Class A Stock were entitled to registration rights pursuant to certain registration rights agreements of the Company as of the Business Combination date. In March 2018, the Company filed a registration statement registering the Warrants (and any shares of Class A Stock issuable upon the exercise of the Warrants), and certain unregistered shares of Class A Stock. The registration statement was declared effective on April 3, 2018.

The holders of the Incremental Loan Warrants exercisable into Class A Stock were entitled to registration rights pursuant to the registration rights agreement of the Company in connection with the Amended and Restated Credit Agreement. In March 2019, the Company filed a registration statement registering the Warrants (and any shares of Class A Stock issuable upon the exercise of the Warrants). The registration statement was declared effective on May 17, 2019.

On February 2, 2018, in connection with the closing of the Business Combination, the Company entered into a Registration Rights Agreement with InnoHold and the Parent Representative (the "InnoHold Registration Rights Agreement"). Under the InnoHold Registration Rights Agreement, InnoHold holds registration rights that obligate the Company to register for resale under the Securities Act, all or any portion of the Equity Consideration (including Class A Stock issued in exchange for the equity consideration received in the Business Combination) (the "Registrable Securities"). InnoHold is entitled to make a written demand for registration under the Securities Act of all or part of its Registrable Securities (up to a maximum of three demands in total). Pursuant to the InnoHold Registration Rights Agreement, the Company filed a registration statement on Form S-3 that was declared effective on November 8, 2019, pursuant to which InnoHold, Tony Pearce and Terry Pearce sold 11.5 million shares of Class A Stock. The Company filed a second registration statement on Form S-3 that was declared effective on May 14, 2020, pursuant to which InnoHold sold 12.4 million shares of Class A Stock. The Company filed a third and final registration statement on Form S-3 that was declared effective on September 9, 2020, pursuant to which InnoHold sold 16.8 million shares of Class A Stock.

Purple LLC Class B Unit Exchange Right

On February 2, 2018, in connection with the closing of the Business Combination, the Company entered into an exchange agreement with Purple LLC and InnoHold and Class B Unit holders who become a party thereto (the "Exchange Agreement"), which provides for the exchange of Purple LLC Class B Units (the "Class B Units") and shares of Class B Stock (together with an equal number of Class B Units, the "Paired Securities") for, at the Company's option, either (A) shares of Class A Stock at an initial exchange ratio equal to one Paired Security for one share of Class A Stock or (B) a cash payment equal to the product of the average of the volume-weighted closing price of one share of Class A Stock for the ten trading days immediately prior to the date InnoHold or other Class B Unit holders deliver a notice of exchange multiplied by the number of Paired Securities being exchanged. In December 2018, InnoHold distributed Paired Securities to Terry Pearce and Tony Pearce who also agreed to become parties to the Exchange Agreement. In June 2019, InnoHold distributed Paired Securities to certain current and former employees who also agreed to become parties to the exchange agreement. Holders of Class B Units may elect to exchange all or any portion of their Paired Securities as described above by delivering a notice to Purple LLC. See Note 16 — *Equity Compensation Plans.*

In certain cases, adjustments to the exchange ratio will occur in case of a split, reclassification, recapitalization, subdivision or similar transaction of or relating to the Class B Units or the shares of Class A Stock and Class B Stock or a transaction in which the Class A Stock is exchanged or converted into other securities or property. The exchange ratio will also adjust in certain circumstances when the Company acquires Class B Units other than through an exchange for its shares of Class A Stock.

The right of a holder of Paired Securities to exchange may be limited by the Company if it reasonably determines in good faith that such restrictions are required by applicable law (including securities laws), such exchange would not be permitted under other agreements of such holder with the Company or its subsidiaries, including the Operating Agreement, or if such exchange would cause Purple LLC to be treated as a "publicly traded partnership" under applicable tax laws.

The Company and each holder of Paired Securities shall bear its own expense regarding the exchange except that the Company shall be responsible for transfer taxes, stamp taxes and similar duties.

During the nine months ended September 30, 2020, 30.8 million Paired Securities were exchanged for shares of Class A Stock.

Maintenance of One-to-One Ratios

The Third Purple LLC Agreement includes provisions intended to ensure that the Company at all times maintains a one-to-one ratio between (a) (i) the number of outstanding shares of Class A Stock and (ii) the number of Class A Units owned by the Company (subject to certain exceptions for certain rights to purchase equity securities of the Company under a "poison pill" or similar stockholder rights plan, if any, certain convertible or exchangeable securities issued under the Company's equity compensation plan and certain equity securities issued pursuant to the Company's equity compensation plan (other than a stock option plan) that are restricted or have not vested thereunder) and (b) (i) the number of other outstanding equity securities of the Company (including the warrants exercisable for shares of Class A Stock) and (ii) the number of corresponding outstanding equity securities of Purple LLC. These provisions are intended to result in non-controlling interest holders having a voting interest in the Company that is identical to their economic interest in Purple LLC.

Non-Income Related Taxes

The U.S. Supreme Court ruling in *South Dakota v. Wayfair, Inc.*, No.17-494, reversed a longstanding precedent that remote sellers are not required to collect state and local sales taxes. We cannot predict the effect of these and other attempts to impose sales, income or other taxes on e-commerce. The Company currently collects and reports on sales tax in all states in which it does business. However, the application of existing, new or revised taxes on our business, in particular, sales taxes, VAT and similar taxes would likely increase the cost of doing business online and decrease the attractiveness of selling products over the internet. The application of these taxes on our business could also create significant increases in internal costs necessary to capture data and collect and remit taxes. There have been, and will continue to be, substantial ongoing costs associated with complying with the various indirect tax requirements in the numerous markets in which we conduct or will conduct business.

Legal Proceedings

On September 9, 2019, Purple LLC filed a Statement of Claim against PerfectSense Home Inc. and PerfectSense Trading Co. Ltd. (collectively, "PerfectSense") in the Federal Court of Canada. PerfectSense is a manufacturer and supplier of mattresses and related products. PerfectSense owns the domain name www.purplesleep.ca, which used to, but no longer, redirects to its website at www.perfectsense.ca. In addition to this, Purple LLC has alleged that PerfectSense has: designed their mattresses with the same look as the Purple mattresses (white mattress top, purple stripe, and grey bottom); used many of the marketing elements on Purple's website (including a similar "exploded view" image of their mattress); and adopted the color purple as their dominant marketing color. Purple LLC is suing for a declaration that PerfectSense has infringed Purple LLC's copyright and trademark rights and committed the tort of passing off. Purple LLC is asking for injunctive relief, damages, an accounting of profits, interest, costs, and delivery up or destruction of the infringing products (including delivery up of the www.purplesleep.ca domain). After filing the statement of claim, Purple LLC posted $15,000 CAD as security for PerfectSense's costs. PerfectSense recently brought a motion to strike that was resolved on consent. Pleadings are now closed, and the action is proceeding under case management. Counsel for the defendant was removed from the record at their own request by Court Order. The Court further ordered the defendant to either appoint counsel or file a motion to permit an officer or director to represent the defendant in legal proceedings. On November 6, 2020, the defendant informally requested that the Court permit Mr. Henderson, the CEO and shareholder of the defendant, to represent the defendant in the action until such time as a lawyer could be appointed. Purple will oppose this informal request.

On September 20, 2020, we filed a complaint at the U.S. Court of International Trade seeking to recover approximately $7.0 million of Section 301 duties paid at the time of importation on certain Chinese-origin goods. More than 4,000 other complaints have been filed by other companies seeking similar refunds. The United States has not yet filed an answer to our complaint. If successful, this litigation could result in a refund of some or all of the Section 301 duties.

The Company is from time to time involved in various other claims, legal proceedings and complaints arising in the ordinary course of business. The Company does not believe that adverse decisions in any such pending or threatened proceedings, or any amount that the Company might be required to pay by reason thereof, would have a material adverse effect on the financial condition or future results of the Company.

12. Related Party Transactions

The Company had various transactions with entities or individuals which are considered related parties.

Coliseum Capital Management, LLC

Immediately following the Business Combination, Adam Gray was appointed to the Company's board of directors. Mr. Gray is a manager of Coliseum Capital, LLC, which is the general partner of CCP and CDF, and he is also a managing partner of Coliseum Capital Management, LLC ("CCM"), which is the investment manager of Blackwell. Mr. Gray has voting and dispositive control over securities held by CCP, CDF and Blackwell which are also Lenders under the Amended and Restated Credit Agreement. In 2018, the Lenders agreed to make a loan in an aggregate principal amount of $25.0 million pursuant to the Credit Agreement entered into as part of the Business Combination. In conjunction with the Credit Agreement, the Sponsor agreed to assign to the Lenders an aggregate of 2.5 million warrants to purchase 1.3 million shares of its Class A Stock. In 2019, two of the Lenders, the Incremental Lenders, agreed to provide an incremental loan of $10.0 million (see Note 10 – *Debt*). The Lenders in aggregate had $41.6 million in principal borrowings outstanding, comprised of $35.0 million in original loan amount and $6.6 million in capitalized interest and accrued interest of $0.9 million as of September 3, 2020. Pursuant to the First Amendment to the Amended and Restated Credit Agreement, the Company did not make any cash interest payments to the Lenders during the three or nine months ended September 30, 2020. The Company made a cash interest payment of $0.5 million and $1.3 million during the three and nine months ended September 30, 2019, respectively. Pursuant to the Second Amendment to the Amended and Restated Credit Agreement, a negative covenant was removed so that there would not be an event of default if Lenders acquired 25% or more ownership of the Company. As part of the Amended and Restated Credit Agreement, CCP and Blackwell were granted 2.6 million warrants to purchase 2.6 million shares of the Company's Class A Stock at a price of $5.74 per share, subject to certain adjustments. In May 2020, pursuant to the terms of the warrant agreement upon the condition that Tony Pearce or Terry Pearce individually or together ceased to beneficially own at least 50% of the voting securities of the Company, the exercise price of the warrants were adjusted to $0 per share.

In February 2018, in connection with the Business Combination, the Company entered into a subscription agreement with CCP and Blackwell, pursuant to which CCP and Blackwell agreed to purchase from the Company an aggregate of 4.0 million shares of Class A Stock at a purchase price of $10.00 per share (the "Coliseum Private Placement"). In connection with the Coliseum Private Placement, the Sponsor assigned (i) an aggregate of 1.3 million additional shares of Class A Stock to CCP and Blackwell and (ii) an aggregate of 3.3 million warrants to purchase 1.6 million shares of Class A Stock to CCP, Blackwell, and CDF. The subscription agreement provides CCP and Blackwell with preemptive rights with respect to future sales of the Company's securities. It also provides them with a right of first refusal with respect to certain debt and preferred equity financings by the Company. The Company also entered into a registration rights agreement with CCP, Blackwell, and CDF, providing for the registration of the shares of Class A Stock issued and assigned to CCP and Blackwell in the Coliseum Private Placement, as well as the shares of Class A Stock underlying the warrants received by CCP, Blackwell and CDF. The Company has filed a registration statement with respect to such securities.

Retirement of Amended and Restated Credit Agreement

On September 3, 2020, the Company retired all indebtedness related to Purple LLC's original Credit Agreement dated as of February 2, 2018, as amended and restated in the Amended and Restated Credit Agreement dated February 26, 2019, and as further amended by the First Amendment to Amended and Restated Credit Agreement dated as of March 27, 2020, the Second Amendment to Amended and Restated Credit Agreement dated as of May 15, 2020, and the Waiver and Consent to Amended and Restated Credit Agreement dated as of August 20, 2020. The total amount paid for the retirement of the debt was $45.0 million, comprised of $35.0 million in original principal, $6.6 million of paid-in-kind interest, $2.5 million in a prepayment fee and $0.9 million in accrued interest.

Purple Founder Entities

TNT Holdings, LLC (herein "TNT Holdings"), EdiZONE, LLC (herein "EdiZONE") and InnoHold, LLC (herein "InnoHold") (the "Purple Founder Entities") were entities under common control with Purple LLC prior to the Business Combination as TNT Holdings and InnoHold are majority owned and controlled by Terry Pearce and Tony Pearce (with EdiZONE being wholly owned by TNT Holdings) who also were the founders of Purple LLC and immediately following the Business Combination were appointed to the Company's Board (the "Purple Founders"). InnoHold was a majority shareholder of the Company until it sold a portion of its interests in a secondary public offering in May 2020, and the remainder of its interests were sold in a secondary public offering in September 2020. The Purple Founders also retired from the Company's Board in August 2020.

TNT Holdings owns the Alpine facility Purple LLC has been leasing since 2010. Effective as of October 31, 2017, Purple LLC entered into an Amended and Restated Lease Agreement with TNT Holdings. The Company determined that TNT Holdings is not a VIE as neither the Company nor Purple LLC hold any explicit or implicit variable interest in TNT Holdings and do not have a controlling financial interest in TNT Holdings. The Company incurred $0.2 million and $0.2 million in rent expense to TNT Holdings for the building lease of the Alpine facility for the three months ended September 30, 2020 and 2019, respectively and $0.7 million and $0.8 million for the nine months ended September 30, 2020 and 2019, respectively. The Company continues to lease the Alpine facility that was formerly the Company headquarters, for use in production, research and development and video production.

During the nine months ended September 30, 2020, 30.1 million Paired Securities have been exchanged for Class A Stock by InnoHold.

On August 14, 2020, Purple LLC entered into a License Transfer and IP Assignment agreement with EdiZONE for the transfer and assignment to Purple LLC all of EdiZONE's rights, interests, and obligations under a certain license agreement, and certain intellectual property rights of EdiZONE, and indemnify and hold EdiZONE harmless from liability related to the certain license agreement. Purple LLC paid EdiZONE $8.5 million as consideration for the agreement. The rights, interests, and obligations under the assigned license agreement now owned by Purple LLC, including the right to receive royalty payments from the licensee, pertain to certain intellectual property owned by Purple LLC that was licensed back to EdiZONE for purposes of allowing EdiZONE to maintain its license with the third party licensee that existed prior to both the Business Combination and EdiZONE's related assignment of all its material intellectual property to Purple LLC pursuant to the Second Amended and Restated Assignment and License Back between EdiZONE and Purple LLC dated November 9, 2018, resulting in Purple LLC now being the direct licensor to that third party licensee of the intellectual property owned by Purple LLC. The additional intellectual property assigned to Purple LLC, and now also owned by Purple LLC, includes the INTELLIPILLOW and GEL MATRIX trademarks. For the avoidance of doubt, and stated simply, Purple LLC acquired the rights of EdiZONE to be the direct licensor with the third party licensee of the intellectual property, namely patents and trade secrets, that were and are owned by Purple LLC. The foregoing description of the License Transfer and IP Assignment Agreement does not purport to be complete and is qualified in its entirety by reference to the complete terms of the agreement, a copy of which is filed as Exhibit 10.2 to this Quarterly Report on Form 10-Q and incorporated herein by reference.

In July 2020 and September 2020, Purple LLC paid InnoHold either directly or through withholding payments directly to various states, an aggregate of $4.7 million in required tax distributions pursuant to the Second Purple LLC Agreement.

13. Stockholders' Equity

Prior to the Business Combination, GPAC was a shell company with no operations, formed as a vehicle to effect a business combination with one or more operating businesses. After the Closing, the Company became a holding company whose sole material asset consists of its interest in Purple LLC.

Class A Common Stock

The Company has 210.0 million shares of Class A Stock authorized at a par value of $0.0001 per share. Holders of the Company's Class A Stock are entitled to one vote for each share held on all matters to be voted on by the stockholders and participate in dividends, if declared by the Board, or receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock. Holders of the Class A Stock and holders of the Class B Stock voting together as a single class, have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. Holders of Class A Stock and Class B Stock are entitled to one vote per share on matters to be voted on by stockholders. At September 30, 2020, 53.8 million shares of Class A Stock were outstanding.

In accordance with the terms of the Business Combination, approximately 1.3 million shares of Class A Stock were subject to vesting and forfeiture. The shares of Class A Stock subject to vesting will be forfeited eight years from the Closing, unless any of the following events (each a "Triggering Event") occurs prior to that time:(i) the closing price of the Class A Stock on the principal exchange on which it is listed is at or above $12.50 for 20 trading days over a thirty trading day period (subject to certain adjustments), (ii) a change of control of the Company, (iii) a "going private" transaction by the Company pursuant to Rule 13e-3 under the Exchange Act or such other time as the Company ceases to be subject to the reporting obligations under Section 13 or 15(d) of the Exchange Act, or (iv) the time that the Company's Class A Stock ceases to be listed on a national securities exchange. During the nine months ended September 30, 2020, a Triggering Event occurred as the closing price of the Class A Stock on the principal exchange on which it is listed was at or above $12.50 for 20 trading days over a thirty trading day period. Accordingly, the shares of Class A Stock are no longer subject to vesting or forfeiture.

Class B Common Stock

The Company has 90.0 million shares of Class B Stock authorized at a par value of $0.0001 per share. Holders of the Company's Class B Stock will vote together as a single class with holders of the Company's Class A Stock on all matters properly submitted to a vote of the stockholders. Shares of Class B Stock may be issued only to InnoHold, their respective successors and assigns, as well as any permitted transferees of InnoHold. A holder of Class B Stock may transfer shares of Class B Stock to any transferee (other than the Company) only if such holder also simultaneously transfers an equal number of such holder's Purple LLC Class B Units to such transferee in compliance with the Second Purple LLC Agreement. The Class B Stock is not entitled to receive dividends, if declared by the Board, or to receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock.

In connection with the Business Combination, approximately 44.1 million shares of Class B Stock were issued to InnoHold as part of the equity consideration. InnoHold subsequently transferred a portion of its shares to permitted transfers and exchanged its remaining shares for Class A Stock that it sold. At September 30, 2020, 0.6 million shares of Class B Stock were outstanding all held by other parties.

Preferred Stock

The Company has 5.0 million shares of preferred stock authorized at a par value of $0.0001 per share. The preferred stock may be issued from time to time in one or more series. The directors are expressly authorized to provide for the issuance of shares of the preferred stock in one or more series and to establish from time to time the number of shares to be included in each such series and to fix the voting rights, designations and other special rights or restrictions. At September 30, 2020, there were no shares of preferred stock outstanding.

Public and Sponsor Warrants

There were 15.5 million public warrants (the "Public Warrants") issued in connection with GPAC's formation and IPO and 12.8 million warrants (the "Sponsor Warrants"), issued pursuant to a private placement simultaneously with the IPO. Each of the Company's warrants entitles the registered holder to purchase one-half of one share of the Company's Class A Stock at a price of $5.75 per half share ($11.50 per full share), subject to adjustment pursuant to the terms of the warrant agreement. Pursuant to the warrant agreement, a warrant holder may exercise its warrants only for a whole number of shares of the Class A Stock. For example, if a warrant holder holds one warrant to purchase one-half of one share of Class A Stock, such warrant will not be exercisable. If a warrant holder holds two warrants, such warrants will be exercisable for one share of the Class A Stock. In no event will the Company be required to net cash settle any warrant. The warrants have a five-year term which commenced on March 2, 2018, 30 days after the completion of the Business Combination, and will expire on February 2, 2023, or earlier upon redemption or liquidation.

The Company may call the warrants for redemption if the reported last sale price of the Class A Stock equals or exceeds $24.00 per share for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date the Company sends the notice of redemption to the warrant holders; provided, however, that the Sponsor Warrants are not redeemable by the Company so long as they are held by the Sponsor or its permitted transferees. In addition, with respect to the Sponsor Warrants, so long as such Sponsor Warrants are held by the Sponsor or its permitted transferee, the holder may elect to exercise the Sponsor Warrants on a cashless basis, by surrendering their Sponsor Warrants for that number of shares of Class A Stock equal to the quotient obtained by dividing (x) the product of the number of shares of Class A Stock underlying the Sponsor Warrants, multiplied by the difference between the exercise price of the Sponsor Warrants and the "fair market value" (defined below), by (y) the fair market value. The "fair market value" means the average reported last sale price of the Class A Stock for the 10 trading days ending on the third trading day prior to the date on which the notice of warrant exercise is sent to the warrant agent. All other terms, rights and obligations of the Sponsor Warrants remain the same as the Public Warrants. Both the Public and Sponsor Warrants are classified as equity instruments in the accompanying condensed consolidated balance sheet.

From the time of GPAC's IPO up to the Business Combination with Purple LLC, there were 28.3 million warrants outstanding. During the nine months ended September 30, 2020, 0.9 million warrants have been exercised. At September 30, 2020, approximately 27.4 million warrants remain outstanding.

Incremental Loan Warrants

In connection with the Amended and Restated Credit Agreement, the Company issued to CCP and Blackwell, as the Incremental Lenders funding the Incremental Loan, 2.6 million Incremental Loan Warrants to purchase 2.6 million shares of the Company's Class A Stock. Each Incremental Loan Warrant entitles the registered holder to purchase one share of the Company's Class A Stock at a price of $5.74 per share, subject to adjustment pursuant to the terms of the warrant agreement. The Incremental Loan Warrants have a five-year term and will expire on February 26, 2024, or earlier upon redemption or liquidation.

The Company may call the warrants for redemption at a price of $0.01 per Share of Class A Stock if the reported last sale price of the Class A Stock equals or exceeds $24.00 per share for any 20 trading days within a 30-trading day period ending on the third trading day prior to the date the Company sends the notice of redemption to the warrant holders. If the Company calls the Incremental Loan Warrants for redemption, it will have the option to require the holder to exercise the Incremental Loan Warrants on a cashless basis, by surrendering their Incremental Loan Warrants for that number of shares of Class A Stock equal to the quotient obtained by dividing (x) the product of the number of shares of Class A Stock underlying the Incremental Loan Warrants, multiplied by the difference between the exercise price of the Sponsor Warrants and the "fair market value" (defined below), by (y) the fair market value. The "fair market value" means the average reported last sale price of the Class A Stock for the 10 trading days ending on the third trading day prior to the date on which the notice of redemption is sent to the holders of Incremental Loan Warrants.

In the event of a "fundamental transaction" as defined in the warrant agreement, the holder will have the right to purchase and receive the same kind and amount of consideration receivable by the stockholders of the Company upon the occurrence of such fundamental transaction. The warrant agreement requires the Company to cause the surviving company in a fundamental transaction, to assume the obligations of the Company under the Incremental Loan Warrants. In addition, a clause in the Incremental Loan Warrant Agreement states, upon the occurrence of a fundamental transaction, that the holders of the Incremental Loan Warrants may elect to either (i) have the exercise price of the warrant reduced by the Black-Scholes value of the Incremental Loan Warrants (as set forth in the Incremental Loan Warrants Agreement) or (ii) cause the Company or its successor to repurchase all or a portion of the Incremental Loan Warrants at the Black-Scholes value (as set forth in the Incremental Loan Warrants). In addition, upon the occurrence of any of the additional following events: (1) acquisition of 25% or more of the total voting power of all the securities of the entity by any one person or group of affiliated persons or entities; (2) Tony Pearce or Terry Pearce individually or together ceasing to beneficially own at least 50% of the voting securities of the Company; or (3) the Board of Directors ceasing to be comprised of a majority of independent directors as defined under NASDAQ rules, the exercise price of the warrant will be reduced by a value based upon a formula model established in the agreement. As a result of these clauses, the Incremental Loan Warrants embody an obligation to repurchase the Company's equity shares, or is indexed to such an obligation, and may require the Company to settle the obligation by transferring assets. As such, the Incremental Loan Warrants are classified as liabilities under ASC 480 - *Distinguishing Liabilities from Equity*.

During the nine months ended September 30, 2020, Tony Pearce or Terry Pearce individually or together ceased to beneficially own at least 50% of the voting securities of the Company. As a result, the exercise price of the warrants were reduced to $0, based on the formula established in the agreement.

Noncontrolling Interest

Noncontrolling interest ("NCI") is the membership interest held by holders other than the Company. On February 2, 2018, upon the close of the Business Combination, and at December 31, 2018, InnoHold's and other Purple LLC Class B Unit holders' combined NCI percentage in Purple LLC was approximately 82%. At September 30, 2020, the combined NCI percentage in Purple LLC was approximately 1%. The Company has consolidated the financial position and results of operations of Purple LLC and reflected the proportionate interest held by all such Purple LLC Class B Unit holders as NCI.

14. Income Taxes

The Company's sole material asset is Purple LLC, which is treated as a partnership for U.S. federal income tax purposes and for purposes of certain state and local income taxes. Purple LLC's net taxable income and any related tax credits are passed through to its members and are included in the members' tax returns, even though such net taxable income or tax credits may not have actually been distributed. While the Company consolidates Purple LLC for financial reporting purposes, the Company will be taxed on its share of earnings of Purple LLC not attributed to the noncontrolling interest holders, which will continue to bear their share of income tax on its allocable earnings of Purple LLC. The income tax burden on the earnings taxed to the noncontrolling interest holders is not reported by the Company in its consolidated financial statements under GAAP. As a result, the Company's effective tax rate differs materially from the statutory rate. The primary factors impacting the expected tax are the allocation of tax benefit to noncontrolling interest and the impact of the valuation allowance.

In prior periods the Company had maintained a full valuation allowance on its net deferred tax assets which are comprised primarily of basis differences in Purple LLC. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income sufficient to utilize the deferred tax assets on income tax returns. In prior periods, management had determined that its net deferred tax assets were not more likely than not going to be realized due to existence of critical negative evidence that the Company was in a three-year cumulative loss position. Considering this and other factors, a valuation allowance of $44.3 million was maintained through the period ending March 31, 2020.

For the period ended June 30, 2020, and in assessing the realizability of deferred tax assets, management determined that it was more likely than not that its net deferred tax assets would be realized and that a full valuation allowance for its deferred tax assets was no longer appropriate. As of the period ended June 30, 2020, the Company was no longer in a three-year cumulative loss position. As a result of the removal of this negative evidence and other items of positive evidence, the Company determined that the deferred tax assets were more likely than not to be realized. Accordingly, through the period ended September 30, 2020, $35.4 million of the valuation allowance associated with the Company's federal and state deferred tax assets was released and recorded as an income tax benefit. An additional $0.7 million of remaining valuation allowance will be released in the fourth quarter of 2020 as taxes are recorded. In addition, and in conjunction with the removal of the valuation allowance, the Company recorded an additional $172.8 million in deferred tax assets primarily related to tax basis increases resulting from exchanges of Class B Paired Securities during the nine months ended September 30, 2020. The deferred tax assets at September 30, 2020 are $205.5 million net of $0.7 million of valuation allowance recorded against the deferred tax assets, which will be released in subsequent quarters and $11.0 million of valuation allowance that has been recorded against the residual outside partnership basis for the amount the Company believes is not more likely than not realizable.

The Company currently estimates its annual effective income tax rate to be 3.14%. The annualized effective tax rate for the Company differs from the federal rate of 21% primarily due to (1) the release of a portion of the valuation allowance through the current year's annual effective tax rate calculation, and (2) NCI in Purple LLC that is allocated to InnoHold and others.

The effective tax rate as of September 30, 2020, is 162% primarily due to the tax benefit from the release of the valuation allowance. For the three months and nine months ended September 30, 2020, the Company has recorded an income tax benefit of $0.1 million and $35.8 million, respectively.

In response to the COVID-19 pandemic, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law in March 2020. The CARES Act lifts certain deduction limitations originally imposed by the Tax Cuts and Jobs Act of 2017 (2017 Tax Act). Corporate taxpayers may carryback net operating losses (NOLs) originating during 2018 through 2020 for up to five years, which was not previously allowed under the 2017 Tax Act. The CARES Act also eliminates the 80% of taxable income limitations by allowing corporate entities to fully utilize NOL carryforwards to offset taxable income in 2018, 2019 or 2020. Taxpayers may generally deduct interest up to the sum of 50% of adjusted taxable income plus business interest income (30% limit under the 2017 Tax Act) for tax years beginning January 1, 2019 and 2020. The CARES Act allows taxpayers with alternative minimum tax credits to claim a refund in 2020 for the entire amount of the credits instead of recovering the credits through refunds over a period of years, as originally enacted by the 2017 Tax Act.

In addition, the CARES Act raises the corporate charitable deduction limit to 25% of taxable income and makes qualified improvement property generally eligible for 15-year cost-recovery and 100% bonus depreciation. The enactment of the CARES Act resulted in two adjustments to our income tax provision for the six months ended June 30, 2020, relating to increased 2019 NOL utilization and tax benefits from NOL carrybacks. We have recorded a discrete benefit of $0.5 million in our income tax provision for the nine months ended September 30, 2020 related to the CARES Act.

In connection with the Business Combination, the Company entered into the TRA with InnoHold, which provides for the payment by the Company to InnoHold of 80% of the net cash savings, if any, in U.S. federal, state and local income tax that the Company actually realizes (or is deemed to realize in certain circumstances) in periods after the Closing as a result of (i) any tax basis increases in the assets of Purple LLC resulting from the distribution to InnoHold of the cash consideration, (ii) the tax basis increases in the assets of Purple LLC resulting from the redemption by Purple LLC or the exchange by the Company, as applicable, of Class B Paired Securities or cash, as applicable, and (iii) imputed interest deemed to be paid by the Company as a result of, and additional tax basis arising from, payments it makes under the TRA.

As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of their Class B Units, a TRA Liability is recorded based on 80% of the estimated future cash tax savings that the Company may realize as a result of increases in the basis of the assets of Purple LLC attributed to the Company as a result of such exchange or redemption. The amount of the increase in asset basis, the related estimated cash tax savings and the attendant TRA Liability to be recorded will depend on the price of the Company's Class A Stock at the time of the relevant redemption or exchange.

The estimation of liability under the TRA is by its nature imprecise and subject to significant assumptions regarding the amount and timing of future taxable income. As a result of the initial merger transaction and the subsequent exchanges of 43.5 million Class B Units for Class A Stock as of September 30, 2020, the potential future TRA liability is $169.6 million, of which $169.0 million has been recorded through the third quarter of 2020. Due to the release of the Company's valuation allowance on the deferred tax assets to which the Tax Receivable Agreement liability relates, only $169.0 of the $169.6 million has been recorded to date ($0.5 million in 2019 and an incremental $168.5 million through September 30, 2020). Of the total liability recorded during 2020, $134.9 million relates to current year exchanges and was recorded as an adjustment to equity and $33.5 million was recorded to expense in order to re-establish the TRA related to prior year exchanges. The additional $0.6 million is expected to be recorded in the fourth quarter of the year ending December 31, 2020.

The effects of uncertain tax positions are recognized in the consolidated financial statements if these positions meet a "more-likely-than-not" threshold. For those uncertain tax positions that are recognized in the consolidated financial statements, liabilities are established to reflect the portion of those positions it cannot conclude "more-likely-than-not" to be realized upon ultimate settlement. The Company's policy is to recognize interest and penalties related to unrecognized tax benefits on the income tax expense line in the accompanying consolidated statement of operations. Accrued interest and penalties would be included on the related tax liability line in the consolidated balance sheet. As of September 30, 2020, no uncertain tax positions were recognized as liabilities in the condensed consolidated financial statements.

15. Net Income (Loss) Per Common Share

The following table sets forth the calculation of basic and diluted weighted average shares outstanding and earnings per share for the periods presented (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net income (loss) (numerator):				
Net income (loss) attributable to Purple Innovation, Inc.-basic	$ (1,022)	$ 1,594	$ 5,832	$ 126
Add: Net income (loss) attributed to the noncontrolling interest	—	6,817	—	224
Net income (loss) attributable to Purple Innovation, Inc.-diluted	$ (1,022)	$ 8,411	$ 5,832	$ 350
Weighted average shares (denominator):				
Weighted average shares—basic	44,266	8,828	32,117	8,576
Add: Dilutive effects of equity awards	—	262	4,511	91
Add: Dilutive effects of Class B common stock	—	43,703	—	43,787
Weighted average shares—diluted	44,266	52,793	36,628	52,454
Net income (loss) per common share:				
Basic	$ (0.02)	$ 0.18	$ 0.18	$ 0.01
Diluted	$ (0.02)	$ 0.16	$ 0.16	$ 0.01

For the three months ended September 30, 2020, the Company excluded 9.9 million Paired Securities exchangeable into shares of Class A Stock and 10.4 million shares of Class A Stock issuable upon exercise of certain Company warrants and stock options as the effect was anti-dilutive. For the nine months ended September 30, 2020, the Company excluded 21.6 million Paired Securities exchangeable into shares of Class A Stock and 2.6 million shares of Class A Stock issuable upon exercise of certain Company warrants as the effect was anti-dilutive. For the three and nine months ended September 30, 2019, the Company excluded 17.0 million shares of Class A Stock issuable upon conversion of the Company's warrants and stock options and 1.3 million shares of issued Class A Stock subject to vesting as the effect was anti-dilutive.

16. Equity Compensation Plans

2017 Equity Incentive Plan

The Purple Innovation, Inc. 2017 Equity Incentive Plan (the "2017 Incentive Plan") provides for grants of stock options, stock appreciation rights, restricted stock and other stock-based awards. Directors, officers and other employees and subsidiaries and affiliates, as well as others performing consulting or advisory services for the Company and its subsidiaries, will be eligible for grants under the 2017 Incentive Plan. The aggregate number of shares of Class A Stock which may be issued or used for reference purposes under the 2017 Incentive Plan or with respect to which awards may be granted may not exceed 4.1 million shares. As of September 30, 2020, approximately 2.1 million shares remain available under the 2017 Incentive Plan.

Class A Common Stock Awards

In March 2020, the Company granted a restricted stock award under the Company's 2017 Equity Incentive Plan to the Company's independent Board advisor and GPAC observer. The stock award vests in March 2021. As this award includes a service condition, the estimated fair value of the restricted stock is measured on the grant date and is recognized over the service period. The Company determined that the fair value of the restricted stock on the grant date was immaterial.

In May and June 2020, the Company granted restricted stock awards under the Company's 2017 Equity Incentive Plan to certain employees of the Company. The stock awards vest over 3 to 4 years. The estimated fair value of the restricted stock is measured on the grant date and is recognized over the vesting period. The Company determined that the fair value of the restricted stock on the grant dates was $0.7 million.

Employee Stock Options

During the nine months ended September 30, 2020, the Company granted stock options under the Company's 2017 Equity Incentive Plan to certain management of the Company. The stock options have an exercise price ranging from of $12.76 to $15.12 per option. The stock options expire in five years and vest over a four-year period. The estimated fair value of the stock options, less expected forfeitures, is amortized over the options vesting period on a straight-line basis. The Company determined the fair value of the options granted during the nine months ended September 30, 2020 using the Black Scholes method with the following assumptions:

Fair market value	$ 8.02 – 15.12
Exercise price	$ 12.76 – 15.12
Risk free interest rate	0.21 - 0.61%
Expected term in years	2.50 - 3.56
Expected volatility	38.28 – 54.45%
Expected dividend yield	—

The following table summarizes the Company's total stock option activity for the nine months ended September 30, 2020:

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term in Years	Intrinsic Value $
As of September 30, 2020:				
Options outstanding as of January 1, 2020	2,136	$ 6.95	4.3	$ 3,752
Granted	309	13.11	—	—
Exercised	(208)	7.42	—	—
Forfeited/cancelled	(109)	10.80	—	—
Options outstanding as of September 30, 2020	2,128	$ 7.61	3.6	$ 36,721

Outstanding and exercisable stock options as of September 30, 2020 are as follows:

	Options Outstanding		Options Exercisable		
Exercise Prices	Number of Options Outstanding (in thousands)	Weighted Average Remaining Life (Years)	Number of Options Exercisable (in thousands)	Weighted Average Remaining Life (Years)	Intrinsic Value
$ 5.75	225	3.39	74	$ 3.39	$ 1,413
5.95	538	3.00	258	3.00	4,875
6.51	277	3.64	82	3.64	1,511
6.65	183	3.61	50	3.61	904
7.99	28	4.17	10	4.17	175
8.07	5	3.90	—	—	—
8.17	225	4.00	22	4.00	365
8.32	230	3.75	53	3.75	865
8.55	179	4.00	—	—	—
12.76	25	4.45	—	—	—
13.12	210	4.22	19	0.13	226
15.12	3	4.63	—	—	—

The estimated fair value of the Company stock options, less expected forfeitures, is amortized over the options vesting period on the straight-line basis. The Company recognized $0.3 million and $0.2 million in stock-based compensation expenses related to stock options during the three months ended September 30, 2020 and 2019, respectively. The Company recognized $0.9 million and $0.4 million in stock-based compensation expenses related to stock options during the nine months ended September 30, 2020 and 2019, respectively.

As of September 30, 2020, there was $3.0 million of total unrecognized stock compensation cost with a remaining recognition period of 2.60 years.

InnoHold Incentive Units

In January 2017, pursuant to the 2016 Equity Incentive Plan approved by InnoHold and Purple LLC that authorized the issuance of 12.0 million incentive units, Purple LLC granted 11.3 million incentive units to Purple Team LLC, an entity for the benefit of certain employees who were participants in that plan. In conjunction with the Business Combination, Purple Team LLC was merged into InnoHold with InnoHold being the surviving entity and the Purple Team LLC incentive units were cancelled and new incentive units were issued by InnoHold under its own limited liability company agreement (the "InnoHold Agreement"). On February 8, 2019, InnoHold initiated a tender offer to each of these incentive unit holders, some of which are current employees of Purple LLC, to distribute to each a pro rata number of 2.5 million Paired Securities held by InnoHold in exchange for the cancellation of their ownership interests in InnoHold. All InnoHold incentive unit holders accepted the offer, and the terms and distribution of each transaction were finalized and closed on June 25, 2019. At the closing of the tender offer, those incentive unit holders received, based on their pro rata holdings of InnoHold Class B Units, a portion of 2.5 million Paired Securities held by InnoHold. The distribution by InnoHold to current employees of Purple LLC as of the distribution date resulted in the recognition of non-cash stock compensation expense for Purple LLC in the amount of $9.0 million which represented the fair value of the Paired Securities as of the distribution date in 2019. As of September 30, 2020, 0.6 million of the Paired Securities remain to be exchanged for Class A Stock by the incentive unit holders. A small number of Paired Securities remain subject to vesting contingent upon such current employees' continued employment with the Company.

