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

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2018

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: 001-37474

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

Delaware	**56-2463152**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)
600 Technology Park Drive Billerica, MA	**01821**
(Address of principal executive offices)	(Zip Code)

(781) 345-9001
(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐ (Do not check if a smaller reporting company)	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 July 31, 2018, there were 63,172,541 shares of Common Stock, $0.00001 par value per share, outstanding.

Conformis, Inc.

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PART I - FINANCIAL INFORMATION

Item 1. FINANCIAL STATEMENTS

CONFORMIS, INC. AND SUBSIDIARIES

Consolidated Balance Sheets
(in thousands, except share and per share data)

	June 30, 2018	December 31, 2017
	(unaudited)	
Assets		
Current Assets		
Cash and cash equivalents	$ 29,122	$ 18,348
Investments	17,459	26,880
Accounts receivable, net	12,215	13,200
Inventories	9,060	9,184
Prepaid expenses and other current assets	2,039	2,246
Total current assets	69,895	69,858
Property and equipment, net	16,955	16,514
Other Assets		
Restricted cash	462	462
Intangible assets, net	159	210
Goodwill	6,731	6,731
Other long-term assets	23	23
Total assets	$ 94,225	$ 93,798
Liabilities and stockholders' equity		
Current liabilities		
Accounts payable	$ 5,995	$ 4,891
Accrued expenses	8,674	7,720
Deferred revenue	—	305
Total current liabilities	14,669	12,916
Other long-term liabilities	638	651
Deferred tax liabilities	28	37
Deferred revenue	—	4,014
Long-term debt, less debt issuance costs	29,721	29,667
Total liabilities	45,056	47,285
Commitments and contingencies	—	—
Stockholders' equity		
Preferred stock, $0.00001 par value:		
Authorized: 5,000,000 shares authorized at June 30, 2018 and December 31, 2017; no shares issued and outstanding as of June 30, 2018 and December 31, 2017	—	—
Common stock, $0.00001 par value:		
Authorized: 200,000,000 shares authorized at June 30, 2018 and December 31, 2017; 63,113,630 and 45,528,519 shares issued and outstanding at June 30, 2018 and December 31, 2017, respectively	1	—
Additional paid-in capital	509,790	486,570
Accumulated deficit	(458,360)	(436,821)
Accumulated other comprehensive loss	(2,262)	(3,236)
Total stockholders' equity	49,169	46,513
Total liabilities and stockholders' equity	$ 94,225	$ 93,798

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

CONFORMIS, INC. AND SUBSIDIARIES

Consolidated Statements of Operations
(unaudited)
(in thousands, except share and per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Revenue				
Product	$ 18,908	$ 18,046	$ 38,391	$ 38,425
Royalty	192	438	365	514
Total revenue	19,100	18,484	38,756	38,939
Cost of revenue	9,989	12,236	20,858	26,196
Gross profit	9,111	6,248	17,898	12,743
Operating expenses				
Sales and marketing	9,809	9,375	20,220	20,191
Research and development	4,850	4,335	9,544	8,895
General and administrative	5,802	6,444	11,942	14,902
Total operating expenses	20,461	20,154	41,706	43,988
Loss from operations	(11,350)	(13,906)	(23,808)	(31,245)
Other income and expenses				
Interest income	171	127	311	230
Interest expense	(766)	(372)	(1,501)	(679)
Foreign currency exchange transaction (loss)/income	(2,098)	2,117	(1,013)	2,507
Total other income (expenses), net	(2,693)	1,872	(2,203)	2,058
Loss before income taxes	(14,043)	(12,034)	(26,011)	(29,187)
Income tax provision	14	56	47	63
Net loss	$ (14,057)	$ (12,090)	$ (26,058)	$ (29,250)
Net loss per share - basic and diluted	$ (0.24)	$ (0.28)	$ (0.46)	$ (0.68)
Weighted average common shares outstanding - basic and diluted	59,763,259	43,193,065	57,208,114	43,035,672