Aggregate Non-Cash Stock-Based Compensation

The Company has accounted for all stock-based compensation under the provisions of ASC 718 Compensation—Stock Compensation. This standard requires the Company to record a non-cash expense associated with the fair value of stock-based compensation over the requisite service period. The table below summarizes the aggregate non-cash stock-based compensation recognized in the statement of operations for stock awards, employee stock options and the distribution by InnoHold of Paired Securities.

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
Non-Cash Stock-Based Compensation	**2020**	**2019**	**2020**	**2019**
Cost of revenues	$ 44	$ 164	$ 124	$ 629
Marketing and sales	76	1,332	224	4,215
General and administrative	181	1,199	840	4,140
Research and development	46	240	371	756
Total non-cash stock-based compensation	$ 347	$ 2,935	$ 1,559	$ 9,740

17. Employee Retirement Plan

In July 2018 the Company established a 401(k) plan that qualifies as a deferred compensation arrangement under Section 401 of the IRS Code. All eligible employees over the age of 18 and with 4 months' service are eligible to participate in the plan. The plan provides for Company matching of employee contributions up to 5% of eligible earnings. Company contributions immediately vest. The Company matching contribution expense was $0.5 million and $0.4 million for the three months ended September 30, 2020 and 2019, respectively, and $1.7 million and $1.0 million for the nine months ended September 30, 2020 and 2019, respectively.

18. Subsequent Events

On October 1, 2020, pursuant to his employment agreement, the Company granted Joseph B. Megibow, Chief Executive Officer, nonqualified stock options to purchase 0.2 million shares of the Company's Class A Stock. The options have an exercise price of $21.70 per share, vest over a four-year period and expire five years from the date of issuance. In addition, the Company determined to increase Mr. Megibow's salary by $50,000 to $500,000 annually, continue to provide Mr. Megibow with such airfare reimbursement and housing stipend for six additional months, expiring March 31, 2021, and extend Mr. Megibow's relocation reimbursements until September 30, 2021.

In October we received a claim that one of our products does not have the proper warning label required by California's Proposition 65, which requires businesses to provide warnings to Californians about significant exposures to chemicals that are known to California to cause cancer, birth defects or other reproductive harm. While we are investigating this claim and generally make efforts to comply with Proposition 65, we may be subject to such claims and, as a result, we may be required to expend resources in defense of these claims and incur costs to comply with the regulations that could increase our cost of doing business

On October 13, 2020, Purple LLC filed a lawsuit against Responsive Surface Technology, LLC ("ReST") and its parent company, PatienTech, LLC ("PatienTech") in the United States District Court for the District of Utah. Purple, LLC seeks monetary damages, injunctive relief, and declaratory judgment based on certain conduct by ReST and PatienTech ("Case I"). Due to confidentiality obligations between the parties, the publicly-filed complaint was filed in a redacted form, and the substance of the dispute cannot be revealed at this time. The defendants' responses to the complaint have not yet come due, and no motions have been filed. Case I remains in its infancy. On October 21, 2020, shortly after the complaint was filed in Case I, ReST filed a retaliatory lawsuit against Purple LLC, Gary DiCamillo, Adam Gray, Joseph Megibow, Terry Pearce, and Tony Pearce, also in the United States District Court for the District of Utah ("Case II"). Although ReST seeks to cast the situation in a light unfavorable to Purple LLC, Case II involves the same facts and transactions as Case I. As a result, Case II is subject to the same confidentiality restrictions, and its substance cannot be revealed at this time. Purple LLC, has not yet filed its response to ReST's complaint. Purple LLC, intends to file a motion to consolidate Case II into Case I in the near future. Purple LLC seeks over $4 million in damages from ReST and PatienTech in Case I, while ReST claims in Case II that Purple LLC is liable to it for tens of millions of dollars. The outcomes of the cases cannot be predicted at this early stage. However, we intend to vigorously pursue our claims under Case I and defend against the claims made by ReST in Case II.

During October 2020, approximately 8.0 million Public Warrants were exercised for $45.6 million in cash and approximately 4.0 million shares of Class A Stock were issued.

On October 27, 2020, the Company provided notice to the holders of the Public Warrants and the Incremental Loan Warrants that the Company is exercising their right under the terms of the Public Warrants and Incremental Loan Warrants to redeem such warrants by paying to such warrant holders the redemption price of $0.01 per warrant on November 30, 2020. Any exercise of the warrants prior to that date must be done on a cashless basis, in accordance with the terms of the warrants. As of November 9, 2020, 1.7 million Public Warrants and 2.6 million Incremental Loan Warrants have been exercised resulting in the issuance of 3.1 million shares of Class A stock.

On November 4, 2020, the Company's Board approved a Short-Term Cash Incentive Plan (the "STIP") for the 2020 plan year. Participation in the STIP is limited to key employees who are employed to serve as Senior Vice Presidents, Vice Presidents, or Senior Directors. Not all eligible employees are guaranteed to participate in the plan, as participation will be subject to Board discretion and approval. The STIP will be administered by the HR & Compensation Committee as authorized by the Board. For the STIP to activate, the company must achieve certain net revenue and adjusted EBITDA targets. If the Company does not reach the minimum targets, no cash awards will be paid to any of the participants under the Plan. The amount of the total payment to each participant is adjustable to account for personal performance criteria, as follows: 70% of the amount is based on the Company's achievement of at least the minimum Company-level performance targets and the remaining 30% is based on the participant's achievement of personal performance criteria selected or approved by the Board. Subject to the other provisions of the STIP, payment to a participant will be made in cash in an amount up to the product determined by multiplying a certain percentage from 50% to 150% by the participant's targeted bonus amount. That percentage will be determined based on whether and the extent to which the net revenue target and adjusted EBITDA target both exceed certain minimum target threshold amounts. The bonus target applicable to each participant is determined by multiplying (x) the participant's annual base salary by (y) the participant's share of the total bonus fund amount, as determined in accordance with the STIP. A participant will have no right to receive a payment under the STIP unless the participant remains in good standing with the Company during the plan year and remains in the employ of the Company through and including the payment date in 2021. This summary of the STIP does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the STIP, which is attached as Exhibit 10.11 to this 10-Q and is incorporated by reference herein.

On November 9, 2020, the Company mailed to Paul Zepf a notice terminating Mr. Zepf's Observer and Indemnification Agreement dated February 2, 2018 (the "Observer Agreement"). Since Mr. Zepf was appointed to the Board of Directors on August 18, 2020, his service as an observer was no longer necessary. The Observer Agreement provided for one-year automatic renewals until the Company provided written notice of termination not less than thirty days prior to the renewal period.

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

The following discussion is intended to provide a more comprehensive review of the operating results and financial condition of Purple Innovation, Inc. than can be obtained from reading the Unaudited Condensed Consolidated Financial Statements alone. The discussion should be read in conjunction with the Unaudited Condensed Consolidated Financial Statements and the notes thereto included in "Part I. Item 1. Financial Statements."

FORWARD-LOOKING STATEMENTS

This quarterly report on Form 10-Q (this "Quarterly Report") contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that represent our current expectations and beliefs. All statements other than statements of historical fact are "forward-looking statements" for purposes of federal and state securities laws. In some cases, you can identify these statements by forward-looking words such as "believe," "expect," "project," "anticipate," "estimate," "intend," "plan," "targets," "likely," "will," "would," "could," "may," "might," the negative of these words and other similar words.

All forward-looking statements included in this Quarterly Report are made only as of the date thereof. It is routine for our internal projections and expectations to change throughout the year, and any forward-looking statements based upon these projections or expectations may change prior to the end of the next quarter or year. Investors are cautioned not to place undue reliance on any such forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise, except as required by law.

We caution and advise readers that these statements are based on assumptions that may not be realized and involve risks and uncertainties that could cause actual results to differ materially from the expectations and beliefs contained herein. These risks include, among others, the evolving impact and duration of the COVID-19 pandemic. For a summary of these risks, see the risk factors included in the "Risk Factors" section in this Quarterly Report and in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 9, 2020.

Introductory Note

On February 2, 2018, our predecessor, GPAC, consummated the Business Combination pursuant to the Merger Agreement, by and among GPAC, Merger Sub, Purple LLC, InnoHold and the Sponsor, which provided for the Company's acquisition of Purple LLC's business through the merger of Merger Sub with and into Purple LLC, with Purple LLC being the survivor in the Business Combination.

In connection with the closing of the Business Combination, the Company changed its name from "Global Partner Acquisition Corp." to "Purple Innovation, Inc." The Business Combination was accounted for as a reverse recapitalization because the former owners of Purple LLC had control over the combined company through their 82% ownership of the common stock of the Company. Although the Company was the legal acquirer, the historical operations of Purple LLC are deemed to be those of the Company. Thus, the financial statements included in this Quarterly Report on Form 10-Q reflect (i) the historical operating results of Purple LLC prior to the Business Combination; (ii) the combined results of the Company following the Business Combination; (iii) the assets and liabilities of Purple LLC at their historical cost; and (iv) the Company's equity and earnings per share for all periods (both pre- and post-Business Combination) presented.

Overview of Our Business

Our mission is to help people feel and live better through innovative comfort solutions.

We are a digitally-native vertical brand founded on comfort product innovation with premium offerings. We design and manufacture a variety of innovative, branded and premium comfort products, including mattresses, pillows, cushions, frames, sheets, and other products. Our products are the result of over 30 years of innovation and investment in proprietary and patented comfort technologies and the development of our own manufacturing processes. Our proprietary gel technology, Hyper-Elastic Polymer, underpins many of our comfort products and provides a range of benefits that differentiate our offerings from other competitors' products. We market and sell our products through our direct-to-consumer ("DTC") online channels, retail brick-and-mortar wholesale partners, third-party online retailers and our Company showrooms.

COVID-19 Pandemic Developments

The COVID-19 pandemic has impacted many aspects of our operations, directly and indirectly, including disruption of our employees, consumer behavior, distribution and logistics, our suppliers, and the market overall. The scope and nature of these impacts continue to evolve. In light of the COVID-19 pandemic, we have taken a number of precautionary measures to manage our resources and mitigate the adverse impact of the pandemic, which is intended to help minimize the risk to our Company, employees, customers, and the communities in which we operate. Employees at the Company's headquarters and certain other employees have been asked to work from home where possible, with only limited access given to employees to work in the office when necessary. For roles that require employees to be on-site, such as our manufacturing facility and distribution center, we mandate protective equipment be worn, perform temperature testing at the start of each shift and again during the shift, contact trace when risk of exposure is known, stagger shifts to reduce concentration of employees, follow social distancing guidelines and sanitize daily including complete weekly anti-viral fumigation. The State of Utah, where all of our manufacturing operations currently take place, has experienced a significant resurgence of COVID-19 cases. If the State of Utah, as part of efforts to control the resurgence of COVID-19, requires us to close our facilities temporarily or to reduce the number of employees working in our manufacturing at a given time, our business and operations could be adversely affected.

Despite the ongoing challenges from COVID-19, the Company has been able to capitalize on the opportunities created by this situation. We continue to serve our customers through our Direct to Consumer ("DTC") channel, which has remained strong throughout the year as consumer demand for our premium, differentiated product offerings shifted to our DTC channel. We continue to focus our efforts in our DTC core competencies resulting in a continued strength in DTC channel sales across all of our product categories throughout the quarter. This increase in demand was a contributing factor to DTC net revenue growth of approximately 97% over the prior year third quarter. There can be no assurance that this trend of strong demand through our DTC channel will continue. We initially experienced a sharp decline in the wholesale side of our business as temporary shutdowns of non-essential businesses and shelter-at-home directives occurred in most U.S. states. As the shutdowns were lifted and stores began to open again, demand through the wholesale channel increased such that our net revenue from wholesale customers this quarter is up 7% over the prior year third quarter. We have our factory outlet and all of our showrooms open and servicing our customers. We recently opened two new showrooms and have two more planned to open by the end of the year. However, due to recent resurgence of COVID-19, we may be required to close our factory outlet and showrooms in the future. We have signed a new lease for a manufacturing facility in Georgia and are proceeding with the buildout and purchasing of equipment to begin production.

This increase in demand allowed us to work through a portion of our on-hand inventory and required us to ramp up production. We continue to take advantage of our vertically integrated business model to adjust production schedules to leverage inventory on hand and manage labor costs. We also continue to dynamically adjust our significant discretionary online advertising spend in response to any changes in DTC trends as they develop.

Our supply chain has not been significantly affected by COVID-19. Suppliers in China were temporarily closed as a result of the pandemic, but we had sufficient inventory on hand. These suppliers have resumed production and are able to supply materials as needed. Most of our domestic suppliers are able to continue operations and provide necessary materials when needed. We have experienced some constraints from certain suppliers due to our increased production to meet demand. We have also experienced some shipping delays in the delivery of our product to our customers. This is due to the increased nationwide demand placed on delivery companies.

Although the Company has taken measures to protect the business, we cannot predict the specific duration for which these precautionary measures will stay in effect, and we may elect or need to take additional measures as the information available to us continues to develop, including with respect to our employees, manufacturing facilities and distribution center, and relationships with our suppliers and customers. Subject to certain assumptions regarding the duration and severity of the COVID-19 pandemic, and government, consumer, and our responses thereto, based on our current projections we believe our cash on hand, ongoing cash generated from e-commerce, liquidity available under our new line of credit, and continuing resumption and ramp up of store operations and our wholesale business, will be sufficient to cover our working capital requirements and anticipated capital expenditures for the next 12 months. However, the extent to which the COVID-19 pandemic and our precautionary measures in response thereto may impact our business will depend on future developments, which are highly uncertain and cannot be precisely predicted at this time.

Operating Results for the Three Months Ended September 30, 2020 and 2019

The following table sets forth for the periods indicated, our results of operations and the percentage of total revenue represented in our statements of operations:

	Three Months Ended September 30,			
	2020	% of Net Revenues	2019	% of Net Revenues
Revenues, net	$ 187,111	100.0%	$ 117,406	100.0%
Cost of revenues	98,857	52.8	64,523	55.0
Gross profit	88,254	47.2	52,883	45.0
Operating expenses:				
Marketing and sales	51,206	27.4	34,055	29.0
General and administrative	11,087	5.9	6,745	5.7
Research and development	1,687	0.9	1,070	0.9
Total operating expenses	63,980	34.2	41,870	35.7
Operating income	24,274	13.0	11,013	9.4
Other income (expense):				
Interest expense	(1,232)	(0.7)	(1,356)	(1.2)
Other income, net	3	0.0	138	0.1
Loss on extinguishment of debt	(5,782)	(3.1)	—	0.0
Change in fair value – warrant liabilities	(17,971)	(9.6)	(1,384)	(1.2)
Tax receivable agreement expense	(567)	(0.3)	—	0.0
Total other income (expense), net	(25,549)	(13.7)	(2,602)	(2.2)
Net income (loss) before income taxes	(1,275)	(0.7)	8,411	7.2
Benefit from income taxes	106	0.1	—	0.0
Net income (loss)	(1,169)	(0.6)	8,411	7.2
Net income attributable to noncontrolling interest	(147)	(0.1)	6,817	5.8
Net income (loss) attributable to Purple Innovation, Inc.	$ (1,022)	(0.5)	$ 1,594	1.4

Revenue

Total net revenue increased $69.7 million, or 59.4%, to $187.1 million for the three months ended September 30, 2020 from $117.4 million for the three months ended September 30, 2019 due to a $49.4 million increase in mattress sales, a $13.4 million increase in top of mattress sales and a $6.9 million net increase in other products. These increases in revenue were primarily attributable to an increase in demand across all product lines due to recent increases in online shopping in home furnishings.

Cost of Revenues

The cost of revenues increased $34.4 million, or 53.2%, to $98.8 million for the three months ended September 30, 2020 from $64.5 million for the three months ended September 30, 2019. The increase was primarily due to a $15.9 million increase in direct material costs, a $7.6 million increase in labor and overhead, a $5.3 million increase in freight charges, a $3.5 million increase in merchant processing fees and a $2.1 million increase in all other costs, all due to the increase in revenue. The gross profit percentage increased to 47.2% of net revenues for the three months ended September 30, 2020 from 45.0% for the same period in 2019. The improvement in gross profit was primarily driven by higher margins due to channel shift toward higher margin DTC sales.

Marketing and Sales

Marketing and sales expenses increased $17.2 million, or 50.4%, to $51.2 million for the three months ended September 30, 2020 from $34.1 million for the three months ended September 30, 2019. The increase was due to an $11.9 million increase in advertising costs, a $3.2 million increase in marketing salaries related to an increase in personnel and an increase of $2.1 million in other marketing and sales expenses. The marketing and sales expense as a percentage of net revenue was 27.4% for the three months ended September 30, 2020. This is a decrease from 29.0% for the three months ended September 30, 2019 due to efficiencies in our advertising spending created from enhanced marketing strategies and lower advertising costs.

General and Administrative

General and administrative expenses increased $4.4 million, or 64.4%, to $11.1 million for the three months ended September 30, 2020 from $6.7 million for the three months ended September 30, 2019. The increase was primarily due to a $2.3 million increase in salaries related to an increase in personnel, $0.7 million additional expense for previous years sales tax liability, $0.9 million in legal and professional fees and $0.5 million increase in all other expenses.

Research and Development

Research and development costs increased $0.6 million, or 57.7%, to $1.7 million for the three months ended September 30, 2020 from $1.1 million for the three months ended September 30, 2019. The increase was due to a $0.8 million amortization of a one-year license agreement for innovative technology, a $0.1 million increase in other R&D expenses, partially offset by a decrease of $0.3 million in salaries as Tony and Terry Pearce resigned their positions as Co-Directors of Research and Development in August 2020.

Operating Income

Operating income increased $13.3 million to $24.3 million for the three months ended September 30, 2020, from operating income of $11.0 million for the three months ended September 30, 2019. The increase was primarily due to increased DTC sales with higher margins and lower marketing and sales costs as a percentage of revenue.

Interest Expense

We incurred $1.2 million in interest expense for the three months ended September 30, 2020 including $0.9 million related to the Amended and Restated Credit Agreement and $0.2 million related to the 2020 Credit Agreement. In addition, for the three months ended September 30, 2020 we incurred discounts and debt issuance costs related to the Amended and Restated Credit Agreement in the amount of $0.1 million which was amortized to interest expense as non-cash interest. The Amended and Restated Credit Agreement was retired during the quarter and the 2020 Credit Agreement had an outstanding principal balance of $45.0 million at September 30, 2020. Under the 2020 Credit Agreement, interest for the Term Debt accrues at LIBOR (with a floor) plus 3%. Interest expense was $1.4 million for the three months ended September 30, 2019. The portion relating to the Amended and Restated Credit Agreement was $1.2 million of which $0.7 million was paid-in-kind through additions to the principal amount and $0.5 million was paid in cash. In addition, for the three months ended September 30, 2019 we incurred discounts and debt issuance costs related to the Amended and Restated Credit Agreement in the amount of $0.2 million which was amortized to interest expense as non-cash interest.

Loss on Extinguishment of Debt

In September 2020, the retirement of the Amended and Restated Credit Agreement was accounted for as an extinguishment of debt. Accordingly, the Company recognized a loss on the extinguishment of debt of approximately $5.8 million, made up primarily of $3.3 million in the write-off of the unamortized portion of the debt discount related to the Amended and Restated Credit Agreement and $2.5 million in a pre-payment penalty.

Change in Fair Value – Warrant Liabilities

The Incremental Loan Warrants issued in conjunction with the Amended and Restated Credit Agreement are classified as liabilities and recorded at fair value on the date of the transaction and subsequently re-measured to fair value at each reporting date with changes in the fair value included in earnings. An increase in fair value for the three months ended September 30, 2020 resulted in a non-cash loss in the amount of $18.0 million recorded in earnings for the period. The increase in the fair value of the Incremental Loan Warrants as of September 30, 2020 was due primarily to the increase in our stock price. On October 27, 2020, we notified the holders of the Incremental Loan Warrants that we would redeem any unexercised Incremental Loan Warrants on November 30, 2020. The Incremental Loan Warrants have been exercised prior to this redemption date.

Tax Receivable Agreement Expense

In connection with the Business Combination, the Company entered into the TRA with InnoHold. As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of their Class B Units, a TRA Liability is recorded based on 80% of the estimated future cash tax savings that the Company may realize as a result of increases in the basis of the assets of Purple LLC attributed to the Company as a result of such exchange or redemption. There were 16.9 million exchanges of Class B Stock for Class A Stock that occurred during the three months ended September 30, 2020. As a result, an additional $90.3 million was recorded to the TRA liability of which $89.7 million was recorded as an adjustment to equity and $0.6 million was recorded to expense during the three months ended September 30, 2020. There was no TRA expense incurred for the three months ended September 30, 2019 as the Company had a full valuation allowance on the deferred tax assets and no TRA liability was recorded.

Benefit from Income Taxes

Our income tax benefit was $0.1 million for the three months ended September 30, 2020, compared to no income tax benefit for the three months ended September 30, 2019. Our income tax benefit for the three months ended September 30, 2020 is primarily due to the change in the effective tax rate during the period. No income tax benefit was recorded during the three months ended September 30, 2019 as the Company had a full valuation allowance on the deferred tax assets.

Noncontrolling Interest

As a result of the Business Combination in 2018, we attribute net income or loss to the Class B units in Purple LLC, owned by InnoHold and other parties, as a noncontrolling interest at their aggregate ownership percentage. At September 30, 2020, this ownership percentage was approximately 1%, a decrease from approximately 81% at September 30, 2019. This decrease was the result of the exchange of 43.5 million Paired Securities for Class A Stock, mostly attributed to InnoHold's three secondary public offerings concluded in November 2019, May 2020 and September 2020.

Operating Results for the Nine Months Ended September 30, 2020 and 2019

The following table sets forth for the periods indicated, our results of operations and the percentage of total revenue represented in our statements of operations:

	Nine Months Ended September 30,			
	2020	% of Net Revenues	2019	% of Net Revenues
Revenues, net	$ 474,582	100.0%	$ 304,058	100.0%
Cost of revenues	251,515	53.0	174,323	57.3
Gross profit	223,067	47.0	129,735	42.7
Operating expenses:				
Marketing and sales	127,313	26.8	94,039	30.9
General and administrative	27,312	5.8	19,243	6.3
Research and development	4,712	1.0	3,004	1.0
Total operating expenses	159,337	33.6	116,286	38.2
Operating income	63,730	13.4	13,449	4.4
Other income (expense):				
Interest expense	(4,045)	(0.9)	(3,801)	(1.3)
Other income, net	109	0.0	373	0.1
Loss on extinguishment of debt	(5,782)	(1.2)	(6,299)	(2.1)
Change in fair value – warrant liabilities	(43,308)	(9.1)	(3,372)	(1.1)
Tax receivable agreement expense	(33,512)	(7.1)	—	0.0
Total other income (expense), net	(86,538)	(18.2)	(13,099)	(4.3)
Net income (loss) before income taxes	(22,808)	(4.8)	350	0.1
Benefit from income taxes	35,818	7.5	—	0.0
Net income	13,010	2.7	350	0.1
Net income attributable to noncontrolling interest	7,178	1.5	224	0.1
Net income attributable to Purple Innovation, Inc.	$ 5,832	1.2	$ 126	0.0

Revenue

Total net revenue increased $170.5 million, or 56.1%, to $474.6 million for the nine months ended September 30, 2020 from $304.1 million for the nine months ended September 30, 2019 due mainly to a $116.1 million increase in mattress sales, a $37.9 million increase in top of mattress sales and a $16.5 million net increase in other products. These increases in revenue were primarily attributable to an increase in demand across all product lines due to recent increases in online shopping in home furnishings.

Cost of Revenues

The cost of revenues increased $77.2 million, or 44.3%, to $251.5 million for the nine months ended September 30, 2020 from $174.3 million for the nine months ended September 30, 2019. The increase was primarily due to a $35.0 million increase in direct material costs, a $18.0 million increase in labor and overhead, $11.9 million increase in freight charges, $8.6 million increase in merchant processing fees, and a $3.7 million increase in other costs, all associated with increased sales. The gross profit percentage increased to 47.0% of net revenues for the nine months ended September 30, 2020 from 42.7% for the same period in 2019. The improvement in gross profit was primarily driven by higher margins due to channel shift toward higher margin DTC sales.

Marketing and Sales

Marketing and sales expenses increased $33.3 million, or 35.4%, to $127.3 million for the nine months ended September 30, 2020 from $94.0 million for the nine months ended September 30, 2019. The increase was due to a $22.4 million increase in advertising costs, a $8.3 million increase in marketing salaries related to an increase in personnel and a $2.6 million increase in other marketing and sales expenses. The marketing and sales expense as a percentage of net revenue was 26.8% for the nine months ended September 30, 2020. This is a decrease from 30.9% for the nine months ended September 30, 2019 due to efficiencies in our advertising spending created from enhanced marketing strategies, lower advertising costs and a temporary reduction in advertising spending as part of our cash preservation initiatives in the second quarter of this year.

General and Administrative

General and administrative expenses increased $8.1 million, or 41.9%, to $27.3 million for the nine months ended September 30, 2020 from $19.2 million for the nine months ended September 30, 2019. The increase was primarily due to a $2.4 million increase in salaries related to an increase in personnel, a $3.5 million increase in software subscriptions, legal fees related to InnoHold's two secondary public offerings concluded in May 2020 and September 2020 and a new corporate building lease, $0.7 million in additional expense for previous years sales tax liability and $1.5 million increase in all other expenses.

Research and Development

Research and development costs increased $1.7 million, or 56.9%, to $4.7 million for the nine months ended September 30, 2020 from $3.0 million for the nine months ended September 30, 2019. The increase was primarily due to $1.6 million in amortization of a one-year license agreement for innovative technology and a $0.1 million increase in other R&D expenses as we added resources for new product innovation.

Operating Income

Operating income increased $50.3 million, or 373.9%, to $63.7 million for the nine months ended September 30, 2020, from operating income of $13.4 million for the nine months ended September 30, 2019. The increase was primarily due to increased DTC sales with higher margins and lower marketing and sales costs as a percentage of revenue.

Interest Expense

We incurred $4.0 million in interest expense for the nine months ended September 30, 2020 including $3.3 million related to the Amended and Restated Credit Agreement and $0.2 million related to the 2020 Credit Agreement. In addition, for the nine months ended September 30, 2020 we incurred discounts and debt issuance costs related to the Amended and Restated Credit Agreement in the amount of $0.5 million which was amortized to interest expense as non-cash interest. The Amended and Restated Credit Agreement was retired in September 2020. Under the Amended and Restated Credit Agreement, interest accrued at a fixed rate of 12%. Under the 2020 Credit Agreement, interest for the Term Debt accrues at LIBOR (with a floor) plus 3%. Interest expense was $3.8 million for the nine months ended September 30, 2019. The portion relating to the Amended and Restated Credit Agreement was $3.2 million of which $1.9 million was paid-in-kind through additions to the principal amount and $1.3 million was paid in cash. In addition, for the nine months ended September 30, 2019 we incurred discounts and debt issuance costs related to the Amended and Restated Credit Agreement in the amount of $0.6 million which was amortized to interest expense as non-cash interest.

Loss on Extinguishment of Debt

In September 2020, the retirement of the Amended and Restated Credit Agreement was accounted for as an extinguishment of debt. Accordingly, the Company recognized a loss on the extinguishment of debt of approximately $5.8 million, consisting primarily of $3.3 million in the write-off of the unamortized portion of the debt discount related to the Amended and Restated Credit Agreement and $2.5 million in a pre-payment penalty.

In February 2019, in conjunction with the Incremental Loan under the Amended and Restated Credit Agreement, we determined that the amended debt terms resulted in substantially different terms for a portion of the existing debt and therefore was required to be accounted for as an extinguishment of a portion of the existing debt. Accordingly, we recognized a non-cash loss on the extinguishment of a portion of the existing debt of approximately $6.3 million. This was a non-cash expense primarily associated with the recognition of related unamortized debt discount and debt issuance costs and the fair value of the Incremental Loan Warrants issued.

Change in Fair Value – Warrant Liabilities

The Incremental Loan Warrants issued in conjunction with the Amended and Restated Credit Agreement are classified as liabilities and recorded at fair value on the date of the transaction and subsequently re-measured to fair value at each reporting date with changes in the fair value included in earnings. An increase in fair value for the nine months ended September 30, 2020 resulted in a non-cash loss in the amount of $43.3 million recorded in earnings for the period. The increase in the fair value of the Incremental Loan Warrants as of September 30, 2020 was due primarily to the increase in our stock price and the decrease of the Pearce's ownership interest below 50%, which triggered a change in the exercise price of the outstanding Incremental Loan Warrants to $0. On October 27, 2020, we notified the holders of the Incremental Loan Warrants that we would redeem any unexercised Incremental Loan Warrants on November 30, 2020. The Incremental Loan Warrants have been exercised prior to this redemption date.

Tax Receivable Agreement Expense

In connection with the Business Combination, the Company entered into the TRA with InnoHold. As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of their Class B Units, a TRA Liability is recorded based on 80% of the estimated future cash tax savings that the Company may realize as a result of increases in the basis of the assets of Purple LLC attributed to the Company as a result of such exchange or redemption. As a result of the initial merger transaction and 43.5 million subsequent exchanges of Class B Stock for Class A Stock and the release of the Company's valuation allowance on the deferred tax assets to which the TRA liability relates, $169.0 million has been recorded as of September 30, 2020, of which $168.5 million was recorded during the nine months ended September 30, 2020. Of the total liability recorded during the nine months ended September 30, 2020, $134.9 million relates to current year exchanges and was recorded as an adjustment to equity and $33.5 million was recorded to expense as it related to reestablishing the TRA related to prior year exchanges. There was no TRA expense incurred for the nine months ended September 30, 2019 as the Company had a full valuation allowance on the deferred tax assets and no TRA liability was recorded.

Benefit from Income Taxes

Our income tax benefit was $35.8 million for the nine months ended September 30, 2020, compared to no income tax benefit for the nine months ended September 30, 2019. Our income tax benefit is primarily due to the release of the federal and state valuation allowance and the recognition of deferred tax assets as of September 30, 2020. No income tax benefit was recorded during the nine months ended September 30, 2019 as the Company had a full valuation allowance on the deferred tax assets.

Noncontrolling Interest

As a result of the Business Combination in 2018, we attribute net income or loss to the Class B units in Purple LLC, owned by InnoHold and other parties, as a noncontrolling interest at their aggregate ownership percentage. At September 30, 2020, this ownership percentage was approximately 1%, a decrease from approximately 81% at September 30, 2019. This decrease was the result of the exchange of 43.5 million Paired Securities for Class A Stock, mostly attributed to InnoHold's three secondary public offerings concluded in November 2019, May 2020 and September 2020.

Liquidity and Capital Resources

Our primary cash needs have historically consisted of working capital, capital expenditures and debt service. Our working capital needs depend upon the timing of cash receipts from sales, payments to vendors and others, changes in inventories, and capital and operating lease payment obligations. Our cash and working capital positions are strong. We had cash in the amount of $98.0 million as of September 30, 2020 and $33.5 million as of December 31, 2019. We had working capital of $67.4 million as of September 30, 2020, and working capital of $27.3 million as of December 31, 2019. During the nine months ended September 30, 2020, our accounts receivable decreased by $6.8 million. Our capital expenditures primarily relate to acquiring and maintaining manufacturing equipment and expanding capacity and cash used for capital expenditures was $14.2 million for the nine months ended September 30, 2020. We financed these capital expenditures through cash provided by operating activities.

In response to the COVID-19 pandemic, we took a number of precautionary measures to manage our resources and mitigate the adverse impact of the pandemic. Given the initial difficultly in predicting how long this pandemic would persist and its full impact, we managed our business and opportunities to preserve liquidity. We temporarily reduced our capital spend by delaying all non-maintenance related projects and investments in non-essential initiatives and headcount additions. Other proactive steps were taken to carefully manage cash and quickly and prudently respond to the rapidly changing circumstances including temporarily furloughing a portion of our permanent workforce, temporarily deferring a portion of the cash compensation of Senior Executives and all the cash compensation of members of our Board of Directors, and limiting other discretionary expenses. We also entered into an amendment to our Amended and Restated Credit Agreement to allow the Company to defer 5% of the interest for quarterly payments due during the first two quarters of 2020. In September 2020, this debt was subsequently retired and replaced with a $45 million term loan and a $55 million line of credit. In addition, our receivables from our wholesale partners remain healthy. Most of our wholesale partners continue to make payments in accordance with their original contract terms and remain current on their outstanding balances.

As a result of our precautionary measures, continued payments from wholesale customers, and our strong DTC sales, our cash balance increased by $64.5 million during the nine months ended September 30, 2020. We have now ended many of the cash preservation programs and have returned to full production to meet increased demand. Subject to certain assumptions regarding the duration and severity of the COVID-19 pandemic, and our responses thereto, based on our current projections we believe our cash on hand, along with ongoing cash generated from our DTC business, amounts available under our line of credit, strong demand of our product in the Wholesale channel and eventual resumption and ramp up of store operations, will be sufficient to cover our working capital requirements and anticipated capital expenditures for the next 12 months.

On January 28, 2019, Purple LLC entered into the First Amendment, which amended the Credit Agreement. In the First Amendment, Purple LLC agreed to enter into the Amended and Restated Credit Agreement under which the Incremental Lenders agreed to provide an incremental loan of $10.0 million such that the total amount of principal indebtedness provided to Purple LLC was increased to $35.0 million. A stockholder meeting was held on February 25, 2019 at which time a majority of non-interested stockholders voted in favor of this transaction. Accordingly, the Amended and Restated Credit Agreement, and each related document, was closed and an incremental loan of $10.0 million was funded. In addition, we issued to the Incremental Lenders warrants to purchase 2.6 million shares of the Company's Class A Stock at a price of $5.74 per share, subject to certain adjustments. On February 26, 2019, we received approximately $9.2 million in proceeds after debt issuance costs and fees. For additional information regarding our credit agreement with Coliseum, refer to Note 8 — *Long-Term Debt, Related Party* of our condensed consolidated financial statements.

On September 3, 2020, Purple LLC entered into a 2020 Credit Agreement with KeyBank National Association and other lenders. The 2020 Credit Agreement provided for a $45.0 million term loan and a $55.0 million revolving line of credit. Proceeds from the term loan, which were fully drawn at closing, were used to retire all indebtedness related to Purple LLC's existing Amended and Restated Credit Agreement. The retirement of the loan under the Amended and Restated Credit Agreement included a prepayment fee of approximately $2.5 million.

Debt service for the nine months ended September 30, 2020 totaled $3.5 million and consisted of interest paid on the Amended and Restated Credit Agreement, the 2020 Credit Agreement, as well as principal and interest payments on certain capital leases.

In the event our cash flow from operations or other sources of financing are less than anticipated, we believe we will be able to fund operating expenses based on our ability to scale back operations, reduce marketing spend and postpone or discontinue our growth strategies. In such event, this could result in slower growth or no growth, and we may run the risk of losing key suppliers, we may not be able to timely satisfy customer orders, and we may not be able to retain all of our employees. In addition, we may be forced to restructure our obligations to current creditors or pursue work-out options.

If cash flow from operations or available financing under the 2020 Credit Agreement are not sufficient to fund our operating expenses or our growth strategies, we may need to raise additional capital. Our ability to obtain additional or alternative capital on acceptable terms or at all is subject to a variety of uncertainties, including instability in the credit and financial markets resulting from the COVID-19 pandemic and other things such as civil unrest and macroeconomic factors and approval from the lenders under the 2020 Credit Agreement. Adequate financing may not be available or, if available, may only be available on unfavorable terms. In response to the economic fallout of the COVID-19 pandemic, the U.S. government established a Main Street Lending Program to support lending to small and medium-sized businesses. However, there is no guarantee that we will be eligible to participate in such program or that, if we are eligible to participate, that we will receive any benefits under this program. Further, the Main Street Lending Program imposes restrictions on how funds received are used that would limit our ability to operate our business. The restrictive covenants in the 2020 Credit Agreement may make it difficult to obtain additional capital on terms that are favorable to us, and we may not be able to satisfy the conditions necessary to obtain additional funds pursuant to the revolving credit facility under the 2020 Credit Agreement. There is no assurance we will obtain the capital we require. As a result, there can be no assurance that we will be able to fund our future operations or growth strategies. In addition, future equity or debt financings may require us to also issue warrants or other equity securities that are likely to be dilutive to our existing stockholders. Newly issued securities may include preferences or superior voting rights or, as described above, may be combined with the issuance of warrants or other derivative securities, which each may have additional dilutive effects. Furthermore, we may incur substantial costs in pursuing future capital and financing, including investment banking fees, legal fees, accounting fees, printing and distribution expenses and other costs. We may also be required to recognize non-cash expenses in connection with certain securities we may issue, such as convertible notes and warrants, which will adversely impact our financial condition. If we cannot raise additional funds on favorable terms or at all, we may not be able to carry out all or parts of our long-term growth strategy, maintain our growth and competitiveness or continue in business.

We are required to make certain payments to InnoHold under the TRA, which payments may have a material adverse effect on our liquidity and capital resources. We are currently unable to determine the total future amount of these payments due to the unpredictable nature of several factors, including the timing of future exchanges, the market price of shares of Class A Stock at the time of the exchanges, the extent to which such exchanges are taxable and the amount and timing of future taxable income sufficient to utilize tax attributes that give rise to the payments under TRA. As of September 30, 2020, the estimated future payments under the TRA are $169.0 million with approximately $0.7 million due to be paid within the next 12 months.

Cash Flows for the Nine Months Ended September 30, 2020 and 2019

The following summarizes our cash flows for the nine months ended September 30, 2020 and 2019 as reported in our condensed consolidated statements of cash flows (in thousands):

	Nine Months Ended September 30,	
	2020	**2019**
Net cash provided by operating activities	$ 87,462	$ 15,844
Net cash used in investing activities	(25,084)	(5,903)
Net cash provided by financing activities	2,099	9,120
Net increase in cash	64,477	19,061
Cash, beginning of the period	33,478	12,232
Cash, end of the period	$ 97,955	$ 31,293

Nine months ended September 30, 2020 Compared to the Nine months ended September 30, 2019

Cash provided by operating activities was $87.5 million for the nine months ended September 30, 2020, an increase of $71.6 million from cash provided by operating activities of $15.8 million during the nine months ended September 30, 2019. This is due to a $39.4 million increase in cash provided by operations as a result of increased operating income over last year driven mainly by an acceleration of DTC sales and a $32.2 million increase from all other changes in operating assets and liabilities due mainly to $23.2 million in additional cash from a year-over-year increase in the change in accounts receivable and $8.7 million in additional cash from a year-over-year increase in the change in inventory and $0.3 million in additional cash from year-over-year increase in the change in all other operating assets and liabilities.