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

CONFORMIS, INC. AND SUBSIDIARIES

Consolidated Statements of Comprehensive Loss
(unaudited)
(in thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Net loss	$ (14,057)	$ (12,090)	$ (26,058)	$ (29,250)
Other comprehensive income (loss)				
Foreign currency translation adjustments	1,885	(1,926)	946	(2,280)
Change in unrealized gain (loss) on available-for-sale securities, net of tax	21	(9)	28	(18)
Comprehensive loss	$ (12,151)	$ (14,025)	$ (25,084)	$ (31,548)

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

CONFORMIS, INC. AND SUBSIDIARIES

Consolidated Statements of Cash Flows
(unaudited)
(in thousands)

	Six Months Ended June 30,	
	2018	2017
Cash flows from operating activities:		
Net loss	$ (26,058)	$ (29,250)
Adjustments to reconcile net loss to net cash used by operating activities:		
Depreciation and amortization expense	1,953	1,748
Stock-based compensation expense	1,784	2,741
Provision for bad debts on trade receivables	(22)	(4)
Disposal of long term-assets	(2)	—
Non-cash interest expense	55	46
Amortization/accretion on investments	51	117
Deferred taxes	(17)	—
Changes in operating assets and liabilities:		
Accounts receivable	1,207	2,811
Inventories	124	(64)
Prepaid expenses and other assets	207	1,406
Accounts payable and accrued liabilities	2,066	(703)
Deferred royalty revenue	—	(153)
Other long-term liabilities	(12)	287
Net cash used in operating activities	(18,664)	(21,018)
Cash flows from investing activities:		
Acquisition of property and equipment	(2,342)	(3,032)
Decrease in restricted cash	—	(462)
Purchase of investments	(14,196)	(20,487)
Maturity of investments	23,595	16,625
Net cash provided/(used) in investing activities	7,057	(7,356)
Cash flows from financing activities:		
Proceeds from exercise of common stock options	112	2,015
Debt issuance costs	—	(434)
Proceeds from issuance of debt	—	30,000
Net proceeds from issuance of common stock	21,324	1,023
Net cash provided by financing activities	21,436	32,604
Foreign exchange effect on cash and cash equivalents	945	(2,280)
Increase in cash and cash equivalents	10,774	1,950
Cash and cash equivalents, beginning of period	18,348	37,257
Cash and cash equivalents, end of period	$ 29,122	$ 39,207
Supplemental information:		
Cash paid for interest	1,234	368

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

Note A—Organization and Basis of Presentation

Conformis, Inc. and its subsidiaries (the “Company”) is a medical technology company that uses its proprietary iFit Image-to-Implant technology platform to develop, manufacture and sell joint replacement implants that are individually sized and shaped, which the Company refers to as customized, to fit each patient’s unique anatomy. The Company’s proprietary iFit® technology platform is potentially applicable to all major joints. The Company offers a broad line of customized knee implants designed to restore the natural shape of a patient’s knee.

The Company was incorporated in Delaware and commenced operations in 2004. The Company has its corporate offices in Billerica, Massachusetts.

These consolidated financial statements as of June 30, 2018 and for the three and six months ended June 30, 2018 and 2017, and related interim information contained within the notes to the Consolidated Financial Statements, have been prepared assuming that the Company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business.

Liquidity and operations

Since the Company’s inception in June 2004, it has financed its operations primarily through private placements of preferred stock, its initial public offering in July 2015, bank debt and convertible debt financings, equity financings, equipment purchase loans, and product revenue beginning in 2007. The Company has not yet attained profitability and continues to incur operating losses and negative operating cash flows, which adversely impacts the Company's ability to continue as a going concern. At June 30, 2018, the Company had an accumulated deficit of $458.4 million and cash and cash equivalents, and investments of $46.6 million, and $0.5 million in restricted cash allocated to lease deposits.