Cash used in investing activities was $25.1 million for the nine months ended September 30, 2020, an increase of $19.2 million from cash used in investing activities of $5.9 million during the nine months ended September 30, 2019. This increase is due mainly to increases in purchases of property and equipment and investment in intangible assets of $8.5 million and $10.6 million, respectively, over the same period in the prior year.

Cash provided by financing activities was $2.1 million in the nine months ended September 30, 2020, a decrease of $7.0 million from cash provided by financing of $9.1 million during the nine months ended September 30, 2019. The cash provided in 2020 represented $45.0 million in proceeds from the 2020 Credit Agreement, $2.1 million of proceeds from warrant and stock option exercises, offset by a $37.5 million payment to retire the Amended and Restated Credit Agreement, $5.0 million in distributions to members and $2.5 million in debt issuance costs. The cash provided in 2019 represented the $10.0 million in funds received from the Amended and Restated Credit Agreement, partially offset by $0.8 million in debt issuance costs and $0.1 million in other financing payments.

Critical Accounting Policies

For a description of our critical accounting policies, refer to Note 2 — *Summary of Significant Accounting Policies* of our condensed consolidated financial statements.

Contractual Obligations

On July 21, 2020, the Company signed a Lease (the "Lease") with PNK S2, LLC for approximately 520,000 square feet located at 1325 Hwy 42 S., Building B, McDonough, Georgia (the "Building"). A copy of the Lease is attached as Exhibit 10.1 to this report and incorporated by reference. The Company anticipates immediately preparing the Building for use as a manufacturing, distribution and office facility and expects it to be fully operational in 2021.

The term of the Lease is 128 months including an eight-month free rent period, which will commence upon completion of the landlord's work on the Company's space in the Building. The Company anticipates the landlord's work is expected to be completed by the middle of first quarter 2021. Prior to the commencement of the term, the Company has an immediate right to make use of the Building. Under the Lease, the Company will pay $3.41 per square foot annually or $147,675 per month for the initial lease year. Thereafter the basic monthly rent increases 2% per year. The Lease also provides the Company with an option to extend the Lease term for two additional five-year periods at rates for the first renewal term of $4.24 per square foot with 2% annual increases and for the second renewal term of $4.75 per square foot with annual increases of 3.5%. The Company is also responsible for its proportionate share of the operating expenses incurred by the landlord for the Building. The Lease provides for a tenant improvement allowance of $12.50 per usable square foot. The Lease also provides the Company with signage rights and a right of first refusal on other contiguous space.

Seasonality and Cyclicality

We believe that sales of our products are typically subject to seasonality corresponding to different periods of the consumer spending cycle, holidays and other seasonal factors. Our sales may also vary with the performance of the broader economy consistent with the market.

Available Information

Our website address is www.purple.com. We make available free of charge on the Investor Relations portion of our website, investors.purple.com, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission.

We also use the Investor Relations portion of our website, investors.purple.com, as a channel of distribution of additional Company information that may be deemed material. Accordingly, investors should monitor this channel, in addition to following our press releases, Securities and Exchange Commission filings and public conference calls and webcasts. The contents of our website shall not be deemed to be incorporated herein by reference.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not Applicable.

ITEM 4. CONTROLS AND PROCEDURES

As an emerging growth company, we are exempt from the auditor attestation requirements with respect to internal control over financial reporting under Section 404(b) of the Sarbanes Oxley Act of 2002.

(a) Evaluation of Disclosure Controls and Procedures

As of the end of the period covered by this report, under the supervision and with the participation of our management, including our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")). Disclosure controls and procedures are controls and other procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our Certifying Officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

Based upon this evaluation, and the above criteria, our CEO and CFO concluded that due to the material weakness described below and as previously disclosed in our Form 10-Q filed August 14, 2020, the Company's disclosure controls and procedures were not effective as of September 30, 2020.

Previously Reported Material Weakness

In connection with the preparation and interim review of our quarterly consolidated financial statements for the quarter ended June 30, 2020, we and our independently registered public accounting firm identified a material weakness in internal controls over the tax provision process, specifically related to the release of the valuation allowance and the unique recording of the Tax Receivable Agreement liability as described in Note 14 – *Income Taxes*.

We have begun remediating the underlying cause of this material weakness including the implementation of additional steps in our process of reviewing unique and complicated tax transactions. We believe these additional steps will enable us to identify and remediate quickly any potential errors in our processes and broaden the scope and quality of our controls over our tax processes.

(b) Changes in Internal Controls Over Financial Reporting.

Other than the changes described above, there have been no changes in our internal control over financial reporting that occurred during the nine months ended September 30, 2020 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The Company is from time to time involved in various claims, legal proceedings and complaints arising in the ordinary course of business. Please refer to Note 11 — *Commitments and Contingencies* and Note 18 – *Subsequent Events* to the condensed consolidated financial statements contained in this report and to Part I, Item 3 of our Annual Report on Form 10-K filed on March 11, 2020 for certain information regarding our legal proceedings.

ITEM 1A. RISK FACTORS

Except as described below, there have been no material changes from the risk factors previously disclosed in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 9, 2020.

Risks Related to Our Business

We may experience significant fluctuations in our operating results and growth rate, which could adversely affect our performance and financial results.

Our revenue growth may not be sustainable, and our percentage growth rates may decrease. Our revenue and operating profit growth depend on the continued growth of demand for our products, and our business is affected by general political, economic and business conditions worldwide. Our business, our employees and our partners may also be negatively affected by political or social unrest including potential reputational damage, disruption of our physical facilities or those of our wholesale partners, and boycotts by employees or boycotts against us, our suppliers, our wholesale partners and our advertising partners. A softening of demand, whether caused by changes in customer confidence or preferences or a weakening of the U.S. or global economies, may result in decreased revenue or growth.

In addition, we rely on estimates and forecasts of our expenses and revenues to provide guidance and inform our business strategies, and some of our past estimates and forecasts have not been accurate. The rapidly evolving nature of our business makes forecasting operating results difficult. If we fail to accurately forecast our expenses and revenues, our business, prospects, financial condition and results of operations may suffer, and the value of our business may decline. If our estimates and forecasts prove incorrect, we may not be able to adjust our operations quickly enough to respond to lower than expected sales or higher than expected expenses.

Our sales and operating results will also fluctuate for many other reasons, including due to risks described elsewhere in this section and the following:

- our ability to attract new customers and the cost of acquiring new customers;
- our ability and the time required to develop new Mattress Max machines, develop new production lines, scale production capacity and appropriately train staff;
- the success of our wholesale business and our Company showroom expansion efforts;
- our ability to have enough production capacity to meet customer demand;
- our ability to effectively manage increasing sales and marketing expenses;
- our access to sufficient capital resources and liquidity to fund the growth of our business;
- competition from the sublicensees of intellectual property licensed back to EdiZONE even if we subsequently acquired from EdiZONE its rights under such licenses;

- our ability to offer products on favorable terms, manage inventory, fulfill orders and manage product returns;
- the introduction of competitive products, services, price decreases, discounts, or improvements;
- timing, effectiveness, and costs of expansion and upgrades of our systems and infrastructure;
- the success of our geographic and product line expansions, including but not limited to power requirements, labor needs, and ease of product distribution;
- the success of hiring, expeditiously training, and retaining engaged labor locally and worldwide;
- our ability to secure and retain superior global partners for specialized delivery services;
- the extent to which we use debt or equity financing, and the terms of any such financing for, our current operations and future growth;
- the outcomes of legal proceedings, claims, or governmental investigations or rulings, which may include significant monetary damages or injunctive relief and could have a material adverse impact on our operating results;
- the ability to obtain patent and other intellectual property rights of exclusive use, and the enforceability and validity of our intellectual property rights;
- our ability to accommodate variations in the mix of products we sell;
- variations in our level of product returns, as well as our methods of collecting product returns or exchanges;
- the extent to which we offer free shipping;
- the extent to which we invest in technology and content, manufacturing, fulfillment, and other expense categories;
- increases in the prices of materials used in the manufacturing of our products or the costs to produce our products, including but not limited to new or unanticipated tariffs;
- our ability to anticipate and prepare for disruptions to manufacturing;
- the extent to which operators of the networks between our customers and our websites successfully charge fees to grant our customers unimpaired and unconstrained access to our online services;
- our ability to collect amounts owed to us when they become due;
- the extent to which our internal network or website is affected by denial of service attacks, malicious unauthorized access, outages, and similar events;
- the extent to which our internal network is affected by spyware, viruses, phishing and other spam emails, intrusions, data theft, downtime, and similar events;
- our ability to manage the expenses associated with multiple facilities;
- our ability to secure attractive real estate locations for expansion with sustainable cost structures; and
- our ability to protect inventory assets from internal and external theft or damage.

We have a short operating history in an evolving industry and, as a result, our past results may not be indicative of future operating performance.

We are a rapidly growing business with a short operating history. Our relatively short operating history makes it difficult to assess our future performance. We have encountered and will continue to encounter risks and difficulties frequently experienced by growing companies in rapidly developing and changing industries, including challenges in forecasting accuracy, determining appropriate investments of our limited resources, market acceptance of our products and services and future products and services, competition from new and established companies, including those with greater financial and technical resources, enhancing our products and services and developing new products and services.

For the years ended December 31, 2019 and 2018, we incurred net losses of ($12.4) million and ($19.6) million, respectively. In 2019, we generated $22.9 million of operating cash flow and ended the year with working capital of $27.3 million and an accumulated deficit of $8.3 million. In 2018, we experienced negative operating cash flow of $21.7 million and ended the year with negative working capital of $0.9 million, and an accumulated deficit of $4.3 million. We need positive cash flow from operations and additional capital to execute our business plan and growth initiatives. If we are unable to satisfy our liquidity and capital resource requirements our business could become adversely affected.

You should consider our business in light of the risks and difficulties we may encounter, as described above and elsewhere in this "Risk Factors" section. If we fail to address the risks and difficulties that we face, our business and operating results will be adversely affected.

The growth of our business places significant strain on our resources and if we are unable to manage our growth, we may not have profitable operations or sufficient capital resources.

We are rapidly and significantly expanding our operations, including expanding our workforce, increasing our product offerings and scaling our infrastructure to support expansion of our manufacturing capacity, our wholesale channel expansion and the opening of our Company showrooms. Our planned growth includes increasing our manufacturing capacity, developing and introducing new products and developing new and broader distribution channels, including wholesale and Company showrooms, and extending our global reach to other countries. This expansion increases the complexity of our business and places significant strain on our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions.

Our continued success depends, in part, upon our ability to manage and expand our operations and facilities and production capacity in the face of continued growth. The growth in our operations has placed, and may continue to place, significant demands on our management and operational and financial infrastructure. If we do not manage our growth effectively, the quality of our products and fulfillment capabilities may suffer which could adversely affect our operating results. Our revenue growth may not be sustainable, and our percentage growth rates may decrease. If we are unable to satisfy our liquidity and capital resource requirements, we may have to scale back, postpone or discontinue our growth strategies, which could result in slower growth or no growth, and we may run the risk of losing key suppliers, we may not be able to timely satisfy customer orders, and we may not be able to retain all of our employees. In addition, we may be forced to restructure our obligations to creditors or pursue work-out options.

Our growth depends in part on our ability to manage the opening and operating of new production facilities and our Company showrooms which will require our entering into leases and other obligations while the success of expanding operations geographically and opening additional Company showrooms remains unproven. To be successful, we will need to obtain or develop retail expertise and we will need to hire new employees in states that may have employment laws that could increase our expenses. In general, operating new production facilities and opening our Company showrooms in new locations exposes us to laws in other states, including California, that may not be as employer-friendly as those in which we currently operate, and may expose us to new liabilities. If we are not able to successfully manage the process of expanding operations geographically, opening our Company showrooms and maintaining operations in an expanding number of facilities and Company showrooms, we may have to close Company showrooms and incur sunk costs and continuing obligations that could put a strain upon our resources, damage our brand and reputation and limit our growth.

To manage our growth effectively, we will need to continue to implement operational, financial and management controls and reporting systems and procedures and improve the systems and procedures that are currently in place. There is no assurance that we will be able to fulfill our staffing requirements for our business, successfully train and assimilate new employees, or expand our management base and enhance our operating and financial systems. Failure to achieve any of these goals will prevent us from managing our growth in an effective manner and could have a material adverse effect on our business, financial condition or results of operations. In addition, our revenue and operating profit growth depends on the continued growth of demand for the products offered by us, and our business is affected by general economic and business conditions worldwide. A softening of demand, whether caused by changes in customer preferences or a weakening of the U.S. or global economies, may result in decreased revenue or growth. Further, we may not be able to accurately forecast our growth rate. We base our expense levels and investment plans on sales estimates. A significant portion of our expenses and investments is fixed, and we may not be able to adjust our spending quickly enough if our sales are less than expected.

We identified a need for internal controls to avoid delays in the timely delivery of our new mattress products and to improve the customer's experience. Also, we have experienced rapid growth in our employee base, and the need to implement controls and procedures for improving employee training and retention. Competition for employees where our production facilities are located also has increased the costs for employee retention. We have implemented improved controls and procedures in an environment of continuous change but our use of resources may not be as effective as intended or we may need to apply more resources than expected to continue to make changes to improve our employee retention and effectiveness and the quality of our products and services over time. If we are unable to make continuous improvement, achieve greater efficiencies in our operating expenses and improve our products and services, our business could be adversely affected.

We may need additional capital to execute our business plan and fund operations and may not be able to obtain such capital on acceptable terms or at all.

In connection with the development and expansion of our business, we expect to incur significant capital and operational expenses. We believe that we can increase our sales and net income by implementing a growth strategy that focuses on (i) increasing our manufacturing capacity, including by establishing additional manufacturing locations; (ii) increasing our direct-to-consumer sales; (iii) expanding our wholesale distribution channel; (iv) opening our Company showrooms; (v) expanding our global sales; (vi) engaging global partners to improve distribution efficiencies and cost savings; and (vii) product assortment and category expansion.

We believe that our cash flow from operations, together with other available sources of liquidity, including the exercises of warrants for cash and additional cash we received and may have further access to under that certain Credit Agreement dated September 3, 2020(the "2020 Credit Agreement") by and between Purple LLC and KeyBank National Association leading a group of financial institutions(the "Institutional Lenders"), including the available revolving credit facility under the 2020 Credit Agreement, will be sufficient to fund anticipated operating expenses, growth initiatives and our other anticipated liquidity needs for the next twelve months, based on our current operating conditions. However, our ability to obtain other capital resources and sources of liquidity may not be sufficient to support future growth strategies. If we are unable to satisfy our liquidity and capital resource requirements, we may have to scale back, postpone or discontinue our growth strategies, which could result in slower growth or no growth, and we may run the risk of losing key suppliers, we may not be able to timely satisfy customer orders, and we may not be able to retain all of our employees. In addition, we may be forced to restructure our obligations to creditors, pursue work-out options or other protective measures.

While we have access to a $55 million revolving credit facility under the 2020 Credit Agreement, our ability to access such funds is subject to certain conditions, which we may not be able to satisfy at such time that we seek to draw on the revolving credit facility. Further, our ability to obtain additional or alternative capital on acceptable terms or at all is subject to a variety of uncertainties, including approval from the Institutional Lenders under the 2020 Credit Agreement. Adequate financing may not be available or, if available, may only be available on unfavorable terms. The restrictive covenants in the 2020 Credit Agreement may make it difficult to obtain additional capital on terms that are favorable to us, and the we may not be able to satisfy the conditions necessary to obtain additional funds pursuant to the revolving credit facility under the 2020 Credit Agreement. There is no assurance we will obtain the capital we require. As a result, there can be no assurance that we will be able to fund our future operations or growth strategies. In addition, future equity or debt financings may require us to also issue warrants or other equity securities that are likely to be dilutive to our existing stockholders. Newly issued securities may include preferences or superior voting rights or may be combined with the issuance of warrants or other derivative securities, which each may have additional dilutive effects. Furthermore, we may incur substantial costs in pursuing future capital and financing, including investment banking fees, legal fees, accounting fees, printing and distribution expenses and other costs. We may also be required to recognize non-cash expenses in connection with certain securities we may issue, such as convertible notes and warrants, which will adversely impact our financial condition. If we cannot raise additional funds on favorable terms or at all, we may not be able to carry out all or parts of our long-term growth strategy, maintain our growth and competitiveness or continue in business.

Changes in accounting standards and subjective assumptions, estimates and judgments by management related to complex accounting matters could significantly affect our financial results.

Generally accepted accounting principles and related accounting pronouncements, implementation guidelines and interpretations with regard to a wide range of matters that are relevant to our business are complex and involve many subjective assumptions, estimates and judgments by our management, including but not limited to estimates that affect our revenue recognition, accounts receivable and allowance for doubtful accounts, valuation of inventories, cost of revenues, sales returns, warranty liabilities, the recognition and measurement of loss contingencies, warrant liabilities, estimates of current and deferred income taxes, deferred income tax valuation allowances and amounts associated with our Tax Receivable Agreement with InnoHold (the "Tax Receivable Agreement"). Changes in these rules or their interpretation or changes in underlying assumptions, estimates or judgments by our management could significantly change our reported or expected financial performance, and could have a material adverse effect on our business.

Our expansion into new products, market segments and geographic regions subjects us to additional business, legal, financial, and competitive risks.

The majority of our sales are made directly to consumers through our website or certain other e-commerce platforms. We have been expanding our business into the wholesale distribution channel through relationships with our wholesale partners but there can be no assurance that we will continue to experience success with our wholesale partners or that anticipated new locations will be successful.

We may be unsuccessful in generating additional sales through wholesale channels. We may extend credit terms in connection with such relationships and such relationships may expose us to the risk of unpaid or late paid invoices. In addition, we may provide fixtures to such partners that may be difficult to recover or re-use. Our wholesale customers may not purchase our products in the volume we expect.

Profitability, if any, from sales to wholesale customers and new product offerings may be lower than from our direct-to-consumer model and current products, and we may not be successful enough in these newer activities to recoup our investments in them. If any of these issues were to arise, they could damage our reputation, limit our growth, and negatively affect our operating results.

We may be unsuccessful in opening any of our Company showrooms beyond the store we currently have at our headquarters in Lehi, Utah, the Company factory outlet in Salt Lake City, Utah and the newly opened Company showrooms in San Diego, California, Santa Clara, California, Santa Monica, California, Austin, Texas and Tysons Corner, Virginia. We have limited experience in opening and operating our Company showrooms. Operating our Company showrooms includes additional risks. For example, we will incur expenses and accept obligations related to additional leases, insurance, distribution and delivery challenges, increased employee management, and new marketing challenges. If we are not successful in our efforts to profitably operate these new stores, our reputation and brand could be damaged, growth could be limited, and our business may be harmed.

In addition, offerings of new products through our direct-to-consumer platform, wholesale distribution channel and our Company showrooms may present new and difficult challenges, and we may be subject to claims if customers of these offerings experience service disruptions or failures or other quality issues. Expansion of sales channels may require the development of additional, differentiated products to avoid price and distribution conflicts between and within sales channels. Wholesale expansion increases our risk as our wholesale partners will require delaying payments to us on net terms ranging from a few days to 60 or more days, or may delay paying us beyond the agreed-upon net terms or fail to pay. Our Company showroom expansion increases our risk for inventory shrinkage from destruction, theft, obsolescence and factors that render such inventory unusable or unsellable.

New products may come with the same warranty and return risks as mentioned above. New product offerings or expansion into new market channels or geographic regions may subject us to new or additional regulation, which would impose potentially significant compliance and distribution costs.

The ongoing COVID-19 pandemic and responses thereto have adversely affected and may continue to adversely affect aspects of our business, including, among other things, our supply chain, workforce, and operations.

The COVID-19 pandemic has resulted in far-reaching economic and financial disruptions that have adversely affected, and are likely to continue to adversely affect, the Company's business, financial condition, capital, liquidity and results of operations. Almost all U.S. states and many local jurisdictions have issued at various times, and others in the future may issue, "shelter-in-place" orders, quarantines, executive orders and similar government orders, restrictions, and recommendations for their residents to control the spread of COVID-19. Such orders, restrictions and recommendations, and the perception that additional orders, restrictions or recommendations could occur, have resulted in widespread closures of businesses not deemed "essential," work stoppages, slowdowns and delays, work-from-home policies, travel restrictions and cancellation of events, as well as increased volatility in stock prices, among other effects. While certain jurisdictions have begun easing restrictions, we cannot be certain that other jurisdictions will do so. Furthermore, many jurisdictions have experienced a resurgence in COVID-19 cases, which has prompted governments to reinstate previously scaled back restrictions. If other jurisdictions experience a resurgence in COVID-19 cases, they may also prolong restrictions or adopt additional restrictions that could negatively affect our business, including, but not limited to, requiring us to close our manufacturing facilities. In addition, policies in the United States regarding the government response to the COVID-19 pandemic may further change as a result of recent elections.

We continue to monitor our operations and government mandates and may elect or be required to temporarily close our offices, manufacturing plants or Company showrooms to protect our employees, and limit our access to customers and limit customer use of our products as they are required to prioritize resources to address the public healthcare needs arising from the COVID-19 pandemic. The disruptions to our activities and operations may negatively impact our business, operating results and financial condition. There is a risk that government actions, or lack thereof, will not be effective at containing COVID-19, and that government actions or inactions, including the orders and restrictions described above and premature lessening of those restrictions, that are intended to contain the spread of COVID-19 while also minimizing harm to the economy, will have a devastating negative impact on the world economy at large, in which case the risks to our sales, operating results and financial condition described herein would be elevated significantly.

The duration of the COVID-19 pandemic's impact on our business may be difficult to assess or predict. The widespread pandemic has resulted, and may continue to result for an extended period, in significant disruption of global financial markets, and may restrict our ability to access capital, which would negatively affect our liquidity. While we have been able to reverse some previous actions undertaken, such as, among others, temporarily deferring capital expenditures, furloughing certain employees, and temporarily deferring compensation for our senior executives, we may be required to take such actions again, or take additional actions, if there is a resurgence of COVID-19 cases or reinstatement of government restrictions. As a result of such actions or restrictions, we may be unable to complete capital expenditure projects or investments in the future, which would limit our ability to grow our business, and our results of operations and financial condition will be adversely affected.

Further, quarantines or government reaction or shutdowns for COVID-19 could disrupt our supply chain. Travel and import restrictions may also disrupt our ability to manufacture or distribute our products. Any import or export or other cargo restrictions related to our products or the raw materials used to manufacture our products would restrict our ability to manufacture and ship products and harm our business, financial condition and results of operations. Our key personnel and other employees could also be affected by COVID-19, potentially reducing their availability. In addition, the government responses to COVID-19 or the procedures we take to mitigate its effect on our workforce could reduce the efficiency of our operations or prove insufficient to mitigate the adverse impact of COVID-19 on our business. We may delay or reduce certain capital spending and related projects until the travel and logistical impacts of COVID-19 are lifted, which could delay the completion of such projects.

Even after initial quarantines and other government restrictions are scaled back, there is risk that we will be unable to continue normal production and operations, due to, among other things, disruptions and delays in our supply chain, reduced demand in our wholesale channel and Company showrooms, government relief programs that enable production workers to remain out of the workforce, and difficulties in ramping up our own operations. We may also experience disputes with our suppliers and/or customers as a result of such difficulties. Further, there may be subsequent outbreaks of COVID-19, particularly as we enter the winter season, that could disrupt our operations. In addition, as employees return to work, we may face claims by such employees or regulatory authorities that we have not provided adequate protection to our employees with respect to the spread of COVID-19 at our facilities.

The global outbreak of COVID-19 continues to rapidly evolve. The ultimate impact of the COVID-19 outbreak is highly uncertain and subject to change. We do not yet know the full extent of potential delays or impacts on our business or the global economy as a whole. However, these effects have harmed our business, financial condition and results of operations in the near term and could have a continuing material impact on our operations, sales and ability to continue as a going concern. To the extent the COVID-19 pandemic adversely affects our business and financial results, it may also have the effect of heightening many of the other risks described in this "Risk Factors" section, such as those relating to our high level of indebtedness, our need to generate sufficient cash flows to service our indebtedness and our ability to comply with the covenants contained in the agreements that govern our indebtedness.

Customer demand for and our ability to sell and market our products, particularly within our wholesale and Company showroom businesses, has been and may in the future be adversely affected by the COVID-19 pandemic and responses thereto.

The COVID-19 pandemic has created significant uncertainty in our business, slowed our anticipated wholesale partner and showroom plans and resulted in a temporary contraction of our wholesale and Company showroom businesses due to temporary shutdowns of non-essential businesses, reduced demand for physical retail locations, and shelter-at-home and social distancing directives in most U.S. states. The future impact to our wholesale partners and consumer demand from the COVID-19 pandemic or a future health epidemic or other outbreak occurring in other locations, particularly in North America, is unknown. If we fail to anticipate changes in demand or consumer behavior resulting from the COVID-19 pandemic or other outbreaks it could adversely affect our business or operating results.

If sales in our channels decline, including as a result of stay-at-home orders, social distancing mandates, temporary closures of or decreased shopping in our wholesale partners' stores or our Company showrooms, or deteriorating general economic conditions, our business may be adversely affected. Moreover, we may be impacted by difficulties experienced by our wholesale partners as a result of the COVID-19 pandemic, including disruptions in their supply chains, their liquidity challenges and their ability to keep open or reopen retail locations. In addition, while in the quarter ended September 30, 2020 we experienced an increase in demand for our products through our DTC channel, there can be no guarantee that sales through our DTC channel will continue to increase or will not decline.

We may not be eligible to participate in some of the relief programs provided under the recently adopted Coronavirus Aid Relief, and Economic Security (CARES) Act or other government programs and even if we are eligible we may not realize any material benefits from participating in such programs.

On March 27, 2020, the President of the United States signed the Coronavirus Aid Relief, and Economic Security (CARES) Act into law. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to tax depreciation methods for qualified improvement property. We continue to evaluate the applicability of the CARES Act to the Company, and the potential impacts on our business and are actively taking advantage of applicable programs.

While we may determine to apply for programs available under the CARES Act, there is no guarantee that we will meet any eligibility requirements to participate in such programs or, even if we are able to participate, that such programs will provide meaningful benefit to our business. In addition to the CARES Act in connection with the COVID-19 pandemic, the U.S. government and state/local governments may offer additional programs intended to assist employers. We may fail to qualify for or take advantage of such COVID-19 relief programs, which may have a negative impact on our business. In the event we obtain financing through a government COVID-19 stimulus program, such financing may impose additional restrictions on our business and how those funds are used, such as bringing employees back from furlough even if production levels remain reduced, restrictions on the payment of distributions or dividends and limits on executive pay that could adversely affect our ability to recruit and retain qualified key employees. In addition, previously adopted government programs designed to provide assistance to businesses and consumers may not be sufficient and further assistance may not be provided.

Our future growth and profitability depend upon the strength of our Purple brand and the effectiveness and efficiency of our marketing programs and our ability to attract and retain customers.

We are highly dependent on the effectiveness of our marketing messages and the efficiency of our advertising expenditures in generating consumer awareness and sales of our products. We continue to evolve our marketing strategies, adjusting our messages, the amount we spend on advertising and where we spend it. We may not always be successful in developing effective messages and new marketing channels, as consumer preferences and competition change, and in achieving efficiency in our advertising expenditures.

We depend heavily on internet-based advertising to market our products through internet-based media and e-commerce platforms. If we are unable to continue utilizing such platforms, if those media and platforms diminish in importance or size, or if we are unable to direct our advertising to our target consumer groups, our advertising efforts may be ineffective, and our business could be adversely affected. The costs of advertising through these platforms have increased significantly, which has resulted in decreased efficiency in the use of our advertising expenditures, and we expect these costs may continue to increase in the future.

We have relationships with online services, search engines, affiliate marketing websites, directories and other website and e-commerce businesses to provide content, advertising and other links that direct customers to our website. We rely on these relationships as significant sources of traffic to our website and to generate new customers. If we are unable to develop or maintain these relationships or develop and maintain new relationships for newly developed and necessary marketing services on acceptable terms, our ability to attract new customers and our financial condition would suffer. In addition, current or future relationships or agreements may fail to produce the sales that we anticipate. The cost of advertising for web-based platforms, such as Facebook, are increasing. Increasing advertising costs erode the efficiency of our advertising efforts. If we are unable to effectively manage our advertising costs or if our advertising efforts fail to produce the sales that we anticipate, our business could be adversely affected.

On October 20, 2020, the United States Department of Justice brought an antitrust lawsuit against Google claiming that Google improperly uses its monopoly over Internet search to impede competition and harm consumers. Our cost of advertising on Google may remain high if Google's monopoly over Internet searches is not prevented and competitive search engines are not allowed to compete. Alternatively, if Google is required because of this lawsuit to split up the company or sell assets, there is no assurance this will decrease advertising costs and it may lead to increased costs due to an increased number of service providers who obtain oligopoly power to control advertising costs. Although this lawsuit may lower our advertising costs, there is risk that it may not and would lead to increased costs which would reduce our profitability and harm our business.

Consumers are increasingly using digital tools as a part of their shopping experience. As a result, our future growth and profitability will depend in part on (i) the effectiveness and efficiency of our online experience for disparate worldwide audiences, including advertising and search optimization programs in generating consumer awareness and sales of our products, (ii) our ability to prevent confusion among consumers that can result from search engines that allow competitors to use or bid on our trademarks to direct consumers to competitors' websites, (iii) our ability to prevent Internet publication or television broadcast of false or misleading information regarding our products or our competitors' products, (iv) the nature and tone of consumer sentiment published on various social media sites, and (v) the stability of our website. In recent years, a number of direct-to-consumer, Internet-based retailers, like us, have emerged and have driven up the cost of basic search terms, which has and may continue to increase the cost of our Internet-based marketing programs. More recently, the large traditional mattress manufacturers have been increasing their efforts to increase their direct-to-consumer sales which also is increasing the cost of our Internet-based marketing programs and cost of customer conversion.

In the past, we have been the target of publications by purported consumer reviewers who claim to have identified health and safety concerns with our products. While we believe such claims to be baseless, refuting such claims requires us to expend significant resources to educate current and potential customers on the safety of our products. Even if we are able to broadly disseminate factual information to refute such claims and reinforce the safety of our products, such claims and attendant adverse publicity could persist and damage our reputation and brand value and result in lower sales.

The number of third-party review websites is increasing, and such reviews are becoming increasingly influential with consumers. Negative reviews from such sources may receive widespread attention from consumers, which could damage our reputation and brand value and result in lower sales. If we are unable to effectively manage relationships with such reviewers to promote accurate reviews of our products, reviewers may decline to review our products or may post reviews with misleading information, which could damage our reputation and make it more difficult for us to improve our brand value.

If our marketing messages are ineffective or our advertising expenditures, geographic price-points, and other marketing programs, including digital programs, are inefficient in creating awareness and consideration of our products and brand name and in driving consumer traffic to our website, our sales, profitability, cash flows and financial condition may be adversely impacted. In addition, if we are not effective in preventing the publication of confusing, false or misleading information regarding our brand or our products, or if there arises significant negative consumer sentiment on social media regarding our brand or our products, our sales, profitability, cash flows and financial condition may be adversely impacted.

Our future growth and profitability depend, in part, upon our ability to achieve and maintain sufficient production capacity to meet customer demands.

We manufacture our mattresses using our proprietary and patented Mattress Max™ machinery to make our Hyper-Elastic Polymer® cushioning material. Because of the unique features of our Mattress Max machines, new machines are not readily available and must be constructed. We also have experienced inefficiencies in sourcing of materials and production of finished products. We have taken steps to improve our processes and capabilities, but if we are unable to maintain our improvements and continue our improvement initiatives to increase efficiencies or if we are unable to promptly and efficiently open our new Georgia manufacturing facility, we may not be able to keep up with demand which would harm our business. If we are unable to construct new Mattress Max machines and implement them into our production process in a timely manner, if our existing Mattress Max machines are unable to function at the desired capacity, or if we are unable to develop replacements for the existing Mattress Max machines if such replacements should become necessary, our production capacity may be constrained and our ability to respond to customer demand may be adversely impacted. We manufacture mattresses and other products using components provided by third-party suppliers. If those third-party suppliers are unable to provide us with such components or if our assembly capacity is insufficient our ability to respond to customer demand may be adversely impacted. This would negatively impact our ability to grow our business and achieve profitability.

We have engaged in significant related-party transactions with affiliates and owners that may give rise to conflicts of interest, result in losses to the Company or otherwise adversely affect our operations and the value of our business.

We have engaged in numerous related-party transactions involving significant shareholders, directors, and officers of the Company, as well as with other entities affiliated with such persons. Several of these transactions were entered into prior to the Business Combination. For example, since 2010, we have leased our facilities in Alpine, Utah from TNT Holdings, which is owned by Tony Pearce and Terry Pearce. As we grow, and our needs change, we may need to negotiate a termination or modification of this lease, and we have recently amended this lease to shift responsibility from TNT Holdings to the Company for arranging certain types of insurance. We have leased a new facility in Lehi, Utah and moved our headquarters into that building during the first quarter 2020. The Company continues to lease the Alpine facility that was formerly the Company headquarters, for use in production, research and development and video production. We also may at some time purchase this Alpine facility from TNT Holdings. Tony and Terry Pearce, either personally or through one or more of their other entities, also have tangible property located in this Alpine facility that has not been clearly identified and separated from our property. Although we expected this tangible property to be either removed or identified and separated in 2019, this has not yet occurred. Tony and Terry Pearce pay no rent or other compensation to us to store such property in our leased facility. While there is currently no dispute over the lease, and we do not anticipate a dispute, there could arise in the future a dispute between the Company and Tony and Terry Pearce over this lease, or ownership of the property located at this facility. Tony Pearce and Terry Pearce served on our board of directors until August 17, 2020 and, through InnoHold, owned a majority of the outstanding shares of our common stock until all their interests were sold in secondary public offerings ending in September 2020.

Prior to the Business Combination, we also entered into an Amended and Restated Confidential Assignment and License Back Agreement with EdiZONE, an entity beneficially owned and controlled by Tony Pearce and Terry Pearce through their ownership of TNT Holdings, pursuant to which EdiZONE transferred tangible and intellectual property to us and we licensed back to EdiZONE certain intellectual property previously licensed by EdiZONE to third parties prior to the Business Combination in order to enable EdiZONE to continue to meet certain pre-existing license obligations to those third parties. EdiZONE and the Pearces have agreed to not modify or extend these third-party licenses and to not enter new third-party licenses. As these third-party license obligations end all rights under the license revert to the Company. These third parties include direct competitors to us that at the time of the Business Combination were not selling products through retail channels in which we were selling our products. One of these third parties is Advanced Comfort Technologies, Inc. dba Intellibed ("ACTI"), a domestic competitor of ours, who sells mattresses through some of the same retailers through which we also sell our products. On August 14, 2020, Purple LLC entered into a License Transfer and IP Assignment Agreement with EdiZONE, pursuant to which EdiZONE assigned the ACTI License Agreement, and related royalties payable thereunder, to Purple LLC, along with the trademarks GEL MATRIX and INTELLIPILLOW. In connection with such assignment, we agreed to indemnify EdiZONE against claims by ACTI against EdiZONE relating to EdiZONE's breach under the License Agreement, claims arising out of the execution of the EdiZONE Agreement, or Purple LLC's ownership, enforcement or breach of the License Agreement. The intellectual property so assigned remains subject to other licenses granted by EdiZONE to third parties, which licenses are retained by EdiZONE. ACTI's sales revenues have been increasing, resulting in increasing royalties paid by ACTI to the Company pursuant to a the ACTI License Agreement. Another third-party licensee may make it difficult for us to expand into certain geographic regions, such as the European Union. While the current license back to EdiZONE, as amended following the Business Combination, is much narrower than the license that existed at the time of the Business Combination, these third-party licenses, including licenses by EdiZONE to a potential foreign competitor and obligations owed to the Company related to the ACTI License Agreement, may lead to conflicts of interest between us and EdiZONE. At the time this initial assignment from and license back to EdiZONE was first entered into, Purple LLC had only Tony and Terry Pearce as directors. Subsequent to the Business Combination, the license to EdiZONE was amended to broaden our rights and narrow EdiZONE's rights with the approval of our independent directors, and the recent acquisition of the ACTI License Agreement also was approved by our independent directors.

Prior to the Business Combination, we also entered into a Shared Services Agreement with other entities controlled by Tony Pearce and Terry Pearce, including EdiZONE, which covered the provision of services to these entities by our employees. The Shared Services Agreement was terminated by us effective July 24, 2019. No legal or accounting services were provided by Purple LLC during 2019 prior to this termination.

Prior to the Business Combination, InnoHold, an entity owned by Terry and Tony Pearce and previously a significant stockholder of the Company, also granted equity incentive awards in Purple LLC to certain key employees at that time. As a result of the structure of those awards being granted through a separate entity, the equity incentives were required, because of the structure of the Business Combination, to be exchanged for ownership units in InnoHold, to avoid those equity interests becoming of no value to the participants. Those participants' ownership interests had certain restrictions, including vesting requirements. These equity incentives granted to key employees prior to the Business Combination are forfeited to the extent the grant to an employee is not yet fully vested at the time that such employee's employment is terminated. Before and for a period of time since the Business Combination, all forfeitures occurring from departing employees have inured to the benefit of only the owners of InnoHold, and not all of our stockholders. This means that the forfeited equity did not increase our currently approved equity incentive pool. Because the forfeited equity resulting from these departures prior to this distribution was held at InnoHold, that forfeited equity did not replenish our equity incentive pool and could not be used for equity grants to those who have replaced and will replace these employees or for other purposes essential to the business. During 2019, to avoid future forfeitures from inuring only to the benefit of InnoHold's owners, InnoHold distributed to the incentive participants their pro rata share of InnoHold's ownership of Class B Stock in Purple Inc. and Class B Units in Purple LLC, after which any forfeitures would inure to the benefit of all of our stockholders. InnoHold distributed additional paired shares of Class B Stock in Purple Inc. and Class B Units in Purple LLC which also will be subject to the same vesting requirements and result in forfeitures inuring to the benefit of all shareholders. Our current equity incentive pool, as approved by the stockholders prior to the Business Combination in the 2017 Equity Incentive Plan, did not account for the departure, before this distribution by InnoHold, of such key employees who had existing equity grants through InnoHold, and there is a risk that we will have to seek approval from the Board and stockholders to refresh the equity incentive pool earlier than anticipated at the time of the Business Combination because of the unanticipated need to use shares from the existing pool to hire and retain other key employees needed to achieve the Company's growth objectives. If the equity pool is not refreshed, there is a risk that we may not be able to hire and retain such key employees. If the equity pool is refreshed with authorized shares of the Company that are issued in accordance with our 2017 Equity Incentive Plan, our stockholders will be diluted. Also, this distribution by InnoHold to the equity incentive participants has caused us to incur administrative expenses related to the distributions, the management of the differing vesting schedules and compliance with their rights under the distribution agreements. In addition, the calculations of the distributive share and related income tax withholdings with respect to holders of InnoHold's Class B Units, as well as the processes by which such distributions and withholdings are made, are highly complex. As a result, there is a risk that the recipients of such distributions or other third parties may claim that we have miscalculated the distribution or income tax withholding amounts or failed to timely pay the taxes. The cost of responding to such claims, including but not limited to the diversion of management's attention from our operations and defense or settlement costs, could negatively impact our operations and financial results.

In connection with the Business Combination, Purple LLC also entered into that certain Credit Agreement dated February 2, with the Lenders, which was guaranteed by Purple Inc. The Lenders also were stockholders and warrant holders of the Company and appointed one director to serve on our Board, Adam Gray, who continues to serve on our Board and is affiliated with the Lenders. Further, on February 26, 2019, the Amended and Restated Credit Agreement between Purple LLC and the Lenders thereto, and each of the related documents, including the issuance of additional warrants to the Incremental Lenders, was closed and an incremental loan was funded. In connection with the funding of the incremental loan, we issued to the Incremental Lenders warrants to purchase shares of our Class A Stock.

On March 27, 2020, the Amended and Restated Credit Agreement was amended to allow Purple LLC at its election a 5% paid-in-kind interest deferral for the first two quarters of 2020. On May 15, 2020, the Amended and Restated Credit Agreement was further amended to remove a negative covenant so that there would not be an event of default if the Lenders acquired 25% or more ownership of the Company. On August 20, 2020, the Company and Purple LLC entered into a Waiver and Consent to Amended and Restated Credit Agreement with the Lenders, that, among other things, waives an event of default as a result of InnoHold ceasing to own 25% or more of the aggregate equity interests in the Company, subject to certain conditions as more fully provided in such waiver

On September 3, 2020, we paid off the full amount owed and a prepayment premium to the Lenders in the aggregate amount of $45.0 million and terminated the Amended and Restated Credit Agreement, subject to those provisions that survive termination.

See “Item 13. Certain Relationships and Related Transactions, and Director Independence” in our Annual Report on Form 10-K for the year ended December 31, 2019 for a further discussion of all related-party transactions between the Company and insiders.

Disruption of operations in our manufacturing facilities, including as a result of pandemics or natural disasters, could increase our costs of doing business or lead to delays in shipping our products.

We have two manufacturing plants, which are located in Alpine, Utah and Grantsville, Utah. We have signed a lease for and have begun work on building out a third manufacturing plant in McDonough, Georgia that is not yet manufacturing products.

Although we can produce some of our products at both Utah sites, we have consolidated production of certain products at each site. Therefore, the disruption of operations of our manufacturing facilities, particularly where manufacturing has been consolidated, for a significant period of time, or even permanently, or disruptions to the scheduled build-out of the Georgia facility such as through a closure related to the COVID-19 pandemic or the loss of the lease, may increase our costs of doing business and lead to delays in shipping our products to customers. Such delays could adversely affect our sales, customer satisfaction, profitability, cash flows, liquidity and financial condition. Because both of our currently operating manufacturing plants are located within the same geographic region, regional economic downturns, natural disasters, closures due to COVID-19 or other issues could potentially disrupt all of our manufacturing and other operating activities, which could adversely affect our business. On March 18, 2020, Magna, Utah was the epicenter of a 5.7 magnitude earthquake that was felt approximately 20 miles away at our Grantsville, Utah manufacturing plant but not felt at our Alpine, Utah manufacturing plant. Since that date, there have been approximately one-thousand aftershocks. Though no damage occurred at either manufacturing plant from the 5.7 earthquake or its aftershocks, continued or increased earthquake activity in the area could disrupt manufacturing and other operating activities, which could adversely affect our business.

Significant product returns could harm our business.

We allow our customers to return products, subject to our returns policies. If product returns are higher than we anticipate, our business, prospects, financial condition and results of operations could be harmed. Further, we modify our policies and procedures relating to returns from time to time, and policies and methods of collecting returned products intended to reduce the number of product returns may result in customer dissatisfaction. The occurrence of any of the foregoing could have a material adverse effect on our business.

Adverse litigation judgments or settlements resulting from legal proceedings in which we may be involved in the normal course of business could affect our operations and financial condition.

In the normal course of business, we may from time to time become involved in various legal proceedings. The outcome of these legal proceedings cannot be predicted. It is possible that an unfavorable outcome of some or all of such matters could cause us to incur substantial liabilities that may have a material adverse effect upon our financial condition and results of operations. Any significant adverse litigation, judgments or settlements could have a negative effect on our business, financial condition and results of operations. Even if we are successful in defending against or prosecuting such litigation, the costs of such litigation, which may or may not be covered by our insurance, could be significant and have a material adverse effect on our business. The quantity and scope of legal proceedings could cause an increase in the amount we pay for insurance coverage which could negatively affect our financial condition.

Our business could suffer if we are unsuccessful in making, integrating, and maintaining commercial agreements, strategic alliances, and other business relationships.

To successfully operate our business, we rely on commercial agreements and strategic relationships with suppliers, service providers and certain wholesale partners and customers. These arrangements can be complex and require substantial infrastructure capacity, personnel, and other resource commitments. Further, our business partners may have disruptions in their businesses or choose to no longer do business with us and the impact of such disruption or choices could be magnified to the extent such business partners represent a significant part of our business. We may not be able to implement, maintain, or develop the components of these commercial relationships. Moreover, we may not be able to enter into additional commercial relationships and strategic alliances on favorable terms or at all.

As our agreements terminate or relationships unwind, we may be unable to renew or replace these agreements on comparable terms, or at all. We may in the future enter into amendments on less favorable terms or encounter parties that have difficulty meeting their contractual obligations to us, which could adversely affect our operating results.

Our present and future services agreements, other commercial agreements, and strategic relationships create additional risks such as:

- disruption of our ongoing business, including loss of management focus on existing businesses;
- impairment of other relationships;
- variability in revenue and income from entering into, amending, or terminating such agreements or relationships; and
- difficulty integrating under the commercial agreements.

We have entered into arrangements with several wholesale partners through which we sell certain of our products in their retail stores. We anticipate increasing the number of these partnerships. Also, we have agreed to exclusivity of certain products with some of our wholesale partners. Our relationships with our wholesale partners may not be profitable to us or may impose additional costs that we would not otherwise incur under our prior DTC-only operations. Our wholesale partners may experience their own business disruptions, including for example bankruptcy, that could affect their ability to continue to do business with us. Our wholesale partners may engage in conduct that could breach the exclusivity rights of other wholesale partners. Further, maintaining these relationships may require the commitment of significant amounts of time, financial resources and management attention, and may result in prohibitions on certain sales channels through exclusivity requirements, which may adversely affect other aspects of our business.

We have opened a Company factory outlet and six Company showrooms. Our business is expanding into additional Company showrooms which, like our online e-commerce retail store, will compete with our wholesale partners for customers. Our relationships with our wholesale partners may be adversely affected by this competition. In our effort to make our products available to consumers in multiple retail channels, there is the risk that sales may diminish in other channels, costs may be incurred without an increase in overall sales and our wholesale partners may no longer carry our products. Managing an omni-channel distribution strategy, including the relationships with business partners in each channel, may require significant amounts of time, resources and attention which may adversely affect other aspects of our business.

We operate in a highly competitive Comfort Industry, and if we are unable to compete successfully, we may lose customers and our sales may decline.

The Comfort Industry market is highly competitive and fragmented. We face competition from many manufacturers (including competitors that primarily manufacture and import from China and other low-cost countries), traditional brick-and-mortar retailers and online retailers, including direct-to-consumer competitors. Participants in the Comfort Industry compete primarily on price, quality, brand name recognition, product availability and product performance and compete across a range of distribution channels. The highly competitive nature of the Comfort Industry means we are continually subject to the risk of loss of market share, loss of significant customers, reductions in margins, and the inability to acquire new customers.

A number of our significant competitors offer products that compete directly with our products. Any such competition by established manufacturers and retailers or new entrants into the market could have a material adverse effect on our business, financial condition and operating results. Comfort Industry manufacturers and retailers are seeking to increase their channels of distribution and are looking for new ways to reach the consumer. Like us, many newer competitors in the mattress industry have begun to offer "bed-in-a-box" or similar products directly to consumers through the Internet and other distribution channels. Some of our established competitors have begun to offer "bed-in-a-box" products as well. Many of our competitors source their products from countries such as China and Vietnam, where the costs may be lower than our costs. Companies providing for the distribution of mattresses online or through retail stores, such as Amazon and Walmart, also have begun to offer competing products in their respective channels. In addition, retailers outside the U.S. have integrated vertically in the furniture and bedding industries, and it is possible that retailers may acquire other retailers or may seek to vertically integrate in the U.S. by acquiring a mattress manufacturer.

Many of our current and potential competitors may have substantially greater financial support, technical and marketing resources, larger customer bases, longer operating histories, greater name recognition, mature distribution methods, and more established relationships in the industry than we do and sell products through broader and more established distribution channels. These competitors, or new entrants into the market, may compete aggressively and gain market share with existing or new products, and may pursue or expand their presence in the Comfort Industry. We cannot be sure we will have the resources or expertise to compete successfully in the future. We have limited ability to anticipate the timing and scale of new product introductions, advertising campaigns or new pricing strategies by our competitors, which could inhibit our ability to retain or increase market share, or to maintain our product margins. Our current and potential competitors may secure better terms from vendors, adopt more aggressive pricing, and devote more resources to technology, infrastructure, fulfillment, and marketing. Also, due to the large number of competitors and their wide range of product offerings, we may not be able to continue to differentiate our products through value, styling or functionality from those of our competitors. Our products are also typically heavier than others and some markets we wish to expand into will not support delivery of our heavy products through parcel services or other affordable home delivery services, limiting our ability to serve the market.

One competitor, ACTI, which has been a licensee of EdiZONE for over fifteen years until the Company's recent acquisition of the ACTI License Agreement from EdiZONE, uses similar technology to our Hyper-Elastic Polymer material and Purple Grid in its own mattress, topper and pillow products sold through branded retail stores domestically and in Canada. This competitor has been growing its sales and now distributes its products through wholesale partners with retail locations where our mattresses are sold. This competitor may continue to increase its sales and expand into additional distribution channels which could erode our sales in those retail locations and channels. Even with the Company's receipt of royalties from ACTI pursuant to the ACTI License Agreement, the continuing growth of this single competitor could adversely affect our business.

A consolidation of the domestic market for foam may increase the prices for foam in the geographical market in which we purchase foam, which could adversely affect our business. We source a specialized type of foam from a supplier who has been in bankruptcy, and the ability of that supplier to remain in business in the short- or long-term may affect our ability to continue to obtain that specialized foam and require us to modify our product offerings, lose sales or incur increased expenses that could adversely affect our cash flows, margins and profitability.

In addition, the barriers to entry into the retail bedding industry are relatively low. New or existing bedding retailers could enter our markets and increase the competition we face. Competition in existing and new markets may also prevent or delay our ability to gain relative market share. Any of the developments described above could have a material adverse effect on our planned growth and future results of operations.

We will face different market dynamics and competition as we develop new products to expand our presence in our target markets. In some markets, our future competitors may have greater brand recognition and broader distribution than we currently enjoy. We may not be as successful as our competitors in generating revenues in those markets due to the lack of recognition of our brands, lack of customer acceptance, lack of product quality history and other factors. As a result, any new expansion efforts could be costlier and less profitable than our efforts in our existing markets. If we are not as successful as our competitors are in our target markets, our sales could decline, our margins could be impacted negatively and we could lose market share, any of which could materially harm our business.

If we are unable to effectively compete with other manufacturers and retailers of mattresses, pillows, cushions, and our other products our sales, profitability, cash flows and financial condition may be adversely impacted.

The results of the U.S. Department of Commerce's antidumping investigation could have a negative impact on our planned growth and future results of operations.

On December 16, 2019, the U.S. Department of Commerce ("Department") issued an antidumping duty order directing the U.S. Customs and Border Protection ("CBP") to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price, or constructed export price, of the subject merchandise for all relevant entries of mattresses from China. However, if the antidumping duties do not result in the prevention of dumping of underpriced Chinese mattresses into the U.S. market, or if the import duties enacted by the Department pursuant to its antidumping order are removed, rescinded, or modified, we could experience or continue to experience a negative impact on our planned growth and the future results of operations.

In addition, in March 2020 several U.S. mattress manufacturers and two labor unions announced that they filed seven antidumping duty petitions and one countervailing duty petition with the Department charging that unfairly traded imports of finished mattresses from eight countries are causing material injury to the U.S. mattress industry. In April 2020 the Department opened an investigation into the petitions. In May 2020, the Department rolled out preliminary countervailing duties on Chinese-origin mattresses. These duties are in addition to the antidumping duties on mattresses from China. If the Department fails to impose antidumping duties on the seven named exporting countries and/or countervailing duties on China, we could experience continued negative impact on our planned growth and future results of operations.

Purple LLC has licensed certain intellectual property to EdiZONE, LLC, which is owned by Tony and Terry Pearce via TNT Holdings, LLC, for the purpose of enabling EdiZONE to meet its contractual obligations to licensees of EdiZONE under contracts entered into years before the Business Combination, and some of those licensees are competitors of Purple LLC and have exclusivity rights that Purple LLC is required to observe.

Purple LLC has licensed to EdiZONE, LLC, which is an entity owned by Tony and Terry Pearce through TNT Holdings, LLC, certain intellectual property rights for use by EdiZONE outside of the consumer comfort market. Prior to the Business Combination, EdiZONE's business model was the creation and licensing of intellectual property, and it had granted many licenses over time, most of which were terminated prior to the Business Combination. When EdiZONE assigned its intellectual property to Purple LLC it received in return a license back of the intellectual property it needed to maintain its contractual obligations under the licenses that still were in place at that time. After the Business Combination, this license back to EdiZONE has been amended with the cooperation of Purple LLC, EdiZONE and the Pearces to further narrow EdiZONE's rights, in order to minimize the conflicts of interest that may exist. Although there are no conflicts of interest foreseen at this time, if conflicts of interest do arise and are not properly addressed, disputes may occur which may be detrimental to the Company.

On August 14, 2020, Purple LLC entered into a License Transfer and IP Assignment Agreement with EdiZONE, pursuant to which EdiZONE assigned to Purple LLC all its interest in the ACTI License Agreement and the trademarks GEL MATRIX and INTELLIPILLOW. In connection with such assignment, we agreed to indemnify EdiZONE against claims by ACTI against EdiZONE relating to EdiZONE's breach under the License Agreement, claims arising out of the execution of the EdiZONE Agreement, or Purple LLC's ownership, enforcement or breach of the License Agreement.

EdiZONE previously entered into licenses, as described above, for comfort-related intellectual property. These licenses include exclusivity rights that may prohibit us from selling our existing mattresses or potentially new products in certain geographic areas, including domestically and in the European Union. That risk may be addressed by redesign of the configuration of the Hyper-Elastic Polymer in that geographic region by either using existing technologies already assigned by EdiZONE to Purple LLC or developing new technologies. Alternatively, that risk may not exist at all to the extent Purple LLC's current mattress products are the subject of expired patent rights licensed by that licensee or because Purple LLC is not the licensor. However, there can be no assurance that our future sales in these geographic territories, if any, will not be challenged by the licensee as a violation of the license agreements, or that any redesigned mattresses created by us will be successful. If Purple LLC's activities are challenged by a licensee, Purple LLC has an indemnification obligation to EdiZONE and the Pearces, which may be an expense to the Company.

In addition, if these third parties violate their licenses or infringe on intellectual property owned by Purple LLC and Purple LLC is unable to take effective action against such violating or infringing parties, we may be unable to protect against this infringement or the effects of such violations and our business could be harmed.

Purple LLC has obtained, with the cooperation of EdiZONE and the Pearces, the right to enforce its intellectual property rights at Purple LLC's option, provided that Purple LLC will indemnify EdiZONE and fund the expense of such enforcement. In addition, as the licensor under the ACTI License Agreement, the Company now has the ability as the direct licensor to enforce its intellectual property rights against ACTI. In the event such enforcement is deemed necessary by Purple LLC, Purple LLC may not be successful in any such efforts to enforce its intellectual property and other rights under the ACTI License Agreement and this may harm our business.

Fluctuations in the price, availability and quality of raw materials could cause and has caused delays that could result in our inability to provide goods to our customers or could increase our costs, either of which could decrease our earnings.

In manufacturing products, we use various commodity components, such as polyurethane foam, oil, our spring units, ingredients for our Hyper-Elastic Polymer® material, our water-based adhesive and other raw materials. Because we are dependent on outside suppliers for our raw materials, fluctuations in their price, availability, and quality could have a negative effect on our cost of sales and our ability to meet our customers' demands. Competitive and marketing pressures may prevent us from passing along price increases to our customers, and the inability to meet our customers' demands could cause us to lose sales.

We depend on a few key employees, and if we lose the services of certain of our principal executive officers, we may not be able to run our business effectively.

Our future success depends in part on our ability to attract and retain key executive, merchandising, marketing, sales, finance, operations and engineering personnel. If any of our executive officers cease to be employed by us, we would have to hire additional qualified personnel. Our ability to successfully attract and hire other experienced and qualified executive officers cannot be assured and may be difficult because we face competition for these professionals from our competitors, our suppliers and other companies operating in our industry and in our geographic locations. Since the Business Combination, we have hired a new Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, and a Chief Retail Officer. We have also experienced the departure of the prior Chief Marketing Officer and the prior Chief Branding Officer. These departures and any delay in replacing these executives could significantly disrupt our ability to grow and pursue our strategic plans. We are currently in the process of searching for a qualified replacement for our Chief Marketing Officer. While we believe our new executive officers have benefitted and will continue to benefit us, finding qualified replacements is time-consuming, takes Company resources, and can disrupt our growth and achievement of strategic plans.

Further, the involvement of Tony and Terry Pearce has been crucial to the success of our company because of their extensive experience with and technical knowledge of our products. On August 17, 2020, Terry Pearce and Tony Pearce retired from our Board of Directors, and from their positions as Co-Directors of Research & Development. If we are unsuccessful in our efforts to build out our research and development capabilities around the many technologies conceived by Tony and Terry Pearce, our ability to develop new technologies and innovative products may be adversely affected.

Our business exposes us to personal injury, property damage and product liability claims, which could result in adverse publicity and harm to our brands and our results of operations.

We may be subject to personal injury, property damage and product liability claims for the products that we sell or related to the Company showrooms we will operate. Any personal injury, property damage or product liability claim made against us, whether or not it has merit, could be time consuming and costly to defend, resulting in adverse publicity, or damage to our reputation, and have an adverse effect on our results of operations. In addition, any negative publicity involving our vendors, employees, labor contractors, delivery contractors and other parties who are not within our control could negatively impact us.

Further, the products we sell are subject to regulation by the U.S. Consumer Product Safety Commission ("CPSC") and similar state and international regulatory authorities. Such products could be subject to recalls and other actions by these authorities. Product safety concerns may require us to voluntarily remove selected products from our stores. Such recalls and voluntary removal of products can result in, among other things, lost sales, diverted resources, potential harm to our reputation and increased customer service costs, which could have a material adverse effect on our financial condition.

We previously voluntarily reported to the CPSC concerning a potential defect in an accessory product supplied to us by third parties. After its review, CPSC staff closed the case with no action by the Commission. We are providing repair parts to customers with affected products as a warranty matter and are continuing to monitor the issue. We anticipate at this time approximately 30% of our customers who purchased this product will desire to receive our improvement which we will ship to them at no cost. Since we will incur the cost of this improvement, if our estimate is too low, we may incur additional expenses. Contacting customers with this improvement also may result in an increase in warranty claims or claims of injury or damage prior to receiving the improvement that has not yet been communicated to us. If a customer is harmed by a product failure there also could be litigation and expenses related to a claim of personal injury, which could harm our brand and reputation and negatively affect our operating results.

We maintain insurance against some forms of personal injury, property damage and product liability claims, but such coverage may not be adequate for liabilities actually incurred. A successful claim brought against us in excess of available insurance coverage, or any claim or product recall that results in significant adverse publicity against us, may have a material adverse effect on our sales, profitability, cash flows and financial condition.

Regulatory requirements, including, but not limited to, trade, customs, environmental, health and safety requirements, may require costly expenditures and expose us to liability.

Our products and our marketing and advertising programs are subject to regulation in the U.S. by various federal, state and local regulatory authorities, including the Federal Trade Commission and U.S. Customs and Border Protection. In addition, our operations are subject to federal, state and local consumer protection regulations and other laws relating specifically to the bedding industry. These rules and regulations may conflict and may change from time to time, as a result of changes in the political environment or otherwise. There may be continuing costs of regulatory compliance including continuous testing, additional quality control processes and appropriate auditing of design and process compliance. For example, the CPSC and other jurisdictions have adopted rules relating to fire retardancy standards for the mattress industry. Some states and the U.S. Congress continue to consider fire retardancy regulations that may be different from or more stringent than the current standard. California recently enacted laws effective in 2021 requiring mattress retailers delivering mattresses via common carrier in California to offer to pick up their customers' old mattresses. Additionally, California, Rhode Island and Connecticut have all enacted laws requiring the recycling of mattresses discarded in their states. State and local bedding industry regulations vary among the states in which we operate but generally impose requirements as to the proper labeling of bedding merchandise, restrictions regarding the identification of merchandise as "new" or otherwise, controls as to hygiene and other aspects of product handling, disposal, sales, resales and penalties for violations. We or our suppliers may be required to incur significant expense to the extent that these regulations change and require new and different compliance measures. For example, new legislation aimed at improving the fire retardancy of mattresses, regulating the handling of mattresses in connection with preventing or controlling the spread of bed bugs could be passed, or requiring the collection or recycling of discarded mattresses, could result in product recalls or in a significant increase in the cost of operating our business. In addition, failure to comply with these various regulations may result in penalties, the inability to conduct business as previously conducted or at all, or adverse publicity, among other things. Adoption of multi-layered regulatory regimes, particularly if they conflict with each other, could increase our costs, alter our manufacturing processes and impair the performance of our products which may have an adverse effect on our business. We are also subject to various health and environmental provisions, such as California Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986) and 16 CFR Part 1633 (Standard for the Flammability (Open Flame) of Mattress Sets).

Our marketing and advertising practices could also become the subject of proceedings before regulatory authorities or the subject of civil claims by competitors and other parties, which could result in civil litigation or regulatory penalties and require us to alter or end these practices or adopt new practices that are not as effective or are more expensive. Despite our efforts to comply with all marketing laws and regulations, we may not be in complete compliance at all times. Some competitors engage in the practice of regularly sending notices alleging non-compliance with certain of these regulations, and demanding proof of compliance, and while we may believe we comply with applicable regulations, this practice consumes our resources, could lead to litigation and may have a negative impact on our financial condition.

In addition, we are subject to federal, state and local laws and regulations relating to pollution, environmental protection and occupational health and safety. We may not be in complete compliance with all such requirements at all times, and we have been required in the past to make changes to our facilities in order to comply with these requirements. We have made and will continue to make capital and other expenditures to comply with environmental and health and safety requirements. If a release of harmful or hazardous substances occurs on or from our properties or any associated offsite disposal location, or if contamination from prior activities is discovered at any of our properties, we may be held liable and the amount of such liability could be material. As a manufacturer of mattresses, pillows, cushions and related products, we use and dispose of a number of substances, such as glue, oil, solvents and other petroleum products, as well as certain foam ingredients, that may subject us to regulation under numerous foreign, federal and state laws and regulations governing the environment. Among other laws and regulations, we are subject in the U.S. to the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Air Act and related state and local statutes and regulations.

We are also subject to federal laws and regulations relating to international shipments, customs, and import controls. We may not be in complete compliance with all such requirements at all times, and if we are not in compliance with such requirements, we may be subject to penalties or fines, which could have an adverse impact on our financial condition and results of operations.

Our operations could also be impacted by a number of pending legislative and regulatory proposals to address greenhouse gas emissions in the U.S. and other countries. Certain countries have adopted the Kyoto Protocol. New greenhouse gas reduction targets have been established under the Kyoto Protocol, as amended. This and other initiatives under consideration could affect our operations. These actions could increase costs associated with our manufacturing operations, including costs for raw materials, pollution control equipment and transportation. Because it is uncertain what laws will be enacted, we cannot predict the potential impact of such laws on our future consolidated financial condition, results of operations, or cash flows.

We are also subject to regulations and laws specifically governing the Internet, e-commerce, electronic devices, and other services. These regulations and laws may cover taxation, privacy, data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, electronic contracts and other communications, competition, consumer protection, trade and protectionist measures, web services, the provision of online payment services, information reporting requirements, unencumbered Internet access to our services or access to our facilities, the design and operation of websites and the characteristics and quality of products and services. It is not clear how existing laws governing issues such as property ownership, libel, and personal privacy apply to the Internet, e-commerce, digital content, and web services. Unfavorable regulations and laws could diminish the demand for, or availability of, our products and services and increase our cost of doing business.

Claims have been made against us for alleged violations of the Americans with Disability Act (“ADA”) related to accessibility to our website by the blind. The law is unsettled as to whether the ADA covers websites and what standards are applicable, but courts in certain jurisdictions have recognized these types of ADA claims. While we comply with industry standards for making our website accessible to the blind, and regularly test our site for this purpose, we may be subject to such claims and, as a result, we may be required to expend resources in defense of these claims that could increase our cost of doing business.

We have received a claim that one of our products does not have the proper warning label required by California Proposition 65, which requires businesses to provide warnings to Californians about significant exposures to chemicals that are known to the State of California to cause cancer, birth defects or other reproductive harm. While we are investigating this claim and generally make efforts to comply with Proposition 65, we may be subject to such claims and, as a result, we may be required to expend resources in defense of these claims that could increase our cost of doing business. In addition, to the extent we may have violated Proposition 65 we may incur expense associated with complying including but not limited to providing warnings or product recalls.

We could be subject to additional sales tax or other indirect tax liabilities.

The application of indirect taxes (such as sales and use tax, value-added tax (VAT), goods and services tax, business tax and gross receipt tax) to e-commerce businesses and to our users is a complex and evolving issue and we may be unable to timely or accurately determine our obligations with respect to such indirect taxes, if any, in various jurisdictions. Many of the fundamental statutes and regulations that impose these taxes were established before the adoption and growth of the Internet and e-commerce. In many cases, it is not clear how existing statutes apply to the Internet or e-commerce.

An increasing number of states and foreign jurisdictions have considered or adopted laws or administrative practices, with or without notice, that impose additional obligations on remote sellers and online marketplaces to collect transaction taxes such as sales, consumption, value added, or similar taxes. In 2016 and early 2017, we did not have systems and processes to collect these taxes in all jurisdictions where we were conducting business. Failure to comply with such laws or administrative practices, or a successful assertion by such states or foreign jurisdictions requiring us to collect taxes where we did not, could result in substantial tax liabilities for past sales, as well as penalties and interest. For the amounts incurred in 2016 and early 2017 that remain unpaid, we have estimated the sales tax liability, including penalties and interest to be approximately $4.2 million. We are in the process of working with each state to make the necessary filings and take advantage of any amnesty programs or negotiated settlements. InnoHold has agreed to indemnify us for any such tax liability incurred in 2016 and early 2017, and InnoHold has placed in escrow $5 million to cover such liability. However, disputes may arise between InnoHold and us, related to such indemnification, that may increase our costs or delay our reimbursement for such tax liabilities.

We are subject to sales tax or other indirect tax obligations as imposed by the various states in the United States. If the tax authorities in these jurisdictions were to challenge our filings or request an audit, our tax liability may increase.

We may be subject to laws, regulations, and administrative practices that require us to collect information from our customers, vendors, merchants, and other third parties for tax reporting purposes and report such information to various government agencies. The scope of such requirements continues to expand, requiring us to develop and implement new compliance systems. Failure to comply with such laws and regulations could result in significant penalties.

The U.S. Supreme Court ruling in *South Dakota v. Wayfair, Inc.*, No.17-494, reversed a longstanding precedent that remote sellers are not required to collect state and local sales taxes. We cannot predict the effect of these and other attempts to impose sales, income or other taxes on e-commerce. The Company currently collects and reports on sales tax in all states in which it does business. However, the application of existing, new or revised taxes on our business, in particular, sales taxes, VAT and similar taxes would likely increase the cost of doing business online and decrease the attractiveness of selling products over the internet. The application of these taxes on our business could also create significant increases in internal costs necessary to capture data and collect and remit taxes. There have been, and will continue to be, substantial ongoing costs associated with complying with the various indirect tax requirements in the numerous markets in which we conduct or will conduct business.

Our ability to utilize our net operating loss carryforwards and certain other tax attributes may be limited.

Under Section 382 and related provisions of the Internal Revenue Code of 1986, as amended (the "Code"), if a corporation undergoes an "ownership change" (generally defined as a greater than 50 percentage point change (by value) in its equity ownership by certain stockholders over a three year period), the corporation's ability to use its pre-change net operating loss carryforwards ("NOLs") and other pre-change tax attributes to offset its post-change income may be limited. If finalized, Treasury Regulations currently proposed under Section 382 of the Code may further limit our ability to utilize our pre-change NOLs or other tax attributes if we undergo a future ownership change. We may have experienced ownership changes in the past, and we may experience ownership changes in the future and/or subsequent shifts in our stock ownership (some of which may be outside our control). Thus, our ability to utilize carryforwards of our net operating losses and other tax attributes to reduce future tax liabilities may be substantially restricted. At this time, we have not completed a study to assess the impact, if any, of ownership changes on our NOLs under Section 382 of the Code.

We have identified a material weakness in our internal control over our tax provision process which could, if not remediated, result in material misstatements in our financial statements.

Our management has identified a material weakness in our internal controls over financial reporting. A material weakness is defined as a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. In connection with the preparation of our quarterly report for the quarter ended June 30, 2020, we identified a material weakness in internal controls over the tax provision process, specifically related to the release of the valuation allowance and the unique recording of the Tax Receivable Agreement liability during the quarter.

We continue to evaluate, design and work through the process of implementing controls and procedures under a remediation plan designed to address this material weakness. If our remedial measures are insufficient to address the material weakness, or if additional material weaknesses or significant deficiencies in our internal control are discovered or occur in the future, our financial statements may contain material misstatements and we could be required to restate our financial results, which could lead to substantial additional costs for accounting and legal fees and stockholder litigation.

Risks Relating to Our Organizational Structure

Our only significant asset is our ownership of Purple LLC and such ownership may not be sufficient to pay dividends or make distributions or loans to enable us to pay any dividends on our Class A Common Stock or satisfy our other financial obligations, including our obligations under the Tax Receivable Agreement.

We are a holding company and do not directly own any operating assets other than our ownership of interests in Purple LLC. We depend on Purple LLC for distributions, loans and other payments to generate the funds necessary to meet our financial obligations, including our expenses as a publicly traded company, to pay any dividends, and to satisfy our obligations under the Tax Receivable Agreement. The earnings from, or other available assets of, Purple LLC may not be sufficient to make distributions or pay dividends, pay expenses or satisfy our other financial obligations, including our obligations under the Tax Receivable Agreement. Moreover, our debt covenants may not allow us to pay dividends.

We are an emerging growth company, and the reduced reporting requirements applicable to emerging growth companies may make our Class A Common Stock less attractive to investors.

We are an "emerging growth company" as defined under the Jumpstart Our Business Startups Act (the "JOBS Act"). For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), reduced disclosure obligations regarding executive compensation in periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We have been an emerging growth company since our initial public offering in August 2015 and will continue to be an emerging growth company until the end of 2020. If some investors find our common stock less attractive because we may rely on these exemptions, there may be a less active trading market for our common stock, and our stock price may be more volatile.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to opt out of this extended transition period for implementing new or revised accounting standards, which means that when an accounting standard is issued or revised and it has different application dates for public or private companies, we can adopt the new or revised accounting standard at the time private companies adopt the new or revised standard.

Future sales of our Class A Common Stock by our existing stockholders may cause our stock price to fall.

The market price of our Class A Stock could decline as a result of sales by our existing stockholders in the market, or the perception that these sales could occur. These sales might also make it more difficult for us to sell equity securities at a time and price that we deem appropriate. In addition, subsequent public issuances of our stock would cause the interest of each current Purple Inc. stockholder to be diluted. At this time, CCP and Blackwell own a substantial percentage of the shares of Class A Stock of the Company and warrants for additional Class A Stock, and may choose to sell shares of common stock.

Fluctuations in operating results, quarter to quarter earnings and other factors, including incidents involving Purple LLC's clients and negative media coverage, may result in significant decreases in the price of our Class A Common Stock.

The stock markets experience volatility that is often unrelated to operating performance. These broad market fluctuations may adversely affect the trading price of our Class A Stock and, as a result, there may be significant volatility in the market price of our Class A Stock. If we are unable to operate our business as profitably as in the past or as our investors expect us to in the future, the market price of our Class A Stock will likely decline when it becomes apparent that the market expectations may not be realized. In addition to our operating results, many economic and seasonal factors outside of our control could have an adverse effect on the price of our Class A Stock and increase fluctuations in our quarterly earnings. These factors include certain of the risks discussed herein, operating results of other companies in the sleep and comfort products industry, changes in our financial estimates or recommendations of securities analysts, speculation in the press or investment community, negative media coverage or risk of proceedings or government investigation, the possible effects of war, disease, terrorist and other hostilities, adverse weather conditions, changes in general conditions in the economy or the financial markets or other developments affecting the sleep products industry.

We do not anticipate paying any cash dividends in the foreseeable future.

We intend to retain future earnings, if any, for use in the business or for other corporate purposes and do not anticipate that cash dividends with respect to our Class A Stock will be paid in the foreseeable future. Any decision as to the future payment of dividends will depend on our results of operations, financial position and such other factors as our board of directors, in its discretion, deems relevant. As a result, capital appreciation, if any, of our Class A Stock will be a stockholder's sole source of gain for the foreseeable future. Moreover, our debt covenants may not allow us to pay dividends.

A market for our securities may not be maintained, which would adversely affect the liquidity and price of our securities.

The price of our securities may vary significantly due to our operating performance and general market or economic conditions. Furthermore, an active trading market for our securities may never become sustainable for many reasons, including that CCP and Blackwell, who hold a significant portion of our outstanding common stock, may not sell shares, or sell enough shares, to increase the float to a point where a sustainable market develops. You may be unable to sell your securities unless an established market can be sustained.

Purple LLC's level of indebtedness could adversely affect Purple LLC's and our ability to meet its obligations under its indebtedness, react to changes in the economy or its industry and to raise additional capital to fund operations.

As of September 30, 2020, Purple LLC had total debt of $45.6 million outstanding, comprised of $45.0 million outstanding under the 2020 Credit Agreement and $0.6 million in capital lease obligations. While any amounts are outstanding under the 2020 Credit Agreement, Purple LLC is subject to a number of affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, subject to certain exceptions. In particular, Purple LLC is (i) subject to annual capital expenditure limits that can be adjusted based on the Company achieving certain Net Leverage Ratio thresholds as provided in the 2020 Credit Agreement, (ii) restricted from incurring additional debt up to certain amounts, subject to limited exceptions, as set forth in the Credit Agreement, and (iii) maintain minimum Consolidated Net Leverage Ratio and Fixed Charge Coverage Ratio (as those terms are defined in the Credit Agreement) thresholds at certain measurement dates. Purple LLC is also restricted from paying dividends or making other distributions or payments on its capital stock, subject to limited exceptions.

Our level of indebtedness could have important consequences to stockholders. For example, it could:

- make it more difficult to satisfy our obligations with respect to our indebtedness, resulting in possible defaults on, and acceleration of, such indebtedness;
- increase our vulnerability to general adverse economic and industry conditions;
- require us to dedicate a substantial portion of our cash flows from operations to payments on indebtedness, thereby reducing the availability of such cash flows to fund working capital, capital expenditures and other general corporate requirements or to carry out other aspects of our business;
- limit our ability to obtain additional financing to fund future working capital, capital expenditures and other general corporate requirements or to carry out other aspects of our business;
- limit our ability to make material acquisitions or take advantage of business opportunities that may arise; and
- place us at a potential competitive disadvantage compared to our competitors that have less debt.

We may also incur future debt obligations that might subject us to additional restrictive covenants that could affect our financial and operational flexibility.

Future operating flexibility is limited in significant respects by the restrictive covenants in the 2020 Credit Agreement, and we may be unable to comply with all covenants in the future.

The 2020 Credit Agreement imposes restrictions that could impede Purple LLC's and the Company's ability to enter into certain corporate transactions, as well as increases our vulnerability to adverse economic and industry conditions, by limiting our flexibility in planning for, and reacting to, changes in our business and industry. These restrictions include covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates. The restrictions may prevent Purple LLC and the Company from taking actions that we believe would be in the best interests of the business and may make it difficult for us to successfully execute our business strategy or effectively compete with companies that are not similarly restricted.

If we determine that we need to take any action that is restricted under the 2020 Credit Agreement, we will need to first obtain a waiver from the Institutional Lenders. Obtaining such waivers, if needed, may impose additional costs on the Company or we may be unable to obtain such waivers. Purple LLC's ability to comply with these restrictive covenants in future periods will largely depend on its ability to successfully implement its overall business strategy. The breach of any of these covenants or restrictions could result in a default, which could result in the acceleration of Purple LLC's debt. In the event of an acceleration of Purple LLC's debt, Purple LLC could be forced to apply all available cash flows to repay such debt, which would reduce or eliminate distributions to us, which could also force us into bankruptcy or liquidation.

Certain outstanding warrants could be exercised and result in dilution of all shareholders without any concurrent payment or other benefit to the Company.

Certain outstanding warrants held by former members of Global Partner Sponsor, LLC (the sponsor for Global Partner Acquisition Corp., our predecessor) and CCP and its affiliates may be exercised on a cashless basis, without any further consideration paid to us. In addition, on October 22, 2020, the last sales price of our common stock reported was at least $24.00 per share on each of twenty trading days within a thirty (30) trading-day period, and we elected to redeem our outstanding warrants (other than those held by former members of Global Partner Sponsor, LLC and certain warrants held by CCP and its affiliates) by paying redemption consideration of $0.01 per warrant. We sent a Notice of redemption on October 27, 2020 to affected warrant holders. We anticipate that the redemption will take place on November 30, 2020. In connection with our election to redeem, any warrant exercises that take place prior to the redemption must be done on a cashless basis. As a result, we will be required to issue shares of our Class A Stock without any further consideration being paid to us, with respect to any warrants that are exercised prior to redemption on November 30, 2020, which will also result in dilution to existing shareholders. For the period October 1 through October 26, 2020, approximately 8.0 million public warrants were exchanged for 4.0 million Class A shares resulting in cash proceeds to the Company of approximately $45.6 million. On October 27, 2020, the Company announced the redemption of previously issued public and incremental loan warrants, to take place on November 30, 2020. For the period October 27 through November 9, 2020, approximately 1.7 million public and all 2.6 million incremental loan warrants have been exercised and, as a result, there were 60.9 million Class A shares outstanding on November 9, 2020. The approximately 9.3 million public warrants that remain may be cashless exercised at any time prior to November 30, 2020. Any public warrants remaining outstanding at that date will be redeemed. As of November 9, 2020, approximately 8.5 million sponsor warrants remain outstanding. Sponsor warrants are not redeemable, and do not need to be exercised on a cashless basis prior to November 30, 2020, if they are held by the sponsor or a permitted transferee.

We may issue debt and equity securities or securities convertible into equity securities, any of which may be senior to our Class A Common Stock as to distributions and in liquidation, which could negatively affect the value of our Class A Common Stock.

In the future, we may attempt to increase our capital resources by entering into additional debt or debt-like financing that is unsecured or secured by up to all of our assets, or by issuing additional debt or equity securities, which could include issuances of secured or unsecured notes, preferred stock, hybrid securities or securities convertible into or exchangeable for equity securities. In the event of our liquidation, our lenders and holders of our debt would receive distributions of our available assets before distributions to holders of our Class A Stock, and holders of preferred securities would receive distributions of our available assets before distributions to the holders of our Class A Stock. Because our decision to incur debt and issue securities in future offerings may be influenced by market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings or debt financings. Further, market conditions could require us to accept less favorable terms for the issuance of our securities in the future.

Nasdaq may delist our warrants from trading on its exchange, which could limit investors' ability to make transactions in our warrants and subject us to additional trading restrictions.

After the redemption, there will be less than 20 holders of warrants remaining. While there is no Nasdaq rule requiring us to maintain a specified number of holders of warrants, Nasdaq may use its discretionary authority to delist the warrants due to concerns such as, among other things, a lack of liquidity for the warrants. If Nasdaq delists our warrants from trading on its exchange and we are not able to list our securities on another national securities exchange, we expect our securities could be quoted on an over-the-counter market. If this were to occur, we could face significant material adverse consequences, including a limited availability of market quotations for our warrants and reduced liquidity for our warrants.

The National Securities Markets Improvement Act of 1996, which is a federal statute, prevents or preempts the states from regulating the sale of certain securities, which are referred to as "covered securities." Because our warrants are currently listed on Nasdaq, our warrants are covered securities. Although the states are preempted from regulating the sale of our securities, the federal statute does allow the states to investigate companies if there is a suspicion of fraud, and, if there is a finding of fraudulent activity, then the states can regulate or bar the sale of covered securities in a particular case. Further, if our warrants are no longer listed on Nasdaq, the warrants would not be covered securities and we would be subject to regulation in each state in which we offer the warrants.

Tax Risks Relating to Our Structure

Although we may be entitled to tax benefits relating to additional tax depreciation or amortization deductions as a result of the tax basis step-up we receive in connection with the exchanges of Class B Units and shares of Class B Common Stock into our Class A Common Stock and related transactions, we will be required to pay InnoHold 80% of these tax benefits under the Tax Receivable Agreement.

Owners of Class B Units and shares of Class B Stock may, subject to certain conditions and transfer restrictions, exchange their Class B Units and shares of Class B Stock for shares of Class A Stock pursuant to the Exchange Agreement. The deemed exchanges in the Business Combination and any exchanges pursuant to the Exchange Agreement are expected to result in increases in our allocable share of the tax basis of the tangible and intangible assets of Purple LLC. These increases in tax basis may increase (for tax purposes) depreciation and amortization deductions and therefore reduce the amount of income or franchise tax that we would otherwise be required to pay in the future, although the Internal Revenue Service ("IRS") or any applicable foreign, state or local tax authority may challenge all or part of that tax basis increase, and a court could sustain such a challenge. As of September 30, 2020, there have been 43.5 million exchanges of Class B Units and shares of Class B Stock for shares of Class A Stock, in addition to the deemed exchanges that occurred in connection with the Business Combination.

In connection with the Business Combination, we entered into the Tax Receivable Agreement, which generally provides for the payment by us to InnoHold of 80% of certain tax benefits, if any, that we realize as a result of these increases in tax basis and of certain other tax benefits related to entering into the Tax Receivable Agreement, including income or franchise tax benefits attributable to payments under the Tax Receivable Agreement. These payment obligations pursuant to the Tax Receivable Agreement are the obligation of the Company and not of Purple LLC. The actual increase in our allocable share of the Company's tax basis in its assets, as well as the amount and timing of any payments under the Tax Receivable Agreement, will vary depending upon a number of factors, including the timing of exchanges, the market price of shares of our common stock at the time of the exchange, the extent to which such exchanges are taxable and the amount and timing of our income. As of September 30, 2020, the Company's preliminary estimate of the liability under the Tax Receivable Agreement resulting from the deemed exchanges that occurred in connection with the Business Combination and subsequent exchanges of 43.5 million Paired Securities as of September 30, 2020 was approximately $169.6 million. Due to the release of the Company's valuation allowance on the deferred tax assets to which the Tax Receivable Agreement liability relates, $169.0 million of the $169.6 million estimated liability has been recorded as of September 30, 2020 ($0.5 million in 2019 and an incremental $168.5 million through September 30, 2020). The additional $0.6 million is expected to be recorded in the fourth quarter of the year ending December 31, 2020. To the extent the Company realizes tax benefits in future years, or in the event of a change in future tax rates, or if payments under the Tax Receivable Agreement are required to be accelerated, this liability may exceed the estimated liability.

Because not all of the relevant factors described above are known at this time with respect to the exchanges that have occurred, and none of the relevant factors are known with respect to 0.6 million future exchanges (whether this year or in subsequent years), except as estimated above, we cannot yet with certainty determine the final amounts that will be payable under the Tax Receivable Agreement. However, as a result of the size and frequency of the exchanges and the resulting increases in the tax basis of the tangible and intangible assets of Purple LLC, the payments under the Tax Receivable Agreement will be substantial and could have a material adverse effect on our financial condition. The payments under the Tax Receivable Agreement are not conditioned upon continued ownership of the Company by the holders of units.

InnoHold will not be required to reimburse us for any excess payments that may previously have been made under the Tax Receivable Agreement, for example, due to adjustments resulting from examinations by taxing authorities. Rather, excess payments made to such holders will be netted against payments otherwise to be made, if any, after the determination of such excess. As a result, in certain circumstances we could make payments under the Tax Receivable Agreement in excess of our actual income or franchise tax savings, if any, and we may not be able to recoup such excess, which could materially impair our financial condition and adversely affect our liquidity.

If all of the 0.6 million Paired Securities outstanding as of September 30, 2020 were exchanged for shares of Class A Stock pursuant to the Exchange Agreement, and the fair market value of the Class A Stock at the time of such exchange were equal to $31.00 per share (the closing price of a share of our Class A Stock on November 5, 2020), our aggregate liability under the Tax Receivable Agreement would be, including the estimated $169.6 million liability described above, approximately $174.3 million in total, payable in estimated annual amounts ranging from $1.0 million to $12.0 million over a 15-year period. The foregoing estimate of our aggregate liability is based on certain assumptions, including that there are no changes in relevant tax law, that we are able to fully depreciate or amortize our assets, and that we recognize taxable income sufficient to realize the full benefit of the increased depreciation and amortization of our assets in each of the next 15 tax years. These assumptions may not be accurate with respect to all or any exchanges of Paired Securities for Class A Stock. As a result, the amount and timing of our actual aggregate liability under the Tax Receivable Agreement may differ materially from our estimates depending on a number of factors, including those described above and elsewhere in this prospectus.

We may not be able to realize all or a portion of the tax benefits that are expected to result from the acquisition of Units from Purple LLC Class B Unitholders.

Pursuant to the Tax Receivable Agreement, the Company will share tax savings resulting from (A) the amortization of the anticipated step-up in tax basis in Purple LLC's assets as a result of (i) the Business Combination and (ii) the exchange of (a) the Class B Units and (b) the Class B Stock, in each case that were received in connection with the Business Combination, for shares of Class A Stock pursuant to the Exchange Agreement and (B) certain other related transactions with InnoHold in connection with the Business Combination. The amount of any such tax savings attributable to the payment of cash to InnoHold in connection with the Business Combination and the exchanges contemplated by the Exchange Agreement will be paid 80% to InnoHold and other owners of such securities and retained 20% by the Company. Our ability to realize, and benefit from, these tax savings depends on a number of assumptions, including that we will earn sufficient taxable income each year during the period over which the deductions arising from any such basis increases and payments are available and that there are no adverse changes in applicable law or regulations. If our actual taxable income were insufficient to fully utilize such tax benefits or there were adverse changes in applicable law or regulations, we may be unable to realize all or a portion of these expected benefits and our cash flows and stockholders' equity could be negatively affected.

ITEM 5. OTHER INFORMATION

On November 4, 2020, the Company's Board approved a Short-Term Cash Incentive Plan (the "STIP") for the 2020 plan year. Participation in the STIP is limited to key employees who are employed to serve as Senior Vice Presidents, Vice Presidents, or Senior Directors. Not all eligible employees are guaranteed to participate in the plan, as participation will be subject to Board discretion and approval. The STIP will be administered by the HR & Compensation Committee as authorized by the Board. For the STIP to activate, the company must achieve certain net revenue and adjusted EBITDA targets. If the Company does not reach the minimum targets, no cash awards will be paid to any of the participants under the Plan. The amount of the total payment to each participant is adjustable to account for personal performance criteria, as follows: 70% of the amount is based on the Company's achievement of at least the minimum Company-level performance targets and the remaining 30% is based on the participant's achievement of personal performance criteria selected or approved by the Board. Subject to the other provisions of the STIP, payment to a participant will be made in cash in an amount up to the product determined by multiplying a certain percentage from 50% to 150% by the participant's targeted bonus amount. That percentage will be determined based on whether and the extent to which the net revenue target and adjusted EBITDA target both exceed certain minimum target threshold amounts. The bonus target applicable to each participant is determined by multiplying (x) the participant's annual base salary by (y) the participant's share of the total bonus fund amount, as determined in accordance with the STIP. A participant will have no right to receive a payment under the STIP unless the participant remains in good standing with the Company during the plan year and remains in the employ of the Company through and including the payment date in 2021. This summary of the STIP does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the STIP, which is attached as Exhibit 10.11 to this 10-Q and is incorporated by reference herein.

On November 9, 2020, we mailed to Paul Zepf a notice terminating Mr. Zepf's Observer and Indemnification Agreement dated February 2, 2018 (the "Observer Agreement"). Since Mr. Zepf was appointed to the Board of Directors on August 18, 2020, his service as an observer was no longer necessary. The Observer Agreement provided for one-year automatic renewals until we provided written notice of termination not less than thirty days prior to the renewal period.

ITEM 6. EXHIBITS

Number	Description
10.1[(1)]	Lease Agreement between Purple Innovation, LLC and PNK S2, LLC dated July 21, 2020.
10.2*	License Transfer and IP Assignment Agreement between Purple Innovation, LLC and EdiZONE, LLC dated August 14, 2020.
10.3*+	Indemnification Agreement between Purple Innovation, Inc. and Paul Zepf dated August 18, 2020.
10.4[(2)]	Waiver and Consent to Amended and Restated Credit Agreement dated August 20, 2020.
10.5[(3)]	Credit Agreement dated September 3, 2020 between and among Purple Innovation, LLC, Purple Innovation, Inc., KeyBank National Association, and the other lenders party thereto.
10.6[(3)]	Pledge and Security Agreement dated September 3, 2020.
10.7[(3)]	Guaranty dated September 3, 2020.
10.8[(3)]	Collateral Assignment of Patents dated September 3, 2020.
10.9[(3)]	Collateral Assignment of Trademarks dated September 3, 2020.
10.10[(3)]	Collateral Assignment of Copyrights dated September 3, 2020.
10.11*+	Purple Innovation, Inc. 2020 Short-Term Cash Incentive Plan.
31.1*	Certification by Joseph B. Megibow, Chief Executive Officer, pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification by Craig L. Phillips, Chief Financial Officer, pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification by Joseph B. Megibow, Chief Executive Officer, pursuant to Section 1350, Chapter 63 of Title 18, United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification by Craig L. Phillips, Chief Financial Officer, pursuant to Section 1350, Chapter 63 of Title 18, United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

* Filed herewith.
\+ Indicates management contract or compensatory plan.
(1) Previously filed as an Exhibit to the Quarterly Report on Form 10-Q filed August 14, 2020.
(2) Previously filed as an Exhibit to the Current Report on Form 8-K filed August 21, 2020.
(3) Previously filed as an Exhibit to the Current Report on Form 8-K filed September 3, 2020.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

PURPLE INNOVATION, INC.

Date: November 10, 2020

By: /s/ Joseph B. Megibow
Joseph B. Megibow
Chief Executive Officer
(Principal Executive Officer)

Date: November 10, 2020

By: /s/ Craig L. Phillips
Craig L. Phillips
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 10.2

LICENSE TRANSFER AND IP ASSIGNMENT AGREEMENT

This License Transfer and IP Assignment Agreement (this "***Agreement***") is datedand made as of the 14th day of August, 2020 ("***Effective Date***"), by and between EdiZONE, LLC, a Delaware limited liability company ("***EdiZONE***"), and Purple Innovation, LLC, a Delaware limited liability company ("***Purple***"). EdiZONE and Purple are referred to herein collectively as the "***Parties***" and each individually as a "***Party***."

WHEREAS, EdiZONE, as assignee and successor in interest of TNT Holdings, LLC ("***TNT***"), is a party to that certain Amended and Restated License Agreement with Advanced Comfort Technologies, Inc. ("***ACTI***") dated January 28, 2010, as amended by the Settlement Agreement and First Amendment to License Agreement between EdiZONE and ACTI dated May 1, 2017 (collectively, the "***License Agreement***"), a true and complete copy of which is attached hereto as Exhibit A;

WHEREAS, EdiZONE and Purple are parties to that certain Second Amended and Restated Confidential Assignment and License Back Agreement dated November 9, 2018 (the "***Assignment and License Back***"); and

WHEREAS, for the consideration set forth below, EdiZONE desires to transfer and assign to Purple, and Purple desires to assume, all of EdiZONE's rights, interests, and obligations under the License Agreement, and certain intellectual property rights of EdiZONE, and indemnify and hold EdiZONE harmless from liability related to the License Agreement as more specifically set forth herein, and the Parties further desire to document certain effects of such transfer and assignment upon their rights and obligations under the Assignment and License Back, all as set forth below;

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, EdiZONE and Purple hereby agree, as of the Effective Date, as follows.

1. Assignment of License Agreement. EdiZONE hereby absolutely, fully, and irrevocably assigns, transfers and conveys to Purple, as of the Effective Date, all of EdiZONE's rights, obligations, claims, causes of action, title and interest in, to, and under the License Agreement, including but not limited to: (i) all rights of EdiZONE to receive any royalties that are paid or payable thereunder on or after the Effective Date; (ii) all rights to be identified as the licensor of trademarks thereunder; and (iii) any and all claims and causes of action that EdiZONE may have thereunder for previously accrued but unpaid royalties, or for any past, present, or future breach by ACTI of the License Agreement. In the event that ACTI remits any royalty payment under the License Agreement to EdiZONE on or after the Effective Date, EdiZONE will promptly pay such amounts over to Purple in full.

2. Assumption by Purple. Purple hereby accepts such assignment and acknowledges that, as between Purple and EdiZONE, Purple will bear all of the obligations and liabilities of EdiZONE under the License Agreement accruing or arising on or after the Effective Date. In addition, Purple is assuming EdiZONE's (and certain related persons') responsibility for any past or present breach of the License Agreement (and for certain other matters) to the extent provided in, and subject to the terms and conditions of, Section 7 below. Purple agrees that the assignment by EdiZONE to Purple of the License Agreement is subject to, and Purple will be bound by, the applicable terms and conditions of the License Agreement.

3. Assignment of IP.

3.1. Specified Marks. EdiZONE hereby absolutely, fully, and irrevocably assigns, transfers, and conveys to Purple, as of the Effective Date, the entire right, title, and interest in and to the trademarks GEL MATRIX and INTELLIPILLOW (the "***Specified Marks***"), all registrations pertaining to the same (including U.S. Reg. Nos. 5,938,419 and 5,441,198), all related common-law rights, and the goodwill pertaining thereto, together with all claims, demands and causes of action for the past infringement of the Specified Marks or for unfair competition in business in connection therewith, and all rights to sue at law or in equity for any infringement, misappropriation, dilution, or other violations of any of the foregoing, including the right to enforce the use of the Specified Marks in accordance with the License Agreement, and also including the right to receive all proceeds and damages therefrom the same, to be held and enjoyed by Purple and its successors, assigns, or other legal representatives as fully and entirely as the same would or could have been held and enjoyed by EdiZONE had this assignment not been made.

3.2. Incremental IP. To the extent, if any, that any other trademarks, service marks, patents, patent applications, copyrights, trade secrets, know-how, or other intellectual property exist that are licensed to ACTI under the License Agreement and are not already owned by Purple (pursuant to the Assignment and License Back or otherwise) (collectively, "***Incremental IP***"), EdiZONE hereby absolutely, fully, and irrevocably assigns, transfers, and conveys to Purple, as of the Effective Date, the entire right, title, and interest in and to such Incremental IP and, to the extent applicable, all registrations, applications, and filings pertaining thereto, all related common-law rights, and the goodwill pertaining thereto, together with all claims, demands and causes of action for the past infringement of the Incremental IP or for unfair competition in business in connection therewith, and all rights to sue at law or in equity for any infringement, misappropriation, dilution, or other violations of any of the foregoing, including the right to enforce the use of the Incremental IP in accordance with the License Agreement, and also including the right to receive all proceeds and damages therefrom the same, to be held and enjoyed by Purple and its successors, assigns, or other legal representatives as fully and entirely as the same would or could have been held and enjoyed by EdiZONE had this assignment not been made.

3.3. Recordation and Further Assurances. EdiZONE further agrees promptly to confirm the foregoing assignment of the Specified Marks and, if requested by Purple, any other issued, registered, or pending item(s) of Incremental IP in one or more separate assignment documents, in the form set forth in Exhibit B (or another form reasonably acceptable to Purple and suitable for recording in the U.S. Patent and Trademark Office), and will so record such separate assignment document(s), or cooperate with Purple's recordation thereof, within thirty (30) days after Purple's request provided that EdiZONE shall not be required to incur any unreimbursed cost or expenses associated with complying with this Section 3.3. At Purple's direction, and at no cost to Purple other than reimbursement of EdiZONE's reasonable out-of-pocket costs, EdiZONE will execute such documents (and, as applicable, cause its affiliates and personnel to execute such documents) as Purple may reasonably request in order to permit Purple to perfect, memorialize, record, maintain, defend, and enforce Purple's rights, title, and interests in and to the Specified Marks and any Incremental IP. To the extent that any of EdiZONE's officers, managers or employees are required to testify, be deposed or otherwise be a witness in litigation Purple will pay them $2,500 per day. EdiZONE shall not be required to initiate or take any legal action to protect or enforce the Specified Marks and any Incremental IP.

3.4. Technology Transfer. EdiZONE will consult with and train Purple as reasonably necessary within six months following the Effective Date, in order to enable Purple to understand, exercise, practice, and exploit (to the extent not prohibited under the License Agreement and Retained Existing Contracts) the Specified Marks and Incremental IP. EdiZONE will deliver and, where applicable, transfer ownership of any associated files, embodiments, documentation, tooling, materials, and know-how, at no additional cost to Purple other than reimbursement of EdiZONE's reasonable out-of-pocket costs.

4. Effect on Assignment and License Back.

4.1. Retained Existing Contracts. Purple acknowledges that certain of the Incremental IP may currently be licensed to third parties under one or more agreements that are currently in effect and identified in the Assignment and License Back as "Existing Contracts" (such agreements, excluding the License Agreement, the "***Retained Existing Contracts***"), and that Purple's right, title and interest in and to the Incremental IP and Purple's ownership of any such Incremental IP is subject to the licenses granted in those Retained Existing Contracts.

4.2. License Back. To the extent necessary to enable EdiZONE to perform its obligations under the Retained Existing Contracts, and subject to all terms and conditions set forth in the Assignment and License Back, the Parties agree that the Incremental IP will be deemed included in the license back to EdiZONE as granted in the Assignment and License Back, but only as to the Retained Existing Contracts.

4.3. Modification. From and after the Effective Date: (i) the License Agreement will not be considered an Existing Contract for purposes of the Assignment and License Back (nor is it a Retained Existing Contract for purposes of this Agreement); and (ii) the Parties agree that Purple will have no restrictions, limitations, conditions, or duties to EdiZONE under the Assignment and License Back in relation to (a) the License Agreement or (b) Purple's enforcement of any Purple intellectual property rights against any third party, other than the counterparties to the Retained Existing Contracts.

5. Consideration.

5.1. Transfer Payment. Concurrently with the Parties' execution of this Agreement, Purple shall remit to EdiZONE, as consideration for the assignments, transfers, and other rights granted to Purple hereunder, a one-time lump-sum payment in the amount of $8,456,191 (the "***Transfer Payment***"), subject to adjustment as set forth below. Such remittance is to be made by wire transfer, using the bank information provided by EdiZONE to Purple for that purpose, and is made against release of signatures to this Agreement and the recordable assignment for the Specified Marks in the form of Exhibit B.

5.2. Audit and Adjustment. Purple may audit EdiZONE's books and records within 60 days after the Effective Date to verify the royalty amounts received from ACTI under the License Agreement, and EdiZONE will reasonably cooperate with any such audit at Purple's request. Purple will bear its costs to perform such audit, and will maintain the results thereof in confidence. If Purple completes such an audit within that time period, the Transfer Payment will be subject to adjustment to the extent set forth below, and such adjustment will be made (via refund by EdiZONE or additional payment by Purple, as the case may be) no later than 60 days after the Effective Date or 15 days after Purple informs EdiZONE of the results of such audit, whichever is later.

(a) If the audit establishes that the Transfer Payment is at least $10,000 greater than three times the amount of ACTI royalties EdiZONE has received under the License Agreement in respect of the royalty periods between June 1, 2019 and May 31, 2020 ("***3X LTM Royalties***"), then EdiZONE will refund to Purple the difference between the Transfer Payment amount and 3X LTM Royalties.

(b) If the audit establishes that 3X LTM Royalties are at least $10,000 greater than the Transfer Payment, then Purple will additionally pay EdiZONE the difference between 3X LTM Royalties and the Transfer Payment amount.

5.3. Taxes. EdiZONE will be solely responsible for any taxes that may apply to the Transfer Payment (net of any adjustments as set forth above) and any tax liability associated with any amounts received under the License Agreement prior to the Effective Date.

6. Representations and Warranties.

6.1. By EdiZONE. EdiZONE represents and warrants to Purple that:

(a) EdiZONE has all requisite power and authority to enter into and perform this Agreement, and, to the best of EdiZONE's knowledge, its execution and performance of this Agreement does not and will not conflict with any agreements, obligations, or commitments of EdiZONE with respect to any third parties;

(b) EdiZONE was, immediately prior to the assignment to Purple as set forth above, the Licensor under the License Agreement, with full, valid rights to enforce the same against ACTI, and EdiZONE has not assigned the License Agreement (or any rights thereunder) to any third party or otherwise encumbered its rights under the License Agreement; and

(c) EdiZONE's disclosures in response to Purple's due-diligence inquiries in anticipation of this Agreement have been full and accurate, based on the information known to Terry Pearce, Tony Pearce, Carrie Pearce, and/or Gaelyn Pearce and/or in EdiZONE's and/or TNT's files (but without requiring them to perform any special investigation or audit, or to breach any duty of confidentiality to ACTI or others if EdiZONE has advised Purple when and how such confidentiality obligations affect EdiZONE's disclosures). Indeed, Purple acknowledges that EdiZONE is unable to view a large cache of emails between EdiZONE and ACTI.

6.2. By Purple. Purple represents and warrants to EdiZONE that Purple has all requisite power and authority to enter into and perform this Agreement, and, to the best of Purple's knowledge, its execution and performance of this Agreement do not and will not conflict with any agreements, obligations, or commitments of Purple with respect to any third parties.

6.3. Independent Knowledge. Purple acknowledges that it has certain knowledge regarding ACTI's activities as a result of, among other things, Purple's communications with personnel of ACTI and/or third parties and other due diligence and that EdiZONE will have no liability to Purple for any representation or warranty that Purple knows to be untrue as a result of any such knowledge in Purple's possession as of the Effective Date.

7. Indemnification.

7.1. Obligation. Subject to the representations and warranties by EdiZONE set forth above, Purple agrees to indemnify and hold harmless the EdiZONE Group (as defined below) from and against any claims by ACTI or its affiliates, successors, or assigns: (i) for EdiZONE's breach of the ACTI License on or before the Effective Date; or (ii) arising out of or caused by the Parties' execution and/or performance of this Agreement (whether such claim is based on a violation of the 2010 Amended Permanent Injunction in Case No. 060910483 or otherwise) or (iii) Purple's ownership, enforcement or breach of the ACTI License on or after the Effective Date.

7.2. Definition. As used herein, the "***EdiZONE Group***" means and includes: (i) EdiZONE and TNT; (ii) any business entity that controls, is controlled by, or is under common control with EdiZONE and/or TNT; (iii) Terry Pearce, Tony Pearce, Carrie Pearce, and Gaelyn Pearce, each in his or her capacity as an owner, officer, member, agent, or other representative of any of the entities described in clause (i) or (ii); and (iv) any successor of any of the entities or persons described in clauses (i)-(iii), each in its, his, or her capacity as such, but in each case excluding any purported successor to EdiZONE's rights in the License Agreement.

7.3. Notice. EdiZONE Group will promptly notify Purple of any applicable claims, tender to Purple sole control and authority over the defense and settlement of such claims, and provide Purple (at Purple's cost) with reasonable cooperation and information as Purple may reasonably request in connection with the defense and/or settlement of any such claim, subject to compensation to such EdiZONE Group member with compensation for the time incurred. Such cooperation will include, without limitation, prompt approval by the relevant member(s) of the EdiZONE Group of any Purple-requested settlement that fully releases the relevant member(s) of the EdiZONE Group from liability. EdiZONE (on behalf of itself and the other members of the EdiZONE Group) agrees that Purple may conduct the defense and settlement of any such claims through (and will be responsible for the fees and expenses only of) counsel chosen and retained by Purple.

8. Confidentiality. EdiZONE shall, from and after the Effective Date, take all commercially reasonable measures to preserve the confidentiality of any trade secrets and proprietary information included in the Incremental IP, and will treat the same as Confidential Information of Purple for purposes of Section 11 (Confidentiality) of the Assignment and License Back. In addition, each Party agrees to keep the terms of this Agreement, including but not limited to the amount of the Transfer Payment, confidential, and neither will disclose the same to any third party without the other Party's consent; provided, however, that either Party may disclose the terms of this Agreement: (i) as reasonably necessary to comply with applicable laws, regulations, or securities exchange rules or to enforce its rights hereunder; (ii) in confidence to its business or legal advisors; and/or (iii) in confidence to its actual or prospective investors, acquirers, providers of capital, licensees, and/or assignees in order to advise them of the nature and extent of the Parties' rights and obligations hereunder.

9. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns; provided, however, that EdiZONE may not assign this Agreement, or any of its rights or obligations hereunder, to any third party without Purple's prior written consent, and any attempt to do so will be void. Purple may assign this Agreement without EdiZONE's consent.

10. Controlling Law and Jurisdiction. This Agreement shall be construed in accordance with the law of the State of Utah applicable to agreements that are executed and fully performed therein. The Parties agree that the courts of the State of Utah and the United States District Courts therein shall have exclusive jurisdiction of any action or proceeding arising out of or related to this Agreement, without consideration of the applicable laws pertaining to conflict of laws.

11. Injunctive Relief. Given the unique and proprietary nature of the rights granted to Purple under this Agreement and Purple's dependence upon EdiZONE to fulfill its obligations hereunder, the Parties acknowledge and agree that any breach by EdiZONE of its obligations or covenants under this Agreement would cause Purple irreparable harm for which monetary damages would not be an adequate remedy, and Purple will be entitled to equitable relief, including injunctive relief and specific performance, for any threatened or actual breach of this Agreement in addition to all available legal remedies. Given the indemnification and hold harmless granted to EdiZONE and the other members of the EdiZONE Group under this Agreement and their dependence upon Purple to fulfill its obligations hereunder, the Parties acknowledge and agree that any breach by Purple of its obligations or covenants under this Agreement would cause one or more of them irreparable harm for which monetary damages would not be an adequate remedy, and they will be entitled to equitable relief, including injunctive relief and specific performance, for any threatened or actual breach of this Agreement in addition to all available legal remedies.

12. Entire Agreement. This Agreement is the Parties' entire agreement and understanding regarding the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings among the Parties with respect to such subject matter; provided, however, that for the avoidance of doubt, the Parties acknowledge that the Assignment and License Back continues to be in full force and effect except to the extent expressly set forth in this Agreement.

13. Severability. The Parties will cooperate with one another in good faith to give effect to and accomplish the purposes of this Agreement and its provisions to the fullest extent permitted under applicable laws. If any term or provision of this Agreement is determined to be invalid or unenforceable in any situation or in any jurisdiction, it shall be deemed amended consistent with the intent of this Agreement to the narrowest extent possible to render that provision valid and enforceable or, if necessary, removed from this Agreement, and shall not diminish the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

14. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

15. Amendments and Waivers. No amendment of any provisions of this Agreement shall be valid unless the same shall be in writing and signed by the Parties. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party, as applicable, making such waiver nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Such counterparts may be executed and/or delivered by electronic means by either of the Parties, and any signature page so executed and/or delivered shall be treated as an original signature page of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, each of Parties has caused its authorized representative to execute and deliver this License Transfer and IP Assignment Agreement as of the Effective Date written above.

EdiZONE, LLC

By: /s/ Tony M. Pearce

Name: Tony M. Pearce
Title: Manager
Date: August 13, 2020

Purple Innovation, LLC

By: /s/ Joseph B. Megibow

Name: Joseph B. Megibow
Title: CEO
Date: August 14, 2020

EXHIBIT A

[License Agreement attached]

Amended and Restated License Agreement

This Amended and Restated License Agreement (the "Agreement") is entered into this 28th day of January 2010, and is by and between the following:

LICENSOR: TNT Holdings, LLC
123 East 200 North
Alpine, UT 84004
Phone: (801)756-2600
Fax: (801) 756-2061
Email: tony@edizone.com

LICENSEE: Advanced Comfort Technologies, Inc.
4080 South West Temple, #1
Murray, UT 84107-1426
Phone: (801) 272-3144
Fax: (801) 272-3145
Email: brazz@intellibed.com

Recitals

A. Licensee is a party to that certain Agreement dated January 25, 2002, between the Licensee and EdiZONE, LC, nka E-Zone, LLC, a Utah limited liability company ("EdiZONE"), and Licensee and EdiZONE are also the parties to the First Amendment to License dated November 6, 2002, Second Amendment to License dated June 18, 2003, Third Amendment to License dated March 11, 2005, and Settlement Agreement ("Settlement Agreement") dated March 30, 2006 (with respect to those provisions that modify or amend that Agreement) all of which amendments and agreement amend the afore-stated Agreement dated January 25, 2002 (the Agreement as amended by the First Amendment to License, Second Amendment to License, Third Amendment to License, and Settlement Agreement are collectively referred to as the "Original License Agreement"); and

B. The rights and obligations of EdiZONE and of Licensor, as an assignee of EdiZONE's rights and obligations under the Original License Agreement, and of Licensee under the Original License Agreement, and other business activities and transactions, were the subject of a lawsuit filed in the District Court for the Third Judicial District, County of Salt Lake, State of Utah entitled *Advanced Comfort Technology, Inc., v. EdiZONE, LC, et al.,* Case No. 060910483 (the "ACTI Lawsuit"), and the rights and obligations of the parties under the Original License Agreement were the subject of a lawsuit filed in the District Court for the Third Judicial District, County of Salt Lake, State of Utah entitled E-Zone, LLC v. *Advanced Comfort Technologies, Inc.*, Case No. 090907333 (collectively the "Litigations"); and

C. Concurrently with the execution of this Agreement the Licensor, Licensee and other parties to the Litigations are entering into a Confidential Settlement Agreement and Joint Global Release of even date herewith (the "Second Settlement Agreement"), and pursuant thereto are consenting to the entry by the court of an Amended Permanent Injunction in the ACTI Lawsuit (the "Amended Injunction"); and

D. The parties to this Agreement and the ACTI Lawsuit are agreed that all references in the Amended Injunction to the "New License Agreement" and the "Amended and Restated License Agreement" and to any term or provision of the "New License Agreement" and the "Amended and Restated License Agreement" shall mean the Original License Agreement as restated and amended by this Agreement;

Agreement

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. - DEFINITIONS

1.1 Technology Rights. The following terms shall each have their respective defined meanings:

(a) Licensed Gel Material. The term "Licensed Gel Material" (referenced as "Gelastic" in the Original License Agreement) shall mean elastomer gels as owned by Licensor, including the gels themselves, formulations for making the gels, methods for making the gels, products made from the gels and methods for making products from the gels, as defined by U.S. Patent 5,994,450, U.S. patent applications 2006/0194925 filed February 1, 2006 and 12/080,088, filed March 31, 2008, regardless of whether there are any valid patent rights thereto. Licensor and Licensee acknowledge that the claims of U.S. Patent 5,994,450 have been rejected by the USPTO. Licensed Gel Material shall not be construed to mean "Goooz", which is defined below. Licensed Gel Material is included in the License of this Agreement only insofar as it is used in making Licensed Gel Structure, and nowhere in this Agreement shall non-Licensed Gel Structure applications of Licensed Gel Material be construed to be included in any License.

(b) Licensed Gel Structure. The term "Licensed Gel Structure" (referenced as "Intelli-Gel" and which is sometimes also referred to as "Gellycomb" in the Original License Agreement) shall mean a cushioning structure made from "Elastomeric Gel Materials" only as defined in this section 1.1(b) where the cushioning structure consists of multiple hollow buckling columns in any configuration wherein the hollow buckling column walls are joined together at any point of a column wall (including, but not limited to, a corner), and includes cushioning devices that incorporate the cushioning structure in any column structure pattern, products that incorporate the cushioning structure in any column structure pattern, and methods for making products that incorporate the cushioning structure in any column structure pattern, as defined by the specifications and claims of U.S. Patents 5,749,111, 6,026,527 and 7,076,822 and the allowed but not yet issued U.S. patent application 20050173836 entitled "Screed Mold Method", regardless of whether there are any valid patent right thereto. For purposes of illustration, but not limitation, the diagrams attached hereto as Exhibit A are examples of the above-described cushioning structure.

The foregoing notwithstanding, Licensed Gel Structure under this definition does not include hollow buckling columns where the hollow buckling column walls are not joined together at any point of a column wall (including, but not limited to, a corner), but are

connected by a rib or other member, regardless of the material from which the rib or other member is made. For purposes of illustration, and by way of limitation of the License granted hereunder, the diagrams attached as Exhibit B, and incorporated herein, are examples of cushioning structures that are not within the above description of Licensed Gel Structure. Furthermore, by way of limitation of the License granted hereunder, the definition of Licensed Gel Structure herein does not include the following other technologies of Licensor:

"GelCore," which is a gel cushion comprising gel or other elastomeric materials, with or without intentional bubbles or microspheres, utilizing the inventions broadly defined in the "Gel Cores" section of U.S. provisional patent application 61/216,787 filed approximately May 21, 2009, regardless of whether there is any valid patent right thereto; provided, that a cushioning technology shall not be deemed to be GelCore if it contains a structure that has hollow buckling columns in any configuration where the hollow buckling column walls are joined together at any point of a column wall (including, but not limited to, a corner), unless the gel or other elastomeric material is Foamed Gel, Gel-Coated Foam, Gel-Coated Objects, or Goooz, or unless the hollow buckling columns are joined by a rib or other member as defined above;

"XOgel," which is a gel cushion comprising gel or other elastomeric materials, with or without intentional bubbles or microspheres, utilizing the inventions broadly defined in U.S. utility patent application 12/229,724, filed August 25, 2008, entitled "Three-Dimensionally Patterned Gel Cushions or Alternating Pattern Gel", regardless of whether there is any valid patent right thereto; provided, that a cushioning technology shall not be deemed to be XOgel if it contains a structure that has hollow buckling columns in any configuration where the buckling column walls are joined together at any point of a column wall (including, but not limited to, a corner), unless the gel or other elastomeric material is Foamed Gel, Gel-Coated Foam, Gel-Coated Objects, or Goooz, or unless the hollow buckling columns are joined by a rib or other member as defined above;

"Omega-Gel," which is a gel cushion comprising gel or other elastomeric materials, with or without intentional bubbles or microspheres, utilizing the inventions broadly defined in U.S. utility patent application 12/287,056, filed October 3, 2008, entitled "Combo Gel Cushioning Elements", regardless of whether there is any valid patent right thereto; provided, that a cushioning technology shall not be deemed to be Omega-Gel if it contains a structure that has hollow buckling columns in any configuration where the hollow buckling column walls are joined together at any point of a column wall (including, but not limited to, a corner), unless the gel or other elastomeric material is Foamed Gel, Gel-Coated Foam, Gel-Coated Objects, or Goooz, or unless the hollow buckling columns are joined by a rib or other member as defined above;

"Pocketed Gel," which is a gel cushion comprising gel or other elastomeric materials, with or without intentional bubbles or microspheres, utilizing the inventions broadly defined in the "Individually Pocketed Non-Linear Members" portion of Licensee's U.S. provisional patent application 61/216,787 filed approximately May 21, 2009, entitled "Cushions with Individually Pocketed Non-Linear Members, Gel Springs with Joiner Ribs, Gel Cores", regardless of whether there is any valid patent right thereto; provided,

that a cushioning technology shall not be deemed to be Pocketed-Gel if it contains a structure that has hollow buckling columns in any configuration where the hollow buckling column walls are joined together at any point of a column wall (including, but not limited to, a corner), unless the gel or other elastomeric material is Foamed Gel, Gel-Coated Foam, Gel-Coated Objects, or Goooz, or unless the hollow buckling columns are joined by a rib or other member as defined above;

"GelSprings," which is a gel cushion comprising gel or other elastomeric materials, with or without intentional bubbles or microspheres, utilizing the inventions broadly defined in U.S. utility patent application 12/287,047, filed October 3, 2008, entitled "Gel Springs", regardless of whether there is any valid patent right thereto; provided, that a cushioning technology shall not be deemed to be GelSprings if it contains a structure that has hollow buckling columns in any configuration where the hollow buckling column walls are joined together at any point of a column wall (including, but not limited to, a corner), unless the gel or other elastomeric material is Foamed Gel, Gel-Coated Foam, Gel-Coated Objects, or Goooz, or unless the hollow buckling columns are joined by a rib or other member as defined above; and

"X-Gel," which is a gel cushion comprising gel or other elastomeric materials, with or without intentional bubbles or microspheres, utilizing the inventions broadly defined in Licensor's "Ribbed Gel" utility patent application, serial number 12/287,057 filed October 2, 2008, regardless of whether there is any valid patent right thereto; provided, that a cushioning technology shall not be deemed to be X-Gel if it contains a structure that has hollow buckling columns in any configuration where the hollow buckling column walls are joined together at any point of a column wall (including, but not limited to, a corner), unless the gel or other elastomeric material is Foamed Gel, Gel-Coated Foam, Gel-Coated Objects, or Goooz, or unless the hollow buckling columns are joined by a rib or other member as defined above.

For purposes of this definition of Licensed Gel Structure and, by way of limitation of the License granted hereunder, "Elastomeric Gel Materials" includes Licensed Gel Material or other elastomeric gels or materials that have substantially the same properties as Licensed Gel Material, but specifically excludes Foamed Gel, Goooz, Gel Coated Foam (whether the gel coating is Licensed Gel Material or otherwise), Gel-Coated Objects (whether the gel coating is Licensed Gel Material or otherwise), and any material containing deliberately introduced air bubbles, microspheres, or other foaming agents. By way of clarification of the foregoing:

"Goooz" means gelatinous elastomer which is designed to have a slower rebound from deformation than Licensed Gel Material or other elastomer accomplished by means of utilizing resin or other flow modifier in the plasticizer (a gelatinous elastomer is Goooz if 50% compressive deformation takes at least one full second to fully rebound);

"Gel-Coated Foam" means foamed polymer (as examples, open cell polyurethane foam or closed cell polyethylene foam) coated with Licensed Gel Material or other elastomer, where the foamed polymer makes up at least 30% of the overall volume of the combined materials;

"Gel-Coated Objects" means objects of any kind or shape (as examples, solid plastic beads or wood shavings) coated with Licensed Gel Material or other elastomer, where the objects make up at least 30% of the overall volume of the combined materials; and

"Foamed Gel" means any type of Elastomeric Gel Materials with not less than 15% bubbles on average by volume of the Elastomeric Gel Materials (and not the hollow columns between the Elastomeric Gel Materials walls) upon removal from the mold completely cooled, regardless of whether the bubbles are open-cell, closed-cell, or microsphere, and wherein the intent of the manufacturing process is that the bubbles be distributed as evenly as practical in the Elastomeric Gel Materials. In the event that the bubbles are 3M K-37 Microspheres or other microspheres of 0.37 gm/cc true density, whether a piece of Elastomeric Gel Materials contains at least 15% microspheres by volume shall be determined by weighing a sample of the Elastomeric Gel Materials (hereafter "Sample") and comparing it to gel structure made from "Solid Gel." Solid Gel is the same Elastomeric Gel Materials that surrounds the microspheres in the Sample except Solid Gel will have no microspheres or other intentional bubbles and substantially no unintentional bubbles. Solid Gel shall be made in the same mold set as the Sample and shall contain identical numbers of hollow columns of Elastomeric Gel Materials as the Sample. If the Sample weighs more than 92.65% of the weight of the Solid Gel, it shall be conclusively deemed to have less than 15% microspheres on average by volume and, therefore, if sold in the Licensed Field of Use in the Geographic Region will be in violation of this Agreement. The production run of Elastomeric Gel Materials from which the Sample is taken may be redirected to be sold outside the Licensed Field of Use and/or outside the Geographic Region if it exceeds this weight; provided, that that Licensor agrees not to redirect such production run to a person it reasonably believes will sell Licensed Product in the Geographic Region in violation of the License granted to Licensee hereunder. If the Sample weighs less than 92.65% of the Solid Gel, it shall be considered to be made from "Foamed Gel" for purposes of this Agreement. In the event that the bubbles are other than 3M K-37 Microspheres or other microspheres of 0.37 gm/cc true density, whether a piece of Elastomeric Gel Materials contains at least 15% bubbles by volume shall be reasonably agreed between Licensor and Licensee, if necessary using the conflict resolution procedure outlined in Paragraph 12.5 herein, including but not limited to having a court define a new threshold to replace the 92.65% threshold above if such court action is reasonably deemed necessary by either of the Parties.

(c) Adjustable Shape Pillow. The term "Adjustable Shape Pillow" shall mean technology related to a bladder-containing pillow wherein the shape of the pillow is modified by means of adjusting the amount of air within a bladder contained within the pillow, including products that incorporate this technology, as defined in Licensor's formerly pending U.S. patent application serial number 60/199,587 filed April 18, 2000, regardless of whether there are any valid patent rights thereto. Adjustable Shape Pillow is included in the License of this Agreement only insofar as its use in Licensed Gel Structure pillows is within the Licensed Field of Use, and nowhere in this Agreement shall non-Licensed Gel Structure applications of Adjustable Shape Pillow be construed to be included in any License. The Parties acknowledge that some of the features of the prototype bladders provided to Licensee by Licensor and

heretofore being used by Licensee in Licensed Product are the proprietary property of the maker of those bladders and not of Licensor.

(d) Trade Secrets. The Parties specifically acknowledge that Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow are held by and are protected by Licensor as trade secrets as defined in Utah Code Annotated § 13-24-1 *et seq.* The subject matter so held by Licensor is referred to herein as the "Trade Secrets."

(e) Know-How. "Know-How" shall mean information related to manufacturing, production and commercialization of Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow.

(f) United States Patent Rights. "United States Patent Rights" shall mean the applicable parts of one or more United States patent applications which Licensor has filed or may file in its efforts to secure United States patent protection for Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow and any and all issued patents, reissue patents, reexamined patents and corrected patents based on any of them.

(g) Foreign Patent Rights. "Foreign Patent Rights" shall mean the applicable parts of any and all foreign national patent applications which Licensor may file in its efforts to secure foreign patent protection for Licensed Gel Material, Licensed Gel Structure or Adjustable Shape Pillow, and any and all issued patents, reissue patents, reexamined patents and corrected patents based on any of them.

(h) Patent Rights. "Patent Rights" shall mean United States Patent Rights and Foreign Patent Rights collectively.

(i) Technology Rights. "Technology Rights" shall mean Licensed Gel Material, Licensed Gel Structure, Adjustable Shape Pillow, the Trade Secrets, Know-How and Patent Rights, collectively.

1.2 Trademark Rights. "Trademark Rights" shall mean all U.S. common law, federal and state trademark and service mark rights and all foreign trademark and service mark rights to the marks "GELASTIC", "INTELLI-GEL," "INTELLI-PILLOW" and all variations of them which may be used to designate the source or origin of Licensed Gel Material products and services or Licensed Gel Structure products and services. No rights are granted by Licensor to Licensee relating to the "ORTHOJUST", "ORTHO-GEL", "GELCORE", "XOGEL", "OMEGA-GEL", "POCKETED GEL", "GELSPRINGS", X-GEL", "GELLYCOMB", "WONDER-GEL", "GOOOZ", "NEXGEL", "SOLUTIONS", "SWEET MORNINGS", "AWAKENINGS", "DISTINCTIONS", "SPINALGEL", "INTEGRATED GEL THERAPY", "ULTRA-SUPPORT FOUNDATION", "ORIGINAL BLUE GEL", "CROSS-GEL" and "DURAGEL" marks and all variations of each of them, and each of these marks is specifically excluded from the Trademark Rights and may be used by Licensor and its third party licensees as Licensor sees fit.

1.3 Information. During the performance of the terms of this Agreement, Licensee will learn highly sensitive, proprietary information owned by Licensor. The information may include inventions, trade secrets, information concerning or relating to Licensed Gel Material, Licensed Gel Structure or Adjustable Shape Pillow, designs, patent applications, formulas, processes, recipes,

equipment, prototypes, models, mock-ups, samples, materials, manufacturing methods, business plans, marketing information, customer lists, forecasts and the like ("Information").

1.4 Confidential Information and Confidential Materials. "Confidential Information" means any and all Information disclosed by Licensor to Licensee. "Confidential Materials" means any tangible medium (paper, film, magnetic media, actual models, mock-ups, materials, samples, prototypes, etc.) containing or fabricated using Confidential Information. Confidential Information shall not include any information which (i) was in the public domain prior to the execution of this Agreement, or (ii) was already known by the Receiving Party, provided that this Paragraph 1.4(ii) is only applicable if within ten (10) days of disclosure of any Confidential Information of which the Receiving Party claims prior knowledge, the Receiving Party both notifies the providing Party in writing of such prior knowledge and provides the providing Party with documentary evidence showing such prior knowledge.

1.5 Geographic Region. The term "Geographic Region" shall mean the fifty states of the United States of America, Puerto Rico and Canada.

1.6 Licensed Field of Use.

(a) "Licensed Field of Use" shall mean consumer mattresses, consumer mattress overlays, consumer bed head pillows, hospitality mattresses (but not hospitality mattress overlays) and hospitality bed head pillows. Hospitality shall mean such products sold to those who provide hospitality sleeping services (for example, hotels, resorts, casinos, bed and breakfast and motels). Consumer shall mean such products sold for home use through non-medical-specialty consumer mattress distribution channels including, but not limited to, retail stores other than medical product specialty stores, the Internet, catalogs distributed generally to consumers, television shopping channels, direct mail to consumers, short-form and long-form infomercials, referral sources (such as chiropractors, physical therapists, massage therapists, and others engaged in the health services industry but not medical doctors), and magazines (but not medical industry trade magazines). It is acceptable to make medical claims about the products, and to have doctors and chiropractors recommend that patients purchase a mattress or overlay or pillow, so long as the mattress or overlay or pillow are not sold in medical specialty channels as described in Paragraph 1.6(b) of this Agreement. As for the referral sources described above, in the event that there is a conflict herein with the license granted to Gaymar Industries, Inc. in June 2008, Licensee shall not use medical referral sources that are within the scope of the licensed field of use as described in the terms of the license granted to Gaymar Industries, Inc., as of the date of this Agreement and that are objected to by Gaymar Industries, Inc.

(b) The following product areas are expressly excluded from the Licensed Field of Use, though this is not an indication of all excluded products: (i) Mattresses, mattress overlays and pillows for medical beds (acute care, long term care, and home health care), operating tables, stretchers and gurneys; positioning and heating or cooling pads for surgery; and medical devices intended for relief or reduction of pressure and shear on tissue while lying down or while sitting in a medical bed (e.g., heel protectors) including human and veterinary products; (ii) all wheelchair related products; (iii) all products distributed through medical channels ("medical channels" shall mean the following: DME dealers, specialty medical dealers, general line medical distributors, medical products catalogs and direct sales to medical care facilities); and (iv) all product areas not specifically granted in 1.6(a) herein.

(c) The terms "overlay", "mattress overlay", "topper" and "mattress topper" shall have the same meaning and shall mean any cushioning for all or part of the human body (except for head-specific cushioning, such as bed head pillows) intended to be placed on top of a bed or mattress, but which is not integral to a mattress, even if the overlay or topper is attachable to a mattress via use of an attachment mechanism, provided that the mattress does not have built-in means for attaching it to the mattress overlay. A mattress overlay meeting this definition shall not be considered a mattress instead of an overlay even if the overlay is sold in the same store as mattresses, and even if the overlay is displayed on top of a mattress with which it is not integrally constructed. By way of example and without limiting the foregoing, the following will be considered a mattress overlay and not a mattress: (i) a mattress overlay that includes straps for attachment to a mattress, and (ii) a mattress overlay sold with a non-skid pad for placement between the overlay and a mattress to minimize sliding of the overlay with respect to the mattress. Further by way of example, and without limiting the foregoing, the following shall be considered a mattress and not a mattress overlay: an overlay and mattress combination where the mattress has a built-in-zipper that is shared with the overlay so that the overlay is zipped to the mattress to yield a unitary device.

1.7 Reserved Fields of Use. "Reserved Fields of Use" shall mean all fields of use not expressly recited in the Licensed Field of Use.

1.8 Licensed Product. "Licensed Product" shall mean any product or service which embodies or is made using Licensed Gel Material, Licensed Gel Structure or Adjustable Shape Pillow and which subsists within the Licensed Field of Use.

1.9 Customer. "Customer" shall be any third party that acquires possession of a Licensed Product from Licensee directly or indirectly (whether by purchase, rental, lease or otherwise), or receives a service performed by Licensee using a Licensed Product.

1.10 Net Sales. For any particular article of Licensed Product sold, rented or leased, "Net Sales" shall mean the actual sales, rental or lease price of the Licensed Product charged by Licensee or its customers at the wholesale level (the level just prior to retail) or at the retail level if sold by Licensee at retail, in a bona fide transaction with a third party, as per invoices covering such sales, rentals or leases, less deductions for all returns and actual non-reimbursed shipping costs applicable to sales. If Licensee exchanges Licensed Product for valuable consideration other than cash, including an exchange for services, "Net Sales" shall be the fair market value of such consideration.

SECTION 2. - THE LICENSES

2.1 Technology License. Subject to and on the terms and conditions contained herein, especially but not limited to the Reserved Technology License of Paragraph 2.2 below, Licensor hereby grants to Licensee, and Licensee hereby accepts, a license of the Technology Rights to make, use, and sell Licensed Product in the Geographic Region. The Technology License shall be exclusive for mattresses and shall be non-exclusive for mattress overlays and pillows. This includes the right to have subcontractors make Licensed Product for Licensee with the use of Licensed Gel Structure component parts. This includes the right to manufacture Licensed Gel Structure component parts only for use in Licensed Product sold by Licensee, and specifically excludes the right to manufacture or sell Licensed Gel Structure component parts for or to third parties for any other purpose than making Licensed Product as a subcontractor for Licensee. This license is referred to in this Agreement as the

"Technology License." To the extent that the Technology License terminates or is terminated for a particular market, jurisdiction or country under this Agreement, Licensee shall not make, use or sell any Licensed Product or Licensed Gel Structure component parts for use in any product in such country or region in which the License terminates or is terminated, and Licensor shall be permitted to market and sell or license the Technology Rights, and to manufacture, market and sell products using the Technology Rights to third parties in such country or region. The exclusivity of the Technology License shall apply to marketing and selling in full, and to manufacturing except as described in the next sentence. In the event that Licensor or its third party licensee desires to have products which are described by the Technology Rights manufactured in whole or in part within the Geographic Region for marketing and sales outside the Geographic Region, Licensor or its third part licensee shall have the right to do so provided the manufacturer agrees in writing that the product will not be made for any purposes which violate this Agreement. In the event that the Licensee desires to have Licensed Product or Licensed Gel Structure manufactured in whole or in part in an area outside the Geographic Region, Licensee shall have the right to do so with the written permission of Licensor, which shall not be unreasonably withheld. Licensee specifically agrees not to market products using the Technology Rights outside the Geographic Region. With respect to the Reserved Technology License and any license subsequently granted by Licensor thereunder to another person following the Effective Date, Licensor shall not grant any such license to a person that Licensor reasonably believes will sell Licensed Product in the Geographic Region in violation of the License granted to Licensee hereunder.

2.2 Reserved Technology License. Licensor reserves for itself the right to make and use Licensed Product for the purposes of Licensor's further testing and development of Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow or for sale outside the Geographic Region. Licensor also reserves for itself the right to engage in any activities whatsoever with respect to Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow in the Reserved Fields of Use, and with respect to any other technologies not licensed to Licensee herein in any fields of use. This is collectively referred to in this Agreement as the "Reserved Technology License." Notwithstanding the Reserved Technology License, Licensor shall have no obligation to further test, develop or improve Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow.

2.3 Trademark License. Subject to and on the terms and conditions contained herein, especially but not limited to the Reserved Trademark License of Paragraph 2.4 below, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive license of the Trademark Rights for the limited purpose of designating the source or origin of Licensed Product and services performed using Licensed Product only in the Geographic Region, except that Licensee shall have the exclusive right to use the Intelli-Gel trademark when referring to non-medical mattresses, mattress overlays, pillows, and/or other bedding products in the Geographic Region. This exclusivity does not preclude Licensor from using or licensing the use of the Intelli-Gel trademark to designate any product in any other field of use within the Geographic Region or any product in any field of use outside the Geographic Region anywhere else in the world; provided, however, Licensor shall not grant any such license to a person that Licensor reasonably believes will sell Licensed Product in the Geographic Region in violation of the License granted to Licensee hereunder. This exclusivity does not preclude Licensor from using or licensing the use of the Intelli-Gel trademark to designate any products licensed to Gaymar Industries, Inc. This license is referred to in this Agreement as the "Trademark License."

2.4 Reserved Trademark License. Licensor reserves for itself the right to exploit the Trademark Rights in any manner that is not in direct conflict with the Trademark License.

2.5 The License. As used herein, "License" shall mean the Technology License and the Trademark License collectively.

2.6 No Sublicense without Consent. Licensor has specifically chosen Licensee to commercialize Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow in the Licensed Field of Use. Accordingly, Licensee shall not, and Licensee has neither the right nor the power to, grant any sublicense under the License to any third party with the exception of wholly owned subsidiaries of Licensee without the advance written consent of Licensor. No party other than Licensee and its wholly owned subsidiaries has the right to exploit the License or any portion thereof. By way of illustration and not by way of limitation, the following activities by Licensee are considered sublicensing and Licensee expressly agrees not to engage in such activities: (1) selling Licensed Gel Structure mattress components, Licensed Gel Structure mattress overlay components, Licensed Gel Structure pillow components, or Licensed Gel Structure components of any kind to a third party for its use in making mattresses, mattress overlays, pillows, or any other product for sale to anyone other than Licensee in a bona fide arms-length transaction with Licensee; and (2) allowing third parties to make, market or sell Licensed Product other than making and selling such Licensed Product for and to Licensee in a bona fide arms-length transaction with Licensee. By way of further illustration, but not by way of limitation, of the foregoing, providing Licensed Gel Structure to a third party subcontract manufacturer of Licensed Product, purchase of such Licensed Product from the manufacturer by Licensee, and sale of the Licensed Product to the same manufacturer for resale through its distribution channel is not a prohibited sublicense if the purchase and sale result in bona fide payments between the parties for each sale and gross margins for each party that are typical of industry gross margins at the applicable level in the distribution chain.

2.7 Reservations. Rights not expressly granted to Licensee under this Agreement or the License are reserved by Licensor. No part of this Agreement shall be interpreted to prevent Licensor from engaging in any activities that do not directly conflict with any obligation of Licensor under this Agreement. For example, and without any limitation, Licensor can commercially exploit the technology, trademarks and rights reserved by Licensor in any way not inconsistent with the License granted to Licensee, including but not limited to competing with Licensee in the bedding industry or market, to the fullest extent of the rights reserved to Licensor.

SECTION 3 - TECHNOLOGY RIGHTS AND CONSULTATION

3.1 Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow Formulations and Processes. Licensee acknowledges that it already has received from Licensor formulations and processes for the manufacture of Licensed Gel Material, Licensed Gel Structure, and Adjustable Shape Pillows, which Licensor believes to be best suited for Licensed Product. The two exceptions to the foregoing sentence are: (1) that Licensor shall provide a recommendation for formulation of a new gel described in 1.1(a) herein; and (2) that Licensor shall provide any and all Trade Secrets and Know-How related to the screed mold method that are not included in the Screed Mold Method patent, as stated in 1.1(b) herein, which Licensor shall transfer to Licensee (the "Technology Transfer"). The Technology Transfer will be 100% of the recommended formulation and all such Trade Secrets and Know-How developed between January 25, 2002 and the Effective Date, with nothing held back. The Technology Transfer shall be provided within ninety (90) days of the Effective Date, and there shall be no requirement for design work or project management work or consulting work or any other work than providing information. By way of description, the Technology Transfer shall include (a) a complete list of vendors including their part numbers along

with contact information for each vendor; (b) a detailed equipment list for all equipment used in the manufacturing process, as well as contact information for each supplier; (c) batch formulation details for Licensed Gel Structure; and (d) equipment process settings for each piece of equipment with ranges. In addition to the above, as part of the Technology Transfer, ACTI shall be provided two work shifts of unrestricted hands-on training at an existing production facility available to Licensor, or if for any reason such facility is not available, Licensee's facility, by one or more representatives of Licensor who are familiar with production of Licensed Gel Structure made from Licensed Gel Material. Full cooperation shall be received from that person or other knowledgeable employees or principals of Licensor in answering any questions that may be asked related to the manufacturing process. The Licensor will also agree to answer any and all questions for 90 days after the Technology Transfer has been complete. Notwithstanding the above, Licensor does not need to provide detailed designs or project management information, nor does Licensor have to create any documentation that does not already exist and it is sufficient for such information to be transferred orally. Licensor shall provide such information to the best of its reasonable ability as of the Effective Date. Licensor does not warrant that such information will provide successful or economical or quality gel components, and Licensee takes full responsibility for implementation of such information at the sole discretion of Licensee. From time to time, at Licensor's own initiative or at Licensee's request, Licensor may at is sole discretion provide Licensee with updates concerning Licensed Gel Material formulations and manufacturing processes for Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow to the extent the Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow formulations or processes have been improved. Licensee shall only use Licensed Gel Material and other gel formulations provided or approved (which approval shall not be unreasonably withheld) by Licensor in Licensee's Licensed Product.

3.2 Questions and Consultation. Licensee may contact Licensor from time to time with questions about Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow and Licensor shall attempt to answer those questions. However, if Licensee wishes for Licensor to engage in any research, development, testing or evaluation work concerning Licensed Gel Material, Licensed Gel Structure or Adjustable Shape Pillow, Licensee may propose a project to Licensor and Licensor shall respond to Licensee's proposal as Licensor sees fit in a timely manner.

SECTION 4 - CONSIDERATION

4.1 License Issue Fee. In consideration for grant of the License, Licensee shall pay to Licensor a License Issue Fee of ten dollars ($10.00), which is acknowledged to have been received by Licensor. The entire License Issue Fee shall be deemed earned when paid and shall be completely non-refundable.

4.2 Royalty. Licensee shall pay to Licensor a "Royalty" equal to eight percent (8.00%) of the Net Sales of each Licensed Product sold, rented, leased, or otherwise transferred or used during the Term of the License by Licensee or any wholly-owned subsidiary of Licensee. The Royalty shall be in addition to the License Issue Fee and shall not be offset by the License Issue Fee. The triggering event for the payment of the Royalty shall be the earliest of shipment of a Licensed Product by Licensee, the performance of a service using a Licensed Product, preparation of an invoice related to a Licensed Product or an associated service, or use or transfer of a Licensed Product.

4.3 Royalty Reduction. The License includes a complete package of potentially valuable technical information and legal rights for which Licensee is ready, willing and able to pay the License

Issue Fee, the Royalty, and other payments and consideration due under this Agreement. Licensee and Licensor have considered, that at some point in time, there may cease to be patent claims or pending patent claims anywhere in the world that cover the Technology Rights or any portion of any of them. In that event, Licensor and Licensee agree that a Royalty should still be payable for the Technology Rights, but that a reduction in Royalty may be appropriate. Accordingly, the Royalty shall be reduced by 0.25% for all Royalties which accrue during any calendar quarter in which no patent claim or pending patent claim covers the Technology Rights or any portion of either of them for the entire calendar quarter.

4.4 Grant Back License of Improvements. In further consideration for the License, Licensee agrees to grant a non-exclusive license (the "Grant Back License") to Licensor of all improvements, modifications and extensions of the Technology Rights and any portion thereof conceived, owned or licensed by Licensee, its successors, assigns, employees and contractors, etc. during the Term of this Agreement. The Grant Back License shall cover all fields of use. Licensee shall promptly disclose to Licensor all improvements, modifications and extensions of the Technology Rights both orally and in writing. Without limiting the generality of the foregoing, and by way of example only, to the extent that Licensee designs specific consumer mattress, mattress overlay and pillow products using the Technology Rights but does not make an improvement, modification or extension to Licensed Gel Material or Licensed Gel Structure, then Licensee does not need to disclose or license the specific design of the consumer mattress, mattress overlay or pillow to Licensor; however, designs already disclosed to Licensor or any of its sister companies (including but not limited to EdiZONE) prior to the date of this Agreement shall be included in the Grant Back License. For the purpose of clarity, the Parties note that public domain subject matter is available for use by all, and lack of inclusion of public domain subject matter in the Grant Back License shall not be deemed a bar to any party utilizing public domain subject matter.

4.5 Payments. All references in this Agreement to dollars or $ shall mean dollars of the United States of America. All payments to Licensor shall be made in United States dollars. Licensee shall pay Licensor all Royalties due hereunder on a monthly basis. The Royalty payment for a given calendar month shall be made within thirty (30) days of the end of the calendar month in which the Royalty accrued. All payments due under this Agreement shall be paid by check to Licensor at the address shown on page 1 of this Agreement, or to any other person or entity which Licensor may designate to receive payments. In the place of payment by check, Licensee may at its sole option elect to pay the money by bank wire or other type of electronic transfer, provided the net amount received by Licensor is the full owed amount after payment of all fees and costs assessed at both ends of the transaction.

4.6 Reports. Within thirty (30) days following the end of each month, Licensee shall provide Licensor with a written report showing sales in such month and the amount of Royalty payable with respect thereto. Such reports shall include the following information: (a) the number of units of each type of Licensed Product sold, rented or leased, (b) Net Sales from (a), and (c) Royalty payable, and shall be in substantially the form of Appendix A attached hereto. A report of the type required under this Paragraph shall accompany each Royalty payment submitted to Licensor, or shall be sent without a Royalty payment if no Royalty payment is due for the month. For purposes of this paragraph and to facilitate efficient royalty audits, "each type of Licensed Product" shall mean in conjunction with the other terms that Licensee shall break down the information by whether it is a mattress or a mattress-foundation set or an overlay or an overlay-mattress-foundation set or a pillow and shall further break down the information by model number and size and any other such definitive

identification such as, but not limited to, internal accounting numbers or SKU numbers. The information provided to Licensor in such reports is confidential information of Licensee, and Licensor shall not disclose, transfer or offer to disclose or transfer, any such information to any other person or entity, including without limitation any supplier, licensee, or customer of Licensor.

4.7 Overdue Payments. In the event Licensee fails to pay any amount when due hereunder, such amount shall bear interest at the rate of eighteen percent (18%) compounded monthly until the date when such amount is paid in full.

4.8 Non-Refundability of Payments. All payments made to Licensor by Licensee under this Agreement are made in consideration of Licensor disclosing potentially valuable Trade Secrets and Know-How to Licensee, providing Licensee with a potential competitive advantage in the marketplace, granting the Technology License and the Trademark License, Licensee's efforts to date in securing patent protection that may benefit Licensee and otherwise potentially enhancing Licensee's competitive position through performance of this Agreement. Accordingly, the Parties deem all payments made hereunder to be earned when paid and to be completely non-refundable.

SECTION 5 - LICENSEE PERFORMANCE CRITERIA

5.1 Minimum Royalty Payments. Licensor has elected to grant Licensee an exclusive License because of Licensor's belief in Licensee's ability to successfully commercialize Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow in the Licensed Field of Use. In order to ensure Licensor that Licensee's commercialization of Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow will be successful and that certain minimum royalty payments will be made by Licensee to Licensor, Licensee and Licensor have agreed upon a schedule of minimum royalty payments. It is the intention of Licensor and Licensee that the License only remains in force if Licensee makes minimum royalty payments in accordance with the schedule shown in Paragraph 5.2 below.

5.2 Minimum Royalty. A quarterly "Minimum Royalty" shall become payable by Licensee to Licensor on a calendar quarterly basis during the Term of the Agreement. The first Minimum Royalty shall be paid to Licensor within thirty (30) days following the end of the calendar quarter ending March 31, 2010. A Minimum Royalty shall then be payable from Licensee to Licensor each quarter throughout the Term of the Agreement. In the event that monthly Royalties payable in any calendar quarter do not reach the minimum amount set out below for such quarter, Licensee shall pay the Minimum Royalty set forth below on or before the due date of the monthly payment for the third month of that quarter. If the Royalty for the quarter exceeds the Minimum Royalty, Licensee shall pay the Royalty.

Mattress Overlays:	Nine thousand three hundred and seventy-five dollars ($9,375) per quarter
Mattresses:	Seventy five thousand dollars ($75,000.00) per quarter
Pillows:	Eighteen thousand seven hundred and fifty dollars ($18,750) per quarter

5.3 Royalty Payments in Excess of Minimum Royalty. No Royalties paid, whether above, below, or equal to the Minimum Royalty, are to be considered an advance or credit against any Royalty (whether the Minimum Royalty or otherwise) which is due at any future date.

SECTION 6 - RESEARCH AND DEVELOPMENT SERVICES

6.1 R&D Services. At any time during the Term of the License, Licensee may request Licensor or any of its sister companies (each a "Pearce Company") to perform various research and development projects as directed by Licensee (the "R&D Services"). The R&D Services may include, without limitation, conceptual design, human factors analysis, product design, materials selection, materials analysis, materials testing, mold design, mold and tool making, prototype construction, manufacturing process and manufacturing system design, manufacturing system implementation, other production gear-up services, etc.

6.2 Project Scope and Direction. In the event Licensee desires one or more of the Pearce Companies to perform R&D Services, Licensee shall provide reasonable detailed research and development assignments to such Pearce Companies, scheduling and priority information, ongoing communication and review concerning the nature and direction of the R&D Services, and any other information reasonably requested by such Pearce Companies in conjunction with the R&D Services.

6.3 Utilization of R&D Services. R&D Services shall be performed at the Pearce Company Standard Rates (defined in Paragraph 6.4 below). All R&D Services must be authorized by Licensee and accepted by the Pearce Companies performing the R&D Services, at the sole discretion of each, and either Licensee or such Pearce Companies may terminate R&D Services on any project at any time (which shall not terminate the obligation of payment for services rendered to date). None of the Pearce Companies or Licensee is obligated to begin any particular project. All R&D Services will be performed on a best reasonable efforts basis, with no guarantee of a particular outcome or result.

6.4 Standard Rates. The Pearce Company Standard Rates for R&D Services are determined as follows: "Direct Labor", defined as the wages paid or allocated to the Pearce Company's employees, temporary employees, in-house job shoppers, owners, and others acting as or under the direct supervision of the Pearce Company's managers, including benefits and employment taxes except bonuses and retirement plans; plus an overhead burden factor of two (2.00) times Direct Labor; plus outside materials, subcontracts and other outside expenses marked up fifteen percent (15%) as an overhead factor; and then-current standard hourly rates for equipment usage (e.g., CNC milling machines, extruders, injection molding machines, rotational molding machines, and other equipment and machinery). Owners of a Pearce Company performing R&D Services reserve the right to forego a personal wage and allocate a wage level which shall be invoicable to Licensee as though it were a normal wage. The time of any Pearce Company accountant and clerical employees shall not be billed to Licensee unless Licensee makes requests for Licensee-specific accounting or clerical services. General management of a Pearce Company and its employees shall not be billed to Licensee; however, direct project management of any R&D Services by a Pearce Company's management, including internal meetings and meetings with Licensee, shall be billed. The Pearce Company Standard Rates as set forth in this paragraph are subject to change by thirty (30) calendar days' written notice from the Licensor to Licensee.

6.5 Access to Personnel. During any time that R&D Services under this Agreement are being performed, the Pearce Company shall provide Licensee with access to all personnel who

participate in providing R&D Services to Licensee. Such access shall be at reasonable times, shall not be so frequent as to disrupt the business operations of the Pearce Company providing the R&D Services, and shall be subject to reasonable advance notice as required by such Pearce Company to allow it to protect the confidential nature of products and services it may be performing for itself or other parties. Licensee shall pay the Pearce Company Standard Rates for the Pearce Company's time in support of such access, including attendance of the Pearce Company's management personnel, which is required for any meeting.

6.6 Rights in R&D Work Product. All right, title and interests in and to any intellectual property developed during a Pearce Company's performance of R&D Services hereunder, including without limitation improvements, modifications, extensions and applications of the Technology Rights or any portion thereof, shall be held by Licensor. Intellectual property developed during and as a direct result of a Pearce Company's performance of R&D Services hereunder shall be included in the Technology License insofar as it applies to the Licensed Field of Use, and shall be subject to the terms of this Agreement. In the event that R&D Services result in products which are not Licensed Products and for which a Pearce Company did not develop new intellectual property, the License and this Agreement shall be extended to cover such new products, but the royalty for such new products shall be reduced to four percent (4%) of Net Sales, unless agreed otherwise in writing by the Parties.

6.7 Payments. Licensee shall pay all R&D Services amounts within ten (10) calendar days of receiving an invoice from the Pearce Company providing the R&D Services. Invoices may be submitted for work to date, and project completion need not have occurred. For any amounts unpaid after ten (10) days, Licensee will be charged interest at a rate of eighteen percent (18%) annually, compounded monthly. At the sole discretion of the Pearce Company providing the R&D Services, it may require full or partial payments in advance of work being performed.

SECTION 7 - CONFIDENTIALITY

7.1 Protection. Licensee shall not disclose, transfer or offer to disclose or transfer any Confidential Information or Confidential Materials to any other person or entity, including without limitation any of Licensee's employees who do not have a legitimate need to know any Confidential Information or utilize any Confidential Materials. Licensee may only disclose, transfer, or offer to disclose or transfer any Confidential Information or Confidential Materials to those of its employees with a legitimate need to know any Confidential Information or utilize any Confidential Materials, and then only to those employees who are bound by the confidentiality terms of this Agreement. Licensee shall not use Confidential Information except for the purpose described in Paragraph 7.2. Licensee shall take all reasonable precautions to ensure against any disclosure, transfer or use of Confidential Information or Confidential Materials not specifically authorized by Licensor in writing. In the event that Licensee desires to use a subcontractor for manufacturing Licensed Product and that subcontractor will have access to Confidential Information, that subcontractor must be approved by Licensor, which approval shall not unreasonably be withheld, and that subcontractor must sign confidentiality agreements with Licensee and Licensor separately, which agreements must fulfill all of the intents and purposes of this Section 7. For example, if Licensee contracts with a manufacturer of gel components, which requires the disclosure of Confidential Information or Confidential Materials by the subcontractor, Licensee must obtain the prior approval of Licensor and must obtain executed confidentiality agreements from that subcontractor. If on the other hand, Licensee contracts with a manufacturer who only uses gel components provided to it for use in a finished product, Licensee has no obligation to obtain the approval of the Licensor but shall obtain confidentiality

agreements from that subcontractor if and only if such contractor uses any Confidential Information or Trade Secrets or Know-How, including but not limited to the examples of Trade Secrets and Confidential Information listed in confidential Appendix B hereto.

7.2 Purpose. Licensee may only use the Confidential Information and Confidential Materials for the purpose of commercially exploiting the License within the terms and conditions set forth in this Agreement.

7.3 Exception. To the extent that Confidential Information or a portion thereof becomes part of the public domain after the execution of this Agreement, and through no fault or action of Licensee, then as of the date that such Confidential Information becomes part of the public domain, this Section 7 shall prospectively cease to cover such Confidential Information, although this Section 7 shall remain enforceable prospectively with respect to any Confidential Information which has not entered the public domain and this Section 7 shall remain enforceable retrospectively with respect to any Confidential Information that was covered by it on any prior date.

7.4 Disclosure Concerning Existence of this Agreement. The Parties shall be permitted to disclose the existence of this Agreement and the general nature of the terms of this Agreement. Particularly, but not by way of limitation, the Licensed Field of Use and Geographic Region may be disclosed by Licensor to other prospective licensees of the Technology Rights so as to ensure complete understanding by the prospective licensee of fields of use and regions that remain available for license.

SECTION 8 - OWNERSHIP, RESPONSIBILITY ETC.

8.1 Ownership. Nothing in this Agreement assigns or transfers to Licensee ownership of the Technology Rights, the Trademark Rights or any portion thereof. Licensor shall hold title to, and be the worldwide owner of, the Technology Rights and the Trademark Rights, and Licensee shall be a licensee of the Technology Rights in the Licensed Field of Use and a licensee of the Trademark Rights per the provisions of this Agreement, in each case exclusive or non-exclusive as provided herein. Licensee shall not patent or attempt to patent Licensed Gel Material, Licensed Gel Structure or Adjustable Shape Pillow or any variation, modification or improvement thereof, without prior written permission from Licensor.

8.2 Responsibility for Patents, Trademarks, Etc. Licensor shall solely control and make all decisions relating to the filing, prosecution, issuance, maintenance, abandonment, defense, etc. of all aspects of the Technology Rights and the Trademark Rights. Notwithstanding the foregoing, Licensor shall duly consider any and all input provided by Licensee concerning the Technology Rights and the Trademark Rights. Any intellectual property work done by Licensor at the specific request of Licensee shall be billed to Licensee at Licensor's Standard Rates for R&D Services, and Licensor shall periodically provide Licensee with statements showing the amount owed by Licensee under this Paragraph, and Licensee shall provide Licensor with a check for reimbursement within thirty (30) days of receiving any statement. The foregoing sentence does not apply to intellectual property work done at the discretion of Licensor.

8.3 Infringement, Enforcement and Defense of Patent Rights. If Licensee learns of any activity that may constitute infringement of or threat to any of the Technology Rights or the Trademark Rights, Licensee shall immediately inform Licensor of the facts surrounding such suspected

infringement or threat. The Parties recognize that it may be in the best interests of both Parties to cooperate in any settlement discussions and lawsuits, and the Parties agree to negotiate in good faith concerning such cooperation within two (2) weeks of Licensee's notification to Licensor of such infringement. The negotiation shall include such items as the sharing of costs and the sharing of awards or settlement payments. In the event that the negotiations fail, Licensor may, in its sole discretion, take any action that it deems appropriate (including no action) concerning such suspected infringement or threat. If Licensor gains any monetary recovery from the suspected infringer, Licensor may use and dispose of such monetary recovery as it deems appropriate. If within seventy-five (75) calendar days after Licensee notifies Licensor of the alleged infringement of or threat to any of the Technology Rights or the Trademark Rights Licensor has not filed suit against the alleged infringer, then Licensee may bring suit against the infringer at its own expense in Licensor's name. If Licensee gains any monetary recovery as a result of such a suit, Licensee shall keep all recovery attributable to provable costs and damages to Licensee and pay one-half of any recovery over and above such damages to Licensor. For any suit brought by Licensee, Licensee shall fully and completely indemnify and hold harmless Licensor from any and all counterclaims, demands, sanctions, judgments, damages, settlements, fines, attorney's fees, lost income, costs, interest and other expenses incurred by Licensor related to such suit.

8.4 Cooperation. In any proceeding concerning procurement, enforcement or defense of the Technology Rights or the Trademark Rights, or any portion thereof, the Parties shall cooperate with and assist each other in such proceeding including making witnesses available to testify in person and by affidavit, making documents available and otherwise providing reasonable cooperation. This Paragraph shall not be construed as requiring either Party to make any statement or representation that the Party believes to be inaccurate, false or incomplete. In the event that such cooperation is at the request of one party acting in the proceeding by its own choice and at its own expense, and such cooperation becomes material in cost to the cooperating party, the requesting party shall reimburse such costs, including lost time.

8.5 Patent Marking. To the extent that Licensor secures any patents for Licensed Gel Material, Licensed Gel Structure or Adjustable Shape Pillow, Licensor shall inform Licensee of appropriate patent marking to be placed on Licensed Product and its packaging, and Licensee shall utilize such marking. Even without such notification, Licensee shall appropriately mark the Licensed Product and its packaging with the current patent and patent pending status (for example, "Protected by U.S. Patents 5,749,111, 5,994,450, 6,026,527 and other U.S. and International Patents Pending"). Unless otherwise instructed by Licensor, the appropriate patent marking shall be "Protected by U.S. Patents 5,749,111, 6,026,527, 6,413,458, 6,797,765, 7,076,822 and other U.S. and international patents pending". The appropriate patent marking shall be placed on all packaging (by way of non-limiting example, on pillow boxes) and on the product itself (by way of non-limiting example, on mattress law tags, mattress overlay law tags and on pillow law tags).

8.6 Quality Control. Licensee agrees to use the appropriate trademarks legibly in all advertising, literature, and packaging associated with Licensed Product. Any reference to the licensed materials must use the terms Gelastic and/or Intelli-Gel and may not use another mark or name of Licensee's choosing without written permission of Licensor at Licensor's sole discretion, and must indicate that the Gelastic and/or Intelli-Gel trademarks belong to Licensor and identify Licensor's city and state. In order for Licensor to maintain its Trademark Rights, it is necessary for Licensor to monitor the quality of Licensed Product to ensure that such product conforms to the quality of goods that Gelastic and/or Intelli-Gel are used to identify. Accordingly, and for any and all other purposes,

Licensee shall provide Licensor with two mattress-foundation sets of Licensor's choice, one overlay of Licensor's choice, and one each of all pillow models, free of product and delivery charges, on a yearly basis, as of March 17th of each year (beginning March 17th, 2010). Licensor may then review the quality of such Licensed Product as well as the sufficiency of patent and trademark markings and provide any input to Licensee regarding quality control and markings as may be appropriate. Licensee shall take such input into consideration and shall make good faith efforts to remedy quality control problems and/or marking problems identified by Licensor. Licensor shall then be free to use all of the Licensed Product provided pursuant to this Paragraph as it sees fit, except Licensor shall not advertise such Licensed Product for sale or rent other than in a classified ad, and in a classified ad may not use the Intelli-Bed trademark or in any way represent itself as Licensee.

SECTION 9 - RECORDKEEPING AND AUDITS

9.1 Record Keeping. Licensee shall keep detailed and complete records of all Licensed Product manufactured; to whom such Licensed Product was sold, rented, leased or otherwise delivered (including quantities, price, date and location of sale, rental, lease or delivery); inventories of Licensed Product ready for sale; and services performed using Licensed Product. Licensee shall keep paper copies of all such records, including all underlying documentation, which shall include but is not limited to purchase orders and invoices for a minimum of five (5) years from the date of creation of a particular record.

9.2 Examinations and Audits. Upon the written request of Licensor and, except as otherwise provided below, at Licensor's expense (provided that Licensor shall not be required to reimburse Licensee for any time, use of facilities or out-of-pocket costs associated with an examination or audit), Licensee shall allow its books and records to be audited by any person or persons of Licensor's choosing so that Licensor can verify that Licensee is properly paying Royalties. Licensor may request this audit for royalty compliance no sooner than one year (12 months) after the most recent royalty audit. For an examination or audit, Licensee shall allow a full examination and audit of its books and records relating to manufacturing, marketing, sales, rentals and leases of Licensed Product and performance of services using Licensed Product, including books and records regarding quantities, sizes, prices, sales, purchase orders, invoices, supply contracts, rental agreements, lease agreements, service contracts, entities purchasing, renting or leasing Licensed Product, locations to which Licensed Product has been delivered, and related documents and information, for all Licensed Product manufactured, sold, lost, destroyed, given away, in inventory or used to perform a service. Such examinations and audits shall be conducted during reasonable times and with reasonable advance notice, so as to minimize interference with Licensee's business operations, for the purpose of determining Licensee's compliance with its Royalty obligations. In any event, Licensee may not delay an examination or audit more than ten (10) business days from the date of Licensor's written request. In the event that an examination or audit shows that Royalties actually paid for any period were less than ninety-five percent (95%) of the amount properly payable, Licensee shall pay all costs and expenses incurred by Licensor in connection with the examination or audit. Licensee shall pay to Licensor all previously unpaid Royalties, as determined by such examination or audit, within thirty (30) days following the conclusion of such examination or audit. For each calendar or fiscal year in which Licensee performs its own annual audit or has an annual audit performed by outside accountants, Licensee shall require the accountants performing such audit to provide Licensor with a written statement indicating whether the payments due under this agreement have been duly paid to Licensor, and if not, the amount of discrepancy between the amount payable under this Agreement and the amount actually paid. Within thirty (30) days following the conclusion of such audit, Licensee

shall pay Licensor any deficiency as indicated by such accountants. In the event that Licensor inquires of Licensee as to its compliance with any obligation of this Agreement other than relating to royalty payments or insolvency, Licensee agrees to reasonably and timely cooperate by responding within ten (10) business days regarding its state of compliance or non-compliance.

SECTION 10 - INSURANCE

10.1 Insurance. Beginning no later than the date on which Licensee sells, rents, leases, transfers or uses the first Licensed Product or performs a service using a Licensed Product and continuing during the entire period of time during which Licensee sells, rents, leases, transfers or uses Licensed Product or performs services using a Licensed Product, Licensee shall acquire and maintain a standard product liability insurance policy in the amount of at least One Million Dollars ($1,000,000.00) which expressly names Licensor as an additional named insured. Licensee shall use commercially reasonable efforts to cause the insurance company to submit a certificate of insurance to Licensor showing compliance with this paragraph, and if unsuccessful, then Licensee shall submit a copy of its own certificate of insurance as supplied by the insurer which shows compliance with this Paragraph together with correspondence demonstrating that commercially reasonable efforts were made by Licensee.

SECTION 11 - WARRANTIES, DISCLAIMERS, ETC.

11.1 DISCLAIMERS. LICENSOR MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY THAT ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS OR THE LICENSED PRODUCTS. THE TECHNOLOGY RIGHTS AND THE TRADEMARK RIGHTS ARE MADE AVAILABLE TO LICENSEE STRICTLY ON AN "AS IS" BASIS. LICENSOR DOES NOT WARRANT THAT THE TECHNOLOGY RIGHTS HAVE UTILITY, ARE ERROR FREE, ARE SAFE, ARE RELIABLE, THAT THEY WILL MEET LICENSEE'S REQUIREMENTS, OR THAT ANY PART OF THEM ARE PATENTABLE OR THAT THE PATENTS WILL BE VALID WHEN GRANTED OR THAT THE EXPLOITATION OF THE TECHNOLOGY RIGHTS OR THE TRADEMARK RIGHTS OR COMMERCIALIZING LICENSED PRODUCTS WILL NOT INFRINGE ANY EXISTING OR FUTURE PATENT, TRADEMARK OR OTHER LEGAL RIGHTS OF ANY OTHER PERSON OR ENTITY. THE PARTIES ACKNOWLEDGE THAT THERE IS CONSIDERABLE PRIOR ART IN THE FIELD OF ELASTOMER GELS, AND WHILE LICENSED GEL MATERIAL MAY BE UNIQUE DEPENDING ON ITS ADDITIVES, PROCESSING TECHNIQUES, AND USES, PARTICULARLY ITS USES IN LICENSED GEL STRUCTURE, THE BASIC PREMISE OF LICENSED GEL MATERIAL AND THE GENERAL FORMULATON OF THE FIRST GEL DEFINED IN 1.1(a) HEREIN HAS BEEN DISCLOSED IN PRIOR PATENTS, SOME MORE THAN TWENTY YEARS OLD. ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED AND EXCLUDED. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS AND THE LICENSED PRODUCTS IS ASSUMED BY LICENSEE.

11.2 REPRESENTATIONS OF LICENSEE. LICENSEE REPRESENTS AND WARRANTS ONLY THAT: (A) IT HAS THE RIGHT, ABILITY AND INTENTION TO

ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER; AND (B) IT HAS EXECUTED NO OTHER AGREEMENT IN CONFLICT WITH THIS AGREEMENT.

11.3 **LIMITATION ON LIABILITY. LICENSOR SHALL NOT BE LIABLE FOR ANY LIABILITY, CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY INADEQUACY, DEFICIENCY, OR UNSUITABILITY OF THE TECHNOLOGY RIGHTS, THE TRADEMARK RIGHTS OR THE LICENSED PRODUCTS. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOSS OF INVESTMENT, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS) EVEN IF ADVISED OF THE POSSIBILITY THEREOF.**

11.4 Indemnification - Licensee. Licensee assumes all responsibility and liability for the manufacturing, marketing, distribution, sale, rental, lease, use, performance of services, practice and commercial exploitation of Licensed Product, and for exercise of the Technology Rights. Licensee shall fully and completely indemnify Licensor against, and hold it harmless from, any and all claims, threats of litigation, causes of action and demands relating to Licensed Product or its manufacture, marketing, distribution, sale, rental, lease, use, practice or commercial exploitation based on any conduct of Licensee and Customers, including exploitation of the License and any breach of this Agreement by Licensee; provided, however, Licensee shall not have any duty to indemnify under this Agreement with respect to any claim or liability based on Licensor's negligence. Without limiting the generality of the foregoing, Licensee shall defend and hold Licensor harmless on account of, and shall indemnify Licensor against any and all claims, suits, demands, and causes of action of any type or kind whatsoever which may be made against Licensor by any person, firm or corporation on account of injuries to or death of persons or damage to property or loss of income occurring as a result of or in any way arising out of Licensee's or Customers' manufacture, use, rental, lease or sale or performance of a service, regardless of: (a) whether said claims are based upon the negligent production, use, distribution, or other negligence of any third party, Licensee or a Customer; (b) whether the same are based upon any express or implied warranty by any third party, Licensee or a Customer in connection with the production, distribution, rental, lease or use of Licensed Product or performance of a service using a Licensed Product; (c) the location of the court or other place where such claim, suit, demand or cause of action may be made or exist; or (d) whether such claim, suit, demand or cause of action is litigated, settled, arbitrated, mediated or otherwise resolved. Such indemnification shall include any judgments, damages, settlements, fines, attorney's fees, lost income, costs, interest and other expenses incurred as a result of such claims, actions, demands or threats. Licensee shall have the right to settle all claims, actions, demands or threats for which it has agreed to indemnify Licensor without the advance consent of Licensor provided that any such settlement is fully paid by Licensee, such settlement requires no action by Licensor whatsoever either in its execution or enforcement, and such settlement does not in any way restrict or limit Licensor other than Licensor's right to contest such claim, counterclaim, action or demand.

11.5 Allocation of Risk. This Agreement generally (and this Section 11 in particular) represents a mutually agreed upon allocation of risk between the Parties and the consideration given hereunder reflects such allocation of risk.

11.6 Transfer and Ownership. Licensor represents and warrants that it is the successor in interest, assignee, and holder of all of the rights licensed under the Original License Agreement to

Licensee by EdiZONE, and has the right to license to Licensee all of the Licensed Rights under this Agreement.

SECTION 12 - TERM AND TERMINATION

12.1 Term. Subject to the exceptions below, the term of the License for each region of the Geographic Region in which the License is applicable shall begin on the date that Licensee receives the payment provided for in Section 1 of the Second Settlement Agreement (the "Effective Date") and shall continue perpetually unless terminated for any or all regions of the Geographic Region pursuant to the terms of this Agreement. The License shall not terminate before expiration of such Term except:

(a) by the mutual written consent of the Parties, or

(b) as provided in Paragraph 12.2 below, or

(c) as provided in Paragraph 12.3 below, or

(d) if Licensee initiates or directly or indirectly participates in any proceeding or litigation which seeks a ruling of invalidity or unenforceability of the Technology Rights or any portion thereof, cancellation or limitation of the Trademark Rights or any portion thereof, or any other proceeding or adjudication concerning the Technology Rights or the Trademark Rights which Licensor considers adverse to its interests in the Technology Rights or Trademark Rights, unless such initiation or participation is pursuant to Licensor's written instructions, with the caveat that nothing in this Agreement shall be construed as prohibiting or limiting Licensee's participation in any such proceeding, but the consequence of such conduct shall result in immediate and automatic termination upon written notice of termination given by Licensor to Licensee, subject to Licensee's right to dispute such termination under Paragraph 12.5, below (participation in any proceeding or litigation contemplated by this Paragraph 12.1(d) arising solely from Licensee's compliance with a subpoena or other court process issued in a proceeding Licensee does not initiate without Licensor's written instructions is not conduct or an event for which Licensor can terminate this Agreement); or

(e) if Licensee initiates or directly or indirectly participates in any reexamination proceeding concerning the Patent Rights or any portion thereof, including but not limited to citing prior art to any patent office in any country of the world, unless such initiation or participation is pursuant to Licensor's written instructions, with the caveat that nothing in this Agreement shall be construed as prohibiting or limiting Licensee's participation in any such proceeding, but the consequence of such conduct shall result in immediate and automatic termination upon written notice of termination given by Licensor to Licensee, subject to Licensee's right to dispute such termination under Paragraph 12.5, below; or

(f) as provided in Paragraph 13.15 below; or

(g) as provided in Paragraph 13.16 below.

12.2 Termination at the Will of Licensee. Licensee may terminate the License for any region of or for all of Geographic Region by providing Licensor with at least six (6) months' prior written notice of termination. Termination shall be effective on the date specified by Licensee in such

notice, but not sooner than six (6) months if the entire Geographic Region is terminated. If no date is specified in such notice, then termination shall be effective six (6) months following the date of such notice if the termination is for the entire Geographic Region not previously terminated and ten (10) days if the termination is for only a portion of the Geographic Region not previously terminated. If the notice does not specify which regions of the Geographic Region for which the License is being terminated, the termination shall be effective for the entire Geographic Region.

12.3 Breach. If Licensee breaches any term of this Agreement that is not a termination event as provided under Paragraphs 12.1(d), 12.1(e), and 12.1(f) and fails to cure such breach within thirty (30) days of receiving written notice of breach from Licensor (except a breach under Paragraph 10, above, which must be cured within ten (10) business days following such notice, rather than thirty (30) days), then the License shall immediately and automatically terminate subject only to the procedures set forth in Paragraph 12.5 of this Agreement should there be any dispute as to a breach and/or whether the breach has been cured.

12.4 Effect of Termination. Upon the termination of the License for any particular region or for the entire Geographic Region:

(i) Licensee shall immediately cease making, using and selling Licensed Product and performing services using Licensed Product in the region(s) of the Geographic Region for which the License has terminated,

(ii) if the License has terminated for all regions of the Geographic Region, Licensee shall also immediately return all Confidential Materials to Licensee, and

(iii) Licensor shall not have any further obligation or liability under this Agreement with respect to such region(s) of the Geographic Region in which the License is terminated;

provided, however, that the foregoing are suspended during the pendacy of the procedures set forth in Paragraph 12.5, if termination is a disputed matter under Paragraph 12.5. Notwithstanding any such termination of the License, nothing herein shall relieve Licensee of its obligations to pay Royalties or other payments that accrue prior to termination, or to fulfill its obligations under Sections 4, 5, 6, 7, 8, 9, 10, 11, 12 or elsewhere in this Agreement. Further notwithstanding any such termination of the License, Licensed Product on which all money due under this Agreement have already been paid to Licensor may be sold without further permission from Licensor, provided such sale occurs within six (6) months of termination.

12.5 Resolution of Future Disputes/ Enforcement of Terminated License. The Parties agree to hereafter work cooperatively with one another in accordance with their duties and rights under this Agreement, including but not limited to cooperatively resolving any future disputes as quickly, amicably and efficiently as possible through the procedures set forth below.

(a) Any dispute arising from a notice of breach under Paragraph 12.3 above or arising from termination of the License under Paragraphs 12.1(c), 12.1(d), 12.1(e), 12.1(f), or 12.1(g) shall be raised within thirty (30) days following the end of the applicable cure period specified in Paragraph 12.3 or the date of termination provided for under Paragraphs 12.1(c), 12.1(d), 12.1(e), 12.1(f), or 12.1(g), or the dispute will be deemed to be waived and cannot later be asserted, alleged or claimed for any reason. Before any necessary legal action is

pursued by one Party against another Party of this Agreement pertaining to this Agreement or any alleged breach of this Agreement, including but not limited to an uncured breach or other event resulting in termination as provided in this Agreement, any such dispute will be raised in a written notice as provided in this paragraph above, and the Party giving notice will arrange a face-to-face meeting for as soon as reasonably practical, but no later than ten (10) business days after such notice, at which meeting the Parties will in good faith identify the dispute, discuss the specific basis for the dispute, and propose ways in which the dispute and all issues arising from the dispute can be resolved. The Parties agree to negotiate in good faith toward resolving any identified dispute and all issues arising from the dispute.

(b) If the Party raising the dispute believes after ten (10) business days from the first face-to-face meeting that the dispute previously raised and discussed cannot be resolved between the Parties to the dispute, then that Party raising the dispute will prepare and provide to the other Party an additional written notice that describes in reasonable detail (1) the dispute and all related issues that remain to be resolved, (2) the specific provision(s) of the Agreement contended to be breached, (3) the evidence then relied upon for that parties' position, (4) the perceived reason why a resolution could not be reached after the initial meeting(s), and (5) whether or not mediation or arbitration would be agreed upon as the next step toward a resolution. The Parties agree to meet face-to-face at least one more time following this written notice, again to be held as soon as practical but no later than ten (10) business days after such notice, to assure that there is no misunderstanding between the Parties and to discuss further procedures to take to resolve the dispute in the quickest and most amicable and efficient way as possible under the circumstances, including but not limited to an agreement upon a specific issue or issues to be submitted to mediation, arbitration or a court of law for adjudication through a declaratory judgment or otherwise. The Parties agree to enter into this discussion in good faith and to make their best efforts to reach an agreement on the quickest and most amicable and efficient procedure for obtaining complete resolution of the dispute and all related issues so as to promote a continuing business relationship between the Parties and minimize harm to each Party during the dispute. Each dispute and issue related thereto will be considered separately so as to allow those that can be resolved most quickly, amicably and efficiently through one particular procedure to proceed under that procedure without being delayed by other disputes or issues that may take longer to resolve through different procedures. If the Parties do not achieve resolution of a dispute or issue and/or are unable to agree upon further procedures to obtain resolution within ten (10) business days following this additional face to face meeting, either party may thereafter file suit against the other or pursue such other alternative dispute resolution process agreed to by the Parties in writing.

(c) The Parties agree that they will fully and completely comply with all obligations under this Agreement that are not the subject of any dispute, and shall comply with obligations that are the subject of any dispute to the extent the dispute does not reach such compliance, except as otherwise agreed to by the Parties under Paragraphs 12.5(a) or 12.5(b). Without limiting the foregoing, but only as non-limiting examples, Licensee agrees it will not withhold any money owed to Licensor on a claim of offset until a specific right has been determined and amount has been agreed upon, or has been finally determined by a court, or the issue has been addressed as part of a preliminary injunction or other pre-judgment order, or has otherwise been adjudicated to be owed, should the payment of money ever be a disputed issue. Accordingly, until a court or trier of fact in an alternative

dispute resolution procedure with authority to issue a binding decision determines by final order, judgment, permanent injunction, or decision/award that this Agreement is terminated and of no further force or effect, neither of the Parties and none of their officers, directors, managers, employees, agents, equity owners, or affiliates shall state or assert to any third party, orally or in writing, that this Agreement is or will be terminated, or that either Party is not entitled to exercise its rights hereunder, should termination ever be a disputed issue. Nothing herein prevents a Party from informing third parties of the existence of a dispute that has been raised and is pending resolution. Compliance with the terms of this Paragraph 12.5(c) will not give rise to any separate claim for damages in addition to the claims asserted and damages that may be sought on the basis of the matter or matters under dispute as specified in any written notice given under Paragraph 12.5(b).

(d) The procedures agreed upon in this section must be followed before any legal action can be commenced in a court of law, and failure to comply with this section is grounds for the dismissal without prejudice of any prematurely initiated lawsuit.

(e) In the event a court or trier of fact in an alternative dispute resolution procedure with authority to issue a binding decision determines by final order, judgment, permanent injunction, or decision/award that the License granted under this Agreement is terminated and of no further force or effect, the date of termination shall be the date specified in this Agreement, unless the court or trier of fact fixes a different date.

SECTION 13 - OTHER PROVISIONS

13.1 Purchase of Licensed Products by Licensor. At any time during the term of the License granted herein, Licensee shall enable Licensor and its employees to purchase reasonable quantities of Licensee's products from Licensee at Licensee's then-current lowest wholesale prices (e.g., at the highest-quantity price quoted to Customers, or at special promotional prices quoted to any Customer) or sixty percent (60%) of the lowest retail price being quoted to any customer, whichever is less. Licensee shall also make available six (6) units of each SKU (or equivalent) of each Licensed Product each calendar year to Licensor, which Licensor may purchase at Licensee's fully burdened cost of goods sold. In no event shall Licensor re-sell or rent any of the products described in this Paragraph 13.1 at prices higher than paid by Licensor. Licensee shall provide catalogs and price lists for its products to Licensor as they become available to the general trade.

13.2 Other Responsibilities. Licensee shall obtain any and all necessary licenses, approvals and other government authorizations necessary for Licensed Product, including for its manufacture, sale, distribution, export, use, rental, lease and practice engaged in by Licensee and any of Licensee's Customers. Licensee shall ensure that Licensed Product is safe and of good and workmanlike quality. Licensee and its Customers shall strictly comply with all applicable laws and regulations concerning Licensed Product, its manufacture, rental, lease, sale, shipment, export, etc., including but not limited to strict compliance with the Export Control Act of 1979.

13.3 Attorneys' Fees. In the event of any litigation or arbitration between the Parties, the prevailing Party shall be entitled to recover from the non-prevailing Party any and all costs, including reasonable attorneys' fees, incurred by the prevailing Party. Such relief shall be in addition to any other relief, award or damages to which the prevailing Party may be entitled. The court or arbitrator shall determine the prevailing party for the purpose of this Paragraph.

13.4 Injunctive Relief. Licensee and Licensor have determined that in the event of a breach or a threatened breach of this Agreement, the non-breaching party will suffer permanent and irreparable damage. Accordingly, Licensee and Licensor agree that in the event of a breach or threatened breach of this Agreement by the other party, the non-breaching party shall be entitled to preliminary and permanent injunctive relief.

13.5 Severability. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions(s) had never been contained herein; provided that such invalid, illegal or unenforceable provisions shall first be curtailed, limited or eliminated to the extent necessary to remove such invalidity, illegality or unenforceability with respect to the applicable law as it shall then be applied.

13.6 Governing Law and Forum. This Agreement shall be governed, construed and enforced exclusively in accordance with the laws of the State of Utah and the laws of the United States of America. Any arbitration or litigation between the Parties shall be conducted exclusively in Salt Lake City, Utah, U.S.A. and the Parties hereby submit to such exclusive jurisdiction and venue, and agree that such jurisdiction and venue are proper.

13.7 Final Agreement/Conflict. This Agreement is a restatement and amendment of the Original License Agreement. The terms of the Second Settlement Agreement are in addition to the terms of this Agreement and are enforceable separately without regard to the terms of this Agreement or any default hereunder. This Agreement, the Second Settlement Agreement, and the Amended Injunction constitute the final and complete agreement ("Final Agreement") between the Parties concerning the subject matter hereof and thereof and supersede all prior agreements, understandings, negotiations and discussions, written or oral (including drafts of the Final Agreement), between the Parties with respect thereto. No Party shall be bound by any condition, definition, representation, or warranty, other than as expressly set forth in the Final Agreement. Any modification, revision, or amendment of this Agreement shall not be effective unless made in a writing executed by both of the Parties.

13.8 Time is of the Essence. Time is of the essence in the performance of all obligations under this Agreement.

13.9 Waiver. Any waiver of, or promise not to enforce, any right under this Agreement shall not be enforceable unless evidenced by a writing signed by the Party making such waiver or promise, unless a waiver is deemed to have occurred in accordance with a provision of this Agreement in which case the waiver shall not require any further writing and this Agreement shall be executory.

13.10 Headings. The headings in this Agreement are for the purpose of convenience only and shall not limit, enlarge or affect any of the covenants, terms, conditions or provisions of this Agreement.

13.11 Language. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

13.12 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by commercial courier, with a required copy by facsimile transmission or email to the Parties at the addresses set forth above on page 1 of this Agreement, or to such other person and place as either Party shall designate by notice to the other Party. The party sending notice by facsimile shall obtain confirmation that all facsimile transmissions were sent to the facsimile telephone number set forth above on page 1 of this Agreement or such other facsimile telephone number as either Party shall designate by notice to the other Party, or, in the event that facsimile transmission is impossible due to problems on the receiving end, that attempts were made. The party sending notice by email shall confirm that all email communications were sent to the email address set forth above on page 1 of this Agreement or such other email address as either Party shall designate by notice to the other Party, or, in the event that email transmission is impossible due to problems on the receiving end, that attempts were made.

13.13 Assignments. Licensor has specifically chosen Licensee to commercialize Licensed Gel Material, Licensed Gel Structure and Adjustable Shape Pillow in the Licensed Field of Use. Accordingly, Licensee shall not, and Licensee has neither the right nor the power to, assign the License or this Agreement to any other person or entity without the advance written consent of Licensor. In the event that Licensee merges with any other entity, changes its name, or otherwise transforms into a new entity, this Agreement shall be deemed binding upon and enforceable against such new or other entity. Licensor may, at its sole option, assign its rights or obligations hereunder, provided that any third party beneficiaries or third party delegatees agree in writing that each such assignment to which the third party beneficiaries or third party delegatees are parties is subject to the applicable terms and conditions of this Agreement.

13.14 Relationship. Neither Party is or shall be a partner, joint venturer, agent or representative of the other Party.

13.15 Insolvency and Receivership. If (i) Licensee becomes "insolvent" as that term is defined in 11 U.S.C. §101 (as the same may be amended from time to time after the Effective Date), (ii) a receiver is appointed for Licensee by a court of competent jurisdiction, (iii) Licensee files a voluntary petition for bankruptcy, or (iv) an involuntary petition for bankruptcy is filed for Licensee, Licensee does not file a pleading seeking dismissal of the petition and any further proceedings in bankruptcy within sixty (60) days following the date the involuntary petition is served on Licensee, and the bankruptcy proceeding is not in fact dismissed pursuant to such pleading, then this Agreement shall be deemed executory and the License shall be deemed terminated, provided that Licensor shall not take affirmative action to deem Licensee to be insolvent unless Licensee provides notice to Licensor that Licensee is insolvent. Licensee and Licensor mutually agree that in no case can a 13.15(ii), (iii) or (iv) event occur unless Licensee was insolvent ninety-one (91) days prior to the 13.15(ii), (iii) or (iv) event, and so Licensee and Licensor agree that in the case that any 13.15(ii), (iii) or (iv) event occurs, the License was terminated both automatically and by mutual agreement ninety-one (91) days prior to the 13.15(ii), (iii) or (iv) event. In the event that the above 91-day insolvency agreement is held invalid for any reason, such finding shall not affect the automatic termination due to the 13.15(ii), (iii) or (iv) event itself. In the event of such termination or automatic termination, Licensor shall then be free to license the Technology Rights and the Trademark Rights to any other party on either an exclusive or nonexclusive basis, or to otherwise exploit the Technology Rights and the Trademark Rights, at Licensor's sole discretion.

13.16 Diligent Marketing. As a material requirement of this Agreement, Licensee shall be continually diligent in its manufacturing, marketing, and selling of Licensed Products in each of its three forms: Mattress overlays, mattresses, and pillows. In the event of non-diligence in any one of these three forms, Licensor may (after notice and an opportunity to cure pursuant to Paragraph 12.3) terminate the License for that form only, which shall eliminate the requirement for the Minimum Royalty for that form only. Termination under this paragraph is subject to Paragraph 12.5 should there be a dispute as to whether there has been non-diligence in accordance with the requirements of this Paragraph.

13.17 No Construction against Drafter. This Agreement was drafted by both Licensor and Licensee, with the assistance and advice of their respective counsel, and it is agreed that it shall not be construed against either party hereto under any law that requires construction against the drafter.

13.18 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The individuals signing below represent that they are duly authorized to do so by and on behalf of the Party for whom they are signing.

IN WITNESS WHEREOF, the Parties hereto have caused this Amended and Restated License Agreement to be duly executed and entered into as of the date first above written.

LICENSEE:

By (signature): Robert K Lawrence

Name (print): Robert K Lawrence

Title: President

LICENSOR:

By (signature): Tony M. Pearce

Name (print): Tony M. Pearce

Title: Manager

SETTLEMENT AGREEMENT AND FIRST AMENDMENT TO LICENSE AGREEMENT

This Settlement Agreement and First Amendment to License Agreement (the "*Agreement*") is made and entered into effective as of the 1st day of May 2017 ("*Effective Date*"), by and between EdiZONE, LLC ("*Licensor*"), the correspondence address of which is 123 East 200 North, Alpine, Utah, 84004, and Advanced Comfort Technologies, Inc. ("*Licensee*"), the correspondence address of which is 4080 South West Temple, #1, Murray, Utah, 84107-1426. Licensor and Licensee are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, Licensor and Licensee, or their predecessors in interest, entered into that certain Amended and Restated License Agreement, effective as of January 28, 2010 (the "*License Agreement*").

WHEREAS, disputes have arisen, two of which concerns (i) the definition of Net Sales set forth in paragraph 1.10 of the License Agreement and whether Licensee should be reimbursed for royalties Licensee claims it should not have paid Licensor due to non-reimbursed shipping costs incurred by Licensee being included in royalty calculations, and (ii) the use of licensed trademarks and substitution of licensed trademarks with other trademarks without written consent (these two and any and all other disputes as of the Effective Date, known or unknown, are collectively the "*Disputes*");

WHEREAS, Licensor and Licensee desire to resolve the Disputes by amending the License Agreement and as otherwise set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Amendments to License Agreement**. The License Agreement is hereby expressly supplemented and amended by the terms and conditions contained in this Agreement, including only the following:

(a) Section 1.10 of the License Agreement is hereby deleted in its entirety and the following is inserted in place thereof:

> 1.10 Net Sales. For any particular article of Licensed Product sold, rented or leased, "Net Sales" shall mean the actual sales, rental or lease price of the Licensed Product charged by Licensee or its customers at the wholesale level (the level just prior to retail) or at the retail level if sold by Licensee at retail, in a bona fide transaction with a third party, as per invoices covering such sales, rentals or leases, less deductions for all returns and actual non-reimbursed shipping costs applicable to sales. Actual non-reimbursed shipping costs applicable to sales shall be limited to any shipping costs billed to Licensee by a third-party logistics company applicable to Licensee's sales for which Licensee has not been reimbursed. If Licensee exchanges Licensed Product for valuable consideration other than cash, including an exchange for services, "Net Sales" shall be the fair market value of such consideration.

(b) Section 1.2 of the License Agreement is hereby amended by adding the trademark "GEL MATRIX" in the third line to the string of "GELASTIC", "INTELLI-GEL" and "INTELLI-PILLOW" marks.

(c) Section 8.6 is hereby amended by deleting the first two sentences in their entirety and the following is inserted in their place:

8.6 Quality Control. Licensee agrees to use the appropriate trademarks legibly in all advertising, literature, and packaging associated with Licensed Product. Any reference to the Licensed Gel Material or Licensed Gel Structure must use GELASTIC, INTELLI-GEL or GEL MATRIX. Licensee may not use another mark, other than other marks included in Trademark Rights, or name of Licensee's choosing to refer to the Licensed Gel Material or Licensed Gel Structure without written permission of Licensor at Licensor's sole discretion, and must identify Licensor as the owner of the GELASTIC, INTELLI-GEL and GEL MATRIX trademark that Licensee uses, and include in such identification Licensor's city and state as identified in the introduction to this Agreement or as amended pursuant to Section 13.12 of the License Agreement.

(d) Any and all other amendments necessary to implement the intent of the Parties as expressed in the above amendments.

2. **Timing of Amendments.** (A) The Parties agree that the amendment stated above in paragraph 1(a) shall become effective for the months of May 2017 and thereafter, and no offset will be allowed for prior months. (B) The Parties further agree that the amendments stated above in paragraphs 1(b) and 1(c) shall become effective as of the Effective Date, subject to the terms of this Agreement.

3. **Royalty Reports.** Royalty Reports, as required under the License Agreement, shall for the months of May 2017 and thereafter include a section that shows the type and amount of deductions allowed under amended Section 1.10, set forth above.

4. **Trademark Applications.** Licensee represents, agrees and covenants (i) that Licensor owns the GEL MATRIX and INTELLIPILLOW trademarks in the field of cushioning products; (ii) that Licensee has filed applications with the US Patent and Trademark Office ("USPTO") to register GEL MATRIX (Ser. No. 87/312,145) and INTELLIPILLOW (Ser. No. 87/271,822) (the "Applications"), and will continue to prosecute the Applications until a final decision is made by the USPTO unless Licensee determines that continued prosecution for either application is not prudent and Licensee has given Licensor a reasonable opportunity to continue the prosecutions, (iii) that all registrations arising from the Applications ("Registrations") will, after being granted, be assigned, transferred and conveyed to Licensor along with all rights, titles and interests and in a form approved by Licensor, subject only to a license back to Licensee on the terms and conditions set forth in the License Agreement as amended herein, and (iv) that Licensee will pay all costs associated with prosecution of the Applications until they are assigned, transferred and conveyed to Licensor, including but not limited to the preparation and filing of the assignment or other document or documents evidencing Licensor's ownership. Licensor shall be responsible for all costs arising with regard to the Registrations from the time the assignment is recorded until the Registrations are cancelled, including maintaining the Registrations in accordance with its rights set forth in the License Agreement, except that if Licensor decides not to maintain any Registration Licensor will inform Licensee of such decision at least sixty days prior to the relevant maintenance or renewal deadline and, if Licensee is still using the associated mark, then Licensor agrees to assign to Licensee such mark, all corresponding goodwill, and the associated Registration so that Licensee may maintain such Registration. Licensee agrees to disclose all applications it hereafter files for trademarks used or to be used as a source indicator for Licensed Gel Material, Licensed Gel Structure or Adjustable Shape Pillow and to give Licensor periodic updates on the status of those applications. For the avoidance of doubt, Licensee reaffirms that it will not use any other trademark not otherwise allowed in the subject License Agreement as a source indicator for Licensed Gel Material, Licensed Gel Structure or Adjustable Shape Pillow, without complying with the requirement set forth therein to obtain the prior written consent of Licensor. Licensee agrees to use its best reasonable efforts to follow Licensor's guidelines for use of

trademarks that are attached hereto as Exhibit 1 and incorporated herein. Licensor acknowledges and agrees that Licensee uses and may continue to use and register trademarks and service marks for Licensee's products, including but not limited to INTELLIBED, and that such marks are not subject to the License Agreement or this Agreement.

5. **Foamed Gel Monitoring and Use.** Licensee agrees that Licensor and its licensees and assigns are not required by the License Agreement to make for Licensee or any third party gel samples with and without microspheres (foamed gel and non-foamed gel) for purposes of testing, via weight comparison or any other testing protocol, for compliance with the Permanent Injunction agreed upon and entered into in 2010 in conjunction with the License Agreement. The Parties understand and agree that testing methods exist which Licensee can do for itself if Licensee determines testing is needed. Notwithstanding anything to the contrary contained in this Agreement, Licensee agrees that it shall not be a breach of the License Agreement or this Agreement if Licensor elects to distribute, in connection with its sales of Purple Beds, Royal Purple Stress Relievers (also called Purple Squishies) composed of non-foamed gel.

6. **Audit Requests.** Licensor agrees and covenants that it will not seek an audit of Licensor, as allowed under the License Agreement, for twelve months after the Effective Date, after which an audit may be requested, and Licensee will cooperate with such request, as set forth in the License Agreement. For the avoidance of doubt, any request for an audit that has been made before the Effective Date is withdrawn or otherwise null and void as of the Effective Date. For the avoidance of doubt, in accordance with and subject to the global release below, any future audit will not be allowed to cover any sales or other issues occurring prior to the Effective Date.

7. **Marketing and Sales.** In order to further the Parties' intent to coexist peaceably and without conflict, the Parties represent, covenant and agree that each will use its best reasonable efforts to not disparage, criticize or defame the other or its products, and to train and monitor its employees in doing the same and to encourage licensees and assigns to do the same. The Parties will accurately display, portray and describe their respective products to not mislead consumers in their comparison of competing products using gel components, and will refrain from displaying, portraying or describing the competing products of the other Party or of its licensees and assigns. It is understood and agreed that this obligation is reciprocal, and does not prevent either Party from acting as necessary to correct any false or misleading statement or representation of fact to prevent confusion, false light or other such injury until the false or misleading statement or representation is corrected. As only an example, and without intending any limitation, Licensee agrees that it will not describe or depict to consumers a Licensed Gel Material component or other plasticized elastomer component within its mattresses to be larger in dimension or size relative to the entire mattress than the actual dimension and size of such Licensed Gel Material component or other plasticized elastomer component being used at the time.

8. **Global Mutual Release.** The Parties, on behalf of themselves, their successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, licensees, affiliates and assigns, and its and their officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns and successors in interest, and all persons acting by, through, under or in concert with them, and each of them, hereby release and discharge each other, together with their successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, licensees, affiliates and assigns and its and their officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns and successors in interest, and all persons acting by, through, under or in concert with them, and each of them, from any and all known and unknown claims, demands, actions and

recoveries. For the avoidance of doubt, the GEL MATRIX trademark is included in, made part of and licensed as "Trademark Rights" subject to Licensee fulfilling its obligations pursuant to Section 4.

9. **Representations and Warranties of the Parties.** As a material condition to, and as valuable consideration for this Agreement, each Party represents and warrants that: (i) it is not aware of any unasserted claims against the other Party that are beyond those described in the communications between counsel for the Parties (Timothy K. Conde and Casey K. McGarvey).

10. **General**. Except as expressly modified by the amendments contained in this Agreement, all terms, conditions and provisions of the License Agreement shall continue in full force and effect as set forth therein. In the event of a conflict between the terms and conditions of the License Agreement and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail. Each Party represents and warrants to the other Party that this Agreement has been duly authorized, executed and delivered by it and constitutes a valid and legally binding agreement with respect to the subject matter contained herein. Each Party agrees that the License Agreement, as amended herein, together with this Agreement constitutes the complete and exclusive statement of the agreement between the Parties, and supersedes all prior proposals and understandings, oral and written, relating to the subject matter contained herein. This Agreement shall not be modified or rescinded except in a writing signed by the Parties.

11. **Counterparts.** This Agreement may be executed by facsimile and in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the date first written above.

EDIZONE, LLC

By: _____

Name: Tony M. Pearce

Title: Manager

Date: 21 June 2017

ADVANCED COMFORT TECHNOLOGIES, INC.

By: _____

Name: Colin Horsel

Title: CEO

Date: 7/6/17

EXHIBIT B

Form of Recordable Trademark Assignment

TRADEMARK ASSIGNMENT

This **Trademark Assignment** is effective _____, and is between EdiZONE, LLC, a Delaware limited liability company ("**Assignor**"), and Purple Innovation, LLC, a Delaware limited liability company, with an address of 123 East 200 North, Alpine, Utah 84004 ("**Assignee**").

WHEREAS, Assignor is the owner of certain trademarks represented by the trademark registrations more fully described in Schedule A (the "**Marks**"); and

WHEREAS, Assignor desires to assign and Assignee desires to receive all of Assignor's right, title and interest in the Marks and any goodwill associated with the Marks.

The parties therefore agree as follows:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor now assigns to Assignee all of Assignor's right, title and interest in the Marks as they exist anywhere in the world and as may be created or acquired at any date in the future, along with any goodwill associated with the Marks. This assignment includes without limitation all applications and registrations for the Marks, all priority rights or claims based on International Conventions, all rights to proceeds of the Marks, including income, royalties, damages, profits, and payments now or hereafter payable, all rights of action of Assignor, and the right to take proceedings and to seek damages and all other available remedies, against third parties for past, present, or future infringement of the Marks.

Assignor shall execute and deliver any other documents and perform any other reasonable acts Assignee may request, that may be necessary and appropriate to effectuate the provisions of this agreement and establish Assignee's rights in the Marks.

At the request and expense of Assignee, Assignor shall provide all reasonable assistance which Assignee considers necessary in connection with bringing or defending any proceedings in relation to the Marks.

Assignee hereby accepts this assignment of Marks.

Each party has signed this Trademark Assignment effective on the date stated in the introductory clause.

[SIGNATURES ON THE FOLLOWING PAGE]

EDIZONE, LLC ASSIGNOR	PURPLE INNOVATION, LLC ASSIGNEE
By: _____ Name: Date:	By: _____ Name: Date:

[Schedule A to Trademark Assignment to be attached]

Exhibit 10.3

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("**Agreement**"), dated as of August 18, 2020, is by and between Purple Innovation, Inc., a Delaware corporation (the "**Company**") and Paul Zepf (the "**Indemnitee**").

WHEREAS, Indemnitee is a director and/or officer of the Company;

WHEREAS, both the Company and Indemnitee recognize the increased risk of litigation and other claims being asserted against directors and officers of public companies;

WHEREAS, the board of directors of the Company (the "**Board**") has determined that enhancing the ability of the Company to retain and attract as directors and officers the most capable persons is in the best interests of the Company and that the Company therefore should seek to assure such persons that indemnification and insurance coverage is available; and

WHEREAS, in recognition of the need to provide Indemnitee with substantial protection against personal liability, in order to procure Indemnitee's continued service as a director and/or officer of the Company and to enhance Indemnitee's ability to serve the Company in an effective manner, and in order to provide such protection pursuant to express contract rights (intended to be enforceable irrespective of, among other things, any amendment to the Company's certificate of incorporation or bylaws (collectively, the "**Constituent Documents**"), any change in the composition of the Board or any change in control or business combination transaction relating to the Company), the Company wishes to provide in this Agreement for the indemnification of, and the advancement of Expenses (as defined in Section 1(f) below) to, Indemnitee as set forth in this Agreement and for the coverage of Indemnitee under the Company's directors' and officers' liability insurance policies.

NOW, THEREFORE, in consideration of the foregoing and the Indemnitee's agreement to continue to provide services to the Company, the parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "**Beneficial Owner**" has the meaning given to the term "beneficial owner" in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**").

(b) "**Change in Control**" means the occurrence after the date of this Agreement of any of the following events:

(i) any Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing thirty percent (30%) or more of the Company's then outstanding Voting Securities;

(ii) the consummation of a reorganization, merger or consolidation, unless immediately following such reorganization, merger or consolidation, all of the Beneficial Owners of the Voting Securities of the Company immediately prior to such transaction beneficially own, directly or indirectly, more than fifty percent below. (50%) of the combined voting power of the outstanding Voting Securities of the entity resulting from such transaction;

(iii) during any period of two consecutive years, not including any period prior to the execution of this Agreement, individuals who at the beginning of such period constituted the Board (including for this purpose any new directors whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved) cease for any reason to constitute at least a majority of the Board; or

(iv) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets.

(c) "**Claim**" means:

(i) any threatened, pending or completed action, suit, proceeding or alternative dispute resolution mechanism, whether civil, criminal, administrative, arbitrative, investigative or other, and whether made pursuant to federal, state or other law; or

(ii) any inquiry, hearing or investigation that the Indemnitee determines might lead to the institution of any such action, suit, proceeding or alternative dispute resolution mechanism.

(d) "**Delaware Court**" shall have the meaning ascribed to it in Section 9(e)

(e) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Claim in respect of which indemnification is sought by Indemnitee.

(f) "**Expenses**" means any and all expenses, including attorneys' and experts' fees, court costs, transcript costs, travel expenses, duplicating, printing and binding costs, telephone charges, and all other costs and expenses incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness or participate in, any Claim. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Claim, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 5 only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) "**Expense Advance**" means any payment of Expenses advanced to Indemnitee by the Company pursuant to Section 4 or Section 5 hereof.

(h) "**Indemnifiable Event**" means any event or occurrence, whether occurring before, on or after the date of this Agreement, related to the fact that Indemnitee is or was a director, officer, employee or agent of the Company or any subsidiary of the Company, or is or was serving at the request of the Company as a director, officer, employee, member, manager, trustee or agent of any other corporation, limited liability company, partnership, joint venture, trust or other entity or enterprise (collectively with the Company, "**Enterprise**") or by reason of an action or inaction by Indemnitee in any such capacity (whether or not serving in such capacity at the time any Loss is incurred for which indemnification can be provided under this Agreement).

(i) "**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently performs, nor in the past five years has performed, services for either: (i) the Company or Indemnitee (other than in connection with matters concerning Indemnitee under this Agreement or of other indemnitees under similar agreements) or (ii) any other party to the Claim giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(j) "**Losses**" means any and all Expenses, damages, losses, liabilities, judgments, fines, penalties (whether civil, criminal or other), ERISA excise taxes, amounts paid or payable in settlement, including any interest, assessments, any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payments under this Agreement and all other charges paid or payable in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness or participate in, any Claim.

(k) "**Person**" means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity and includes the meaning set forth in Sections 13(d) and 14(d) of the Exchange Act.

(l) "**Standard of Conduct Determination**" shall have the meaning ascribed to it in Section 9(b) below.

(m) "**Voting Securities**" means any securities of the Company that vote generally in the election of directors.

2. Services to the Company. Indemnitee agrees to continue to serve as a director or officer of the Company for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders Indemnitee's resignation or is no longer serving in such capacity. This Agreement shall not be deemed an employment agreement between the Company (or any of its subsidiaries or Enterprise) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's service to the Company or any of its subsidiaries or Enterprise is at will and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment agreement between Indemnitee and the Company (or any of its subsidiaries or Enterprise), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director or officer of the Company, by the Company's Constituent Documents or Delaware law.

3. Indemnification. Subject to Section 9 and Section 10 of this Agreement, the Company shall indemnify Indemnitee, to the fullest extent permitted by the laws of the State of Delaware in effect on the date hereof, or as such laws may from time to time hereafter be amended to increase the scope of such permitted indemnification, against any and all Losses if Indemnitee was or is or becomes a party to or participant in, or is threatened to be made a party to or participant in, any Claim by reason of or arising in part out of an Indemnifiable Event, including, without limitation, Claims brought by or in the right of the Company, Claims brought by third parties, and Claims in which the Indemnitee is solely a witness.

4. Advancement of Expenses. Indemnitee shall have the right to advancement by the Company, prior to the final disposition of any Claim by final adjudication to which there are no further rights of appeal, of any and all Expenses actually and reasonably paid or incurred by Indemnitee in connection with any Claim arising out of an Indemnifiable Event. Indemnitee's right to such advancement is not subject to the satisfaction of any standard of conduct. Without limiting the generality or effect of the foregoing, within ten (10) days after any request by Indemnitee, the Company shall, in accordance with such request, (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. In connection with any request for Expense Advances, Indemnitee shall not be required to provide any documentation or information to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. In connection with any request for Expense Advances, Indemnitee shall execute and deliver to the Company an undertaking (which shall be accepted without reference to Indemnitee's ability to repay the Expense Advances) to repay any amounts paid, advanced, or reimbursed by the Company for such Expenses to the extent that it is ultimately determined, following the final disposition of such Claim, that Indemnitee is not entitled to indemnification hereunder. Indemnitee's obligation to reimburse the Company for Expense Advances shall be unsecured and no interest shall be charged thereon.

5. Indemnification for Expenses in Enforcing Rights. To the fullest extent allowable under applicable law, the Company shall also indemnify against, and, if requested by Indemnitee, shall advance to Indemnitee subject to and in accordance with Section 4, any Expenses actually and reasonably paid or incurred by Indemnitee in connection with any action or proceeding by Indemnitee for (a) indemnification or reimbursement or advance payment of Expenses by the Company under any provision of this Agreement, or under any other agreement or provision of the Constituent Documents now or hereafter in effect relating to Claims relating to Indemnifiable Events, and/or (b) recovery under any directors' and officers' liability insurance policies maintained by the Company. However, in the event that Indemnitee is ultimately determined not to be entitled to such indemnification or insurance recovery, as the case may be, then all amounts advanced under this Section 5 shall be repaid. Indemnitee shall be required to reimburse the Company in the event that a final judicial determination is made that such action brought by Indemnitee was frivolous or not made in good faith.

6. Partial Indemnity. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for a portion of any Losses in respect of a Claim related to an Indemnifiable Event but not for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

7. Notification and Defense of Claims.

(a) Notification of Claims. Indemnitee shall notify the Company in writing as soon as practicable of any Claim which could relate to an Indemnifiable Event or for which Indemnitee could seek Expense Advances, including a brief description (based upon information then available to Indemnitee) of the nature of, and the facts underlying, such Claim. The failure by Indemnitee to timely notify the Company hereunder shall not relieve the Company from any liability hereunder except that the Company shall not be liable to indemnify Indemnitee under this Agreement with respect to any judicial award in a Claim related to an Indemnifiable Event if the Company was not given a reasonable and timely opportunity to participate at its expense in the defense of such action.

(b) Defense of Claims. The Company shall be entitled to participate in the defense of any Claim relating to an Indemnifiable Event at its own expense and, except as otherwise provided below, to the extent the Company so wishes, it may assume the defense thereof with counsel reasonably satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense of any such Claim, the Company shall not be liable to Indemnitee under this Agreement or otherwise for any Expenses subsequently directly incurred by Indemnitee in connection with Indemnitee's defense of such Claim other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ its own legal counsel in such Claim, but all Expenses related to such counsel incurred after notice from the Company of its assumption of the defense shall be at Indemnitee's own expense; provided, however, that if (i) Indemnitee's employment of its own legal counsel has been authorized by the Company, (ii) Indemnitee has reasonably determined that there may be a conflict of interest between Indemnitee and the Company in the defense of such Claim, (iii) after a Change in Control, Indemnitee's employment of its own counsel has been approved by the Independent Counsel or (iv) the Company shall not in fact have employed counsel to assume the defense of such Claim, then Indemnitee shall be entitled to retain its own separate counsel (but not more than one law firm plus, if applicable, local counsel in respect of any such Claim) and all Expenses related to such separate counsel shall be borne by the Company.

8. Procedure upon Application for Indemnification. In order to obtain indemnification pursuant to this Agreement, Indemnitee shall submit to the Company a written request therefor, including in such request such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Claim. Indemnification shall be made insofar as the Company determines Indemnitee is entitled to indemnification in accordance with Section 9 below.

9. Determination of Right to Indemnification.

(a) Mandatory Indemnification; Indemnification as a Witness.

(i) To the extent that Indemnitee shall have been successful on the merits or otherwise in defense of any Claim relating to an Indemnifiable Event or any portion thereof or in defense of any issue or matter therein, including without limitation dismissal without prejudice, Indemnitee shall be indemnified against all Losses relating to such Claim in accordance with Section 3 to the fullest extent allowable by law.

(ii) To the extent that Indemnitee's involvement in a Claim relating to an Indemnifiable Event is to prepare to serve and serve as a witness, and not as a party, the Indemnitee shall be indemnified against all Losses incurred in connection therewith to the fullest extent allowable by law.

(b) Standard of Conduct. To the extent that the provisions of Section 9(a) are inapplicable to a Claim related to an Indemnifiable Event that shall have been finally disposed of, any determination of whether Indemnitee has satisfied any applicable standard of conduct under Delaware law that is a legally required condition to indemnification of Indemnitee hereunder against Losses relating to such Claim and any determination that Expense Advances must be repaid to the Company (a "**Standard of Conduct Determination**") shall be made as follows:

(i) if no Change in Control has occurred, (A) by a majority vote of the Disinterested Directors, even if less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum or (C) if there are no such Disinterested Directors, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee; and

(ii) if a Change in Control shall have occurred, (A) if the Indemnitee so requests in writing, by a majority vote of the Disinterested Directors, even if less than a quorum of the Board or (B) otherwise, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee.

The Company shall indemnify and hold harmless Indemnitee against and, if requested by Indemnitee, shall reimburse Indemnitee for, or advance to Indemnitee, within ten (10) days of such request, any and all Expenses incurred by Indemnitee in cooperating with the person or persons making such Standard of Conduct Determination.

(c) Making the Standard of Conduct Determination. The Company shall use its reasonable best efforts to cause any Standard of Conduct Determination required under Section 9(b) to be made as promptly as practicable. If the person or persons designated to make the Standard of Conduct Determination under Section 9(b) shall not have made a determination within 30 days after the later of (A) receipt by the Company of a written request from Indemnitee for indemnification pursuant to Section 8 (the date of such receipt being the "**Notification Date**") and (B) the selection of an Independent Counsel, if such determination is to be made by Independent Counsel, then Indemnitee shall be deemed to have satisfied the applicable standard of conduct; provided that such 30-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making such determination in good faith requires such additional time to obtain or evaluate information relating thereto. Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of any Claim.

(d) Payment of Indemnification. If, in regard to any Losses:

(i) Indemnitee shall be entitled to indemnification pursuant to Section 9(a);

(ii) no Standard Conduct Determination is legally required as a condition to indemnification of Indemnitee hereunder; or

(iii) Indemnitee has been determined or deemed pursuant to Section 9(b) or Section 9(c) to have satisfied the Standard of Conduct Determination,

then the Company shall pay to Indemnitee, within five (5) days after the later of (A) the Notification Date or (B) the earliest date on which the applicable criterion specified in clause (i), (ii) or (iii) is satisfied, an amount equal to such Losses.

(e) Selection of Independent Counsel for Standard of Conduct Determination. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9.1(b)(i), the Independent Counsel shall be selected by the Board of Directors, and the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9.1(b)(ii), the Independent Counsel shall be selected by Indemnitee, and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, Indemnitee or the Company, as applicable, may, within three (3) days after receiving written notice of selection from the other, deliver to the other a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not satisfy the criteria set forth in the definition of "Independent Counsel" in Section 1(i), and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person or firm so selected shall act as Independent Counsel. If such written objection is properly and timely made and substantiated, (i) the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit; and (ii) the non-objecting party may, at its option, select an alternative Independent Counsel and give written notice to the other party advising such other party of the identity of the alternative Independent Counsel so selected, in which case the provisions of the two immediately preceding sentences, the introductory clause of this sentence and numbered clause (i) of this sentence shall apply to such subsequent selection and notice. If applicable, the provisions of clause (ii) of the immediately preceding sentence shall apply to successive alternative selections. If no Independent Counsel that is permitted under the foregoing provisions of this Section 9(e) to make the Standard of Conduct Determination shall have been selected within twenty (20) days after the Company gives its initial notice pursuant to the first sentence of this Section 9(e) or Indemnitee gives its initial notice pursuant to the second sentence of this Section 9(e), as the case may be, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware ("**Delaware Court**") to resolve any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or to appoint as Independent Counsel a person to be selected by the Court or such other person as the Court shall designate, and the person or firm with respect to whom all objections are so resolved or the person or firm so appointed will act as Independent Counsel. In all events, the Company shall pay all of the reasonable fees and expenses of the Independent Counsel incurred in connection with the Independent Counsel's determination pursuant to Section 9(b).

(f) Presumptions and Defenses.

(i) Indemnitee's Entitlement to Indemnification. In making any Standard of Conduct Determination, the person or persons making such determination shall presume that Indemnitee has satisfied the applicable standard of conduct and is entitled to indemnification, and the Company shall have the burden of proof to overcome that presumption and establish that Indemnitee is not so entitled. Any Standard of Conduct Determination that is adverse to Indemnitee may be challenged by the Indemnitee in the Delaware Court. No determination by the Company (including by its directors or any Independent Counsel) that Indemnitee has not satisfied any applicable standard of conduct may be used as a defense to any legal proceedings brought by Indemnitee to secure indemnification or reimbursement or advance payment of Expenses by the Company hereunder or create a presumption that Indemnitee has not met any applicable standard of conduct.

(ii) Reliance as a Safe Harbor. For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company if Indemnitee's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports or statements furnished to Indemnitee by the officers or employees of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other Person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any director, officer, agent or employee of the Company shall not be imputed to Indemnitee for purposes of determining the right to indemnity hereunder.

(iii) No Other Presumptions. For purposes of this Agreement, the termination of any Claim by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere or its equivalent, will not create a presumption that Indemnitee did not meet any applicable standard of conduct or have any particular belief, or that indemnification hereunder is otherwise not permitted.

(iv) Defense to Indemnification and Burden of Proof. It shall be a defense to any action brought by Indemnitee against the Company to enforce this Agreement (other than an action brought to enforce a claim for Losses incurred in defending against a Claim related to an Indemnifiable Event in advance of its final disposition) that it is not permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed. In connection with any such action or any related Standard of Conduct Determination, the burden of proving such a defense or that the Indemnitee did not satisfy the applicable standard of conduct shall be on the Company.

(v) Resolution of Claims. The Company acknowledges that a settlement or other disposition short of final judgment may be successful on the merits or otherwise for purposes of Section 9.1(a)(i) if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any Claim relating to an Indemnifiable Event to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with our without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise for purposes of Section 9.1(a)(i). The Company shall have the burden of proof to overcome this presumption.

10. Exclusions from Indemnification. Notwithstanding anything in this Agreement to the contrary, the Company shall not be obligated to:

(a) indemnify or advance funds to Indemnitee for Expenses or Losses with respect to proceedings initiated by Indemnitee, including any proceedings against the Company or its directors, officers, employees or other indemnitees and not by way of defense, except:

(i) proceedings referenced in Section 5 above (unless a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous); or

(ii) where the Company has joined in or the Board has consented to the initiation of such proceedings.

(b) indemnify Indemnitee if a final decision by a court of competent jurisdiction determines that such indemnification is prohibited by applicable law.

(c) indemnify Indemnitee for the disgorgement of profits arising from the purchase or sale by Indemnitee of securities of the Company in violation of Section 16(b) of the Exchange Act, or any similar successor statute.

(d) indemnify or advance funds to Indemnitee for Indemnitee's reimbursement to the Company of any bonus or other incentive-based or equity-based compensation previously received by Indemnitee or payment of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements under Section 304 of the Sarbanes- Oxley Act of 2002 in connection with an accounting restatement of the Company or the payment to the Company of profits arising from the purchase or sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act).

11. Settlement of Claims. The Company shall not be liable to Indemnitee under this Agreement for any amounts paid in settlement of any threatened or pending Claim related to an Indemnifiable Event effected without the Company's prior written consent, which shall not be unreasonably withheld. The Company shall not settle any Claim related to an Indemnifiable Event in any manner that would impose any Losses on the Indemnitee without the Indemnitee's prior written consent.

12. Duration. All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is a director or officer of the Company (or is serving at the request of the Company as a director, officer, employee, member, trustee or agent of another Enterprise) and shall continue thereafter (i) so long as Indemnitee may be subject to any possible Claim relating to an Indemnifiable Event (including any rights of appeal thereto) and (ii) throughout the pendency of any proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret his or her rights under this Agreement, even if, in either case, he or she may have ceased to serve in such capacity at the time of any such Claim or proceeding.

13. Non-Exclusivity. The rights of Indemnitee hereunder will be in addition to any other rights Indemnitee may have under the Constituent Documents, the General Corporation Law of the State of Delaware, any other contract or otherwise (collectively, "**Other Indemnity Provisions**"); provided, however, that (a) to the extent that Indemnitee otherwise would have any greater right to indemnification under any Other Indemnity Provision, Indemnitee will be deemed to have such greater right hereunder and (b) to the extent that any change is made to any Other Indemnity Provision which permits any greater right to indemnification than that provided under this Agreement as of the date hereof, Indemnitee will be deemed to have such greater right hereunder.

14. Liability Insurance. For the duration of Indemnitee's service as a director and/or officer of the Company, and thereafter for so long as Indemnitee shall be subject to any pending Claim relating to an Indemnifiable Event, the Company shall use commercially reasonable efforts (taking into account the scope and amount of coverage available relative to the cost thereof) to continue to maintain in effect policies of directors' and officers' liability insurance providing coverage that is at least substantially comparable in scope and amount to that provided by the Company's current policies of directors' and officers' liability insurance. In all policies of directors' and officers' liability insurance maintained by the Company, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights and benefits as are provided to the most favorably insured of the Company's directors, if Indemnitee is a director, or of the Company's officers, if Indemnitee is an officer (and not a director) by such policy. Upon request, the Company will provide to Indemnitee copies of all directors' and officers' liability insurance applications, binders, policies, declarations, endorsements and other related materials.

15. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment to Indemnitee in respect of any Losses to the extent Indemnitee has otherwise received payment under any insurance policy, the Constituent Documents, Other Indemnity Provisions or otherwise of the amounts otherwise indemnifiable by the Company hereunder.

16. Subrogation. In the event of payment to Indemnitee under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee. Indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

17. Amendments. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part of the business and/or assets of the Company, by written agreement in form and substances satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

19. Severability. The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any portion thereof) are held by a court of competent jurisdiction to be invalid, illegal, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

20. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed, by postage prepaid, certified or registered mail:

(a) if to Indemnitee, to the address set forth on the signature page hereto.

(b) if to the Company, to: Purple Innovation, Inc. Attn:

Chief Legal Officer

4100 N. Chapel Ridge Road, Suite 200 Lehi,

Utah 84043

Notice of change of address shall be effective only when given in accordance with this Section. All notices complying with this Section shall be deemed to have been received on the date of hand delivery or on the third business day after mailing.

21. Governing Law and Forum. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware applicable to contracts made and to be performed in such state without giving effect to its principles of conflicts of laws. The Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States, (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (c) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, New Castle County as its agent in the State of Delaware for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware and (d) waive, and agree not to plead or make, any claim that the Delaware Court lacks venue or that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

22. Headings. The headings of the sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction or interpretation thereof.

23. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original, but all of which together shall constitute one and the same Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

PURPLE INNOVATION, INC.

By: /s/ Joseph B. Megibow
Name: Joseph B. Megibow
Title: Chief Executive Officer

INDEMNITEE

By: /s/ Paul Zepf
Name: Paul Zepf
Address: 10 Allison Lane
Thornwood, NY 10594

Exhibit 10.11

PURPLE INNOVATION, INC. 2020 SHORT-TERM CASH INCENTIVE PLAN

The Board of Directors (the "Board") of Purple Innovation, Inc., for itself and its subsidiaries (collectively "Company"), has adopted this Purple Innovation, Inc. 2020 Short-Term Cash Incentive Plan (the "Plan") as of November 4, 2020.

1. Purpose of Plan.

The purposes of the Plan are to provide clear focus on the Company's annual strategic objectives, to align compensation with Company performance, to motivate and reward personal performance, and to retain the talent needed to drive success.

2. Definitions.

(a) "Annual Base Salary" with respect to the Plan Year (defined below) shall mean the amount of salary paid by the Company to a Participant (defined below) during such Plan Year without reduction for any amounts withheld pursuant to participation in a qualified "cafeteria plan" under Section 125 of the Internal Revenue Code (the "Code") or a cash or deferred arrangement under Section 401(k) of the Code. Annual Base Salary shall not include any amount paid or accruing to a Participant under the Plan, equity awards granted under the Purple Innovation, Inc. 2017 Equity Incentive Plan or any other incentive plan, any extraordinary renumeration, expense allowance, imputed income or any other amounts deemed to be indirect compensation, and any contributions made by the Company to this Plan or any other plan or any other amounts which, in the discretion of the Board, are not considered to be Annual Base Salary for purposes of the Plan.

(b) "Bonus Amount" is the amount of cash to be awarded to a Participant under the Plan, and it is the product of (i) the Individual Allocation (defined below) of the Participant multiplied by (ii) the Bonus Fund Amount (defined below).

(c) "Bonus Fund Amount" is the amount of cash made available under the Plan from which each Bonus Amount is paid, and it is the product of (i) the Bonus Percentage (defined below) multiplied by (ii) the sum of the products of (A) each Participant's Annual Base Salary multiplied by (B) that Participant's Participation Percentage (defined below).

(d) "Bonus Percentage" is the percentage determined by the Company meeting certain Financial Targets (defined below). The Bonus Percentage will be a single percentage from and between 50% to 150% as determined on a pro rata basis for each of the two Financial Targets on a weighted basis. The percentage for each Financial Target will be determined in proportion to the actual amount achieved in between the Minimum Target Level and the Plan Target Level for the incremental percentage increase between 50% and 100%, or in proportion to the actual amount achieved in between the Plan Target Level and Maximum Target Level for the incremental percentage increase between 100% and 150%, as these terms are used in the definition of Financial Targets. In no event will the percentage for either Financial Target be below 50% or above 150%. The percentage for each Financial Target will be weighted at 60% for the Adjusted EBITDA Target and 40% for the Net Revenue Target, as these terms are used in the definition of Financial Targets, for a final combined Bonus Percentage. The Bonus Percentage is used to determine the amount of the Bonus Fund from which a Bonus Amount will be paid to each Participant.

(e) “Financial Targets” are the targets for net revenue (the “Net Revenue Target”) and adjusted EBITDA (the “Adjusted EBITDA Target”) set by the Company for the Plan Year and consist of the financial targets for each at plan (the “Plan Target Level”) and at minimum and maximum levels (respectively, the “Minimum Target Level” and “Maximum Target Level”). Both the Net Revenue Target and Adjusted EBITDA Target must be at or exceed the Minimum Target Level before any Bonus Amount will be determined and paid. For purposes of this definition, “Adjusted EBITDA” and “net revenue” shall mean the amounts reported by the Company in its Form 10-K, for the Plan Year. The Financial Targets shall account for 70% of each Participant’s Incentive Factor.

(f) “Incentive Points” are the points for each Participant that are the quotient of (i) the product of (A) the Participant’s Annual Base Salary multiplied by (B) the Participant’s Incentive Factor, divided by (ii) 1,000,000.

(g) “Incentive Factor” is for each Participant the sum of (i) the Corporate Factor and (ii) the Individual Factor applicable to that Participant. For purposes of this definition, “Corporate Factor” is 70% of the Participant’s Participation Percentage, and “Individual Factor” is 30% of the Participant’s Participation Percentage. The Individual Factor portion is subject to adjustment in accordance with the Participant’s Personal Performance Criteria (defined below).

(h) “Individual Allocation” is a percentage applicable to each Participant that is the quotient of (i) the Participant’s Incentive Points divided by (ii) the sum of all Participants’ Incentive Points. Each Participant’s Individual Allocation is multiplied by the Bonus Fund Amount to determine that Participant’s Bonus Amount to be paid under the Plan.

(i) “Participant” is the executive officer or other employee determined by the Board to be entitled to participate in the Plan and has the title of Senior Director, Vice President or Senior Vice President.

(j) “Participation Percentage” is the percentage set forth in the participation letter issued by the Company to each Participant determined to be eligible to participate in the Plan. A Participant who is employed during the first three quarters of the Plan Year will receive a prorated Participation Percentage in accordance with the amount of time employed during the Plan Year in relation to the entire Plan Year.

(k) “Payment Date” shall mean the date payments are made under the Plan which shall occur promptly following the filing of the Company’s audited financial results in Form 10-K for the Plan Year (defined below).

(l) “Personal Performance Criteria” for participants in the Plan may include one or more criteria as set by management and approved by the Board in their discretion to promote the Company’s key strategic objectives. The Personal Performance Criteria shall account for 30% of the Incentive Factor used to determined Incentive Points. Individual performance is ranked on a scale of 1 to 5. Those scoring a 1 or 2 will have this portion of the Incentive Factor reduced to 0%, meaning only the Corporate Factor will be included in the Incentive Factor and used to determine Incentive Points. Those scoring a 3 will retain the full 30%, meaning both the Corporate Factor and the Individual Factor will be included in the Incentive Factor used to determine Incentive Points. Those scoring a 4 or 5 receive an additional amount above the 30% Individual Factor portion of the Incentive Factor, with 30% multiplied by 1.25% for those scoring a 4 and multiplied by 1.5% for those scoring a 5, resulting in an incrementally higher Incentive Factor used to determine such Participant’s Incentive Points.

(m) “Plan Year” shall mean calendar year 2020 (January 1, 2020 – December 31, 2020). (If the Plan is extended to apply to subsequent years it shall mean the Company’s fiscal year if then different from the calendar year.)

3. Administration of the Plan.

The Plan is authorized by the Board and shall be administered by the Company under the oversight of the HR & Compensation Committee (“Committee”). All awards made under the Plan shall be approved by the Board. No member of the Board, while serving as such, shall be eligible for participation in the Plan as a director but shall be eligible as an employee if also employed by the Company. The Board shall have exclusive and final authority in all determinations and decisions affecting the Plan and its Participants. The Board shall also have sole authority to interpret the Plan, to establish and revise rules and regulations relating to the Plan, to delegate such responsibilities or duties as it deems desirable, and to make any other determination that it believes necessary or advisable for the administration of the Plan including, but not limited to: (i) approving the designation of eligible Participants; (ii) determining the Participation Percentage of each Participant; (iii) setting the Personal Performance Criteria for each Participant; and (iv) determining attainment of Personal Performance Criteria and other material terms.

4. Participation.

The Board may from time to time designate when a Participant ceases to participate in the Plan or return to participation in the Plan. Cash awards for new Participants during the Plan Year shall be pro-rated for employees who are hired and begin service before the fourth quarter of the Plan Year.

5. Performance Gate Trigger.

For the Plan to activate, the Company must achieve annual 2020 Financial Targets. If the Company does not reach both of the Financial Targets at the Minimum Target Level set forth therein, no cash awards will be paid to any of the Participants under the Plan. This does not preclude management from making individual discretionary bonuses to any person regardless of whether the person is selected to be a Participant under this Plan, subject to any needed Board approval.

6. Right to Payment.

Unless otherwise determined by the Board, in its sole discretion, a Participant shall have no right to receive a payment under the Plan unless the Participant remains in the employ of the Company through and including the Payment Date and remains in good standing with the Company during the Plan Year. No Participant shall have a right to more than the amount of an award approved by the Board.

7. Payment.

Subject to the other provisions of the Plan, payment to a Participant of a Bonus Amount will be made in cash on the Payment Date.

8. Miscellaneous Provisions.

(a) A Participant's rights and interests under the Plan are personal to the Participant and may not be sold, assigned, pledged, or otherwise transferred or encumbered in any manner, without the express approval of or exceptions allowed by the Committee in its discretion.

(b) No award will be earned on a pro rata basis for a termination (including for voluntary or involuntary separation, retirement, death or disability) of employment occurring during the Plan Year or before the Payment Date.

(c) Neither the Plan nor any action taken under the Plan shall be construed as giving any Participant any right to continued employment with the Company either before or after the Payment Date.

(d) The Company shall have the right to make such provisions as it deems necessary or appropriate to satisfy any obligations it may have to withhold income or other taxes incurred because of payments made under the Plan.

(e) The Board may at any time, and from time to time, alter, amend, suspend, or terminate the Plan in whole or in part prior to any payment under the Plan. Notwithstanding the foregoing, no such action may be taken that affects adversely any of the rights of a Participant, without such Participant's consent, to an award that has been paid under the Plan.

(f) The Company has the right to recoup or "clawback" awards paid under this Plan in accordance with the Company's Incentive Compensation Clawback Policy in effect at the time.

(g) The Plan shall apply only to the 2020 calendar year and shall not continue thereafter for subsequent years or from year to year, except as hereafter may be determined by the Board.

(h) In the absence of a written employment contract, the relationship between Participants and the Company is one of at-will employment. The Plan does not alter this relationship. The Plan will not supersede any specific employment contract obligations the Company may have with a Plan Participant.

EXHIBIT 31.1

CERTIFICATIONS

I, Joseph B. Megibow, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Purple Innovation, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

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

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

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

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

Dated: November 10, 2020

/s/ Joseph B. Megibow

Joseph B. Megibow, Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATIONS

I, Craig L. Phillips, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Purple Innovation, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

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

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

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

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

Dated: November 10, 2020

/s/ Craig L. Phillips

Craig L. Phillips, Chief Financial Officer
(Principal Financial and Accounting Officer)

EXHIBIT 32.1

CERTIFICATION

In connection with the Quarterly Report on Form 10-Q of Purple Innovation, Inc. (the "Corporation") for the quarter ended September 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Joseph B. Megibow, Chief Executive Officer of the Corporation, hereby certifies, pursuant to Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

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

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

Dated: November 10, 2020

/s/ Joseph B. Megibow

Joseph B. Megibow, Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 32.2

CERTIFICATION

In connection with the Quarterly Report on Form 10-Q of Purple Innovation, Inc. (the "Corporation") for the quarter ended September 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Craig L. Phillips, Chief Financial Officer of the Corporation, hereby certifies, pursuant to Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

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

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

Dated: November 10, 2020

/s/ Craig L/ Phillips

Craig L. Phillips, Chief Financial Officer
(Principal Financial and Accounting Officer)