On January 6, 2017, the Company entered into a senior secured $50 million loan and security agreement (the "2017 Secured Loan Agreement") with Oxford Finance LLC ("Oxford"). Through the 2017 Secured Loan Agreement, the Company accessed the initial $15 million of borrowings at closing (the "Term A Loan"), and an additional $15 million of borrowings on June 30, 2017 (the "Term B Loan"), The Company also had access to, but did not draw, an additional $20 million of borrowings, at its option, through June 2018, subject to the satisfaction of certain revenue milestones and customary drawdown conditions, which the Company did not satisfy as of the end of June 2018. On July 31, 2018, the Company and Oxford entered into an amendment (the “Amendment”) to the 2017 Secured Loan Agreement. See "Note J-Debt and Notes Payable" for additional information on the 2017 Secured Loan Agreement and the Amendment.

In January 2017, the Company filed a shelf registration statement on Form S-3, which was declared effective by the SEC on May 9, 2017 (the "Shelf Registration Statement"). The Shelf Registration Statement allows the Company to sell from time to time up to $200 million of common stock, preferred stock, debt securities, warrants, or units comprised of any combination of these securities, for its own account in one or more offerings. On May 10, 2017, the Company filed with the SEC a prospectus supplement (the “Prospectus Supplement”), for the sale and issuance of up to $50 million of its common stock and entered into a Distribution Agreement with Canaccord Genuity Inc. (“Canaccord”), pursuant to which Canaccord agreed to sell shares of the Company's common stock from time to time, as our agent, in an “at-the-market” offering ("ATM") as defined in Rule 415 promulgated under the U.S. Securities Act of 1933, as amended. The Company is not obligated to sell any shares under the Distribution Agreement. As of June 30, 2018, the Company has sold 228,946 shares under the Distribution Agreement resulting in net proceeds of $1.0 million.

On January 29, 2018, the Company closed an offering of its common stock pursuant to the Shelf Registration Statement and issued and sold 15,333,333 shares of its common stock (including 2,000,000 shares of common stock issued in connection with the exercise in full by the underwriters of their over-allotment option) at a public offering price of $1.50 per share, for aggregate net proceeds of approximately $21.3 million. The Company intends to use the net proceeds of the offering of the shares for general corporate purposes, which may include

research and development costs, sales and marketing costs, clinical studies, manufacturing development, the acquisition or licensing of other businesses or technologies, repayment and refinancing of debt, including the Company's secured term loan facility, working capital and capital expenditures.

The Company anticipates that its principal sources of funds in the future will be revenue generated from the sale of its products, potential future capital raises through the issuance of equity or other securities, and revenue that may be generated in connection with licensing its intellectual property.

The Company expects that its existing cash and cash equivalents as of June 30, 2018, including borrowings made under its 2017 Secured Loan Agreement, coupled with the $21.3 million of net proceeds from the 2018 Common Stock Offering, and anticipated revenue from operations, will enable the Company to fund its operating expenses and capital expenditure requirements and pay its debt service as it becomes due for at least the next 12 months from the date of filing. Management has based this expectation on assumptions that may prove to be wrong, such as the revenue that it expects to generate from the sale of its products and the gross profit the Company expects to generate from that revenue, and it could use its capital resources sooner than expected. In the event the Company's resources are not sufficient to fund its operations, the Company may need to engage in equity or debt financings to secure additional funds. The Company may not be able to obtain additional financing on terms favorable to the Company, or at all.

Basis of presentation and use of estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenue and expenses during the reporting periods. The most significant estimates used in these consolidated financial statements include revenue recognition, accounts receivable valuation, inventory reserves, goodwill valuation, intangible valuation, purchase accounting, impairment assessments, equity instruments, stock compensation, income tax reserves and related allowances, and the lives of property and equipment. Actual results may differ from those estimates. The interim financial statements should be read in conjunction with the audited financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2017.

Unaudited Interim Financial Information

The accompanying Interim Consolidated Financial Statements as of June 30, 2018 and for the three and six months ended June 30, 2018 and 2017, and related interim information contained within the notes to the Consolidated Financial Statements are unaudited. These unaudited interim consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States, or U.S. GAAP. In management's opinion, the unaudited interim consolidated financial statements have been prepared on the same basis as the audited financial statements and include all adjustments (including normal recurring adjustments) necessary for the fair presentation of the Company's financial position as of June 30, 2018, results of operations for the three and six months ended June 30, 2018 and 2017, and cash flows for the six months ended June 30, 2018 and 2017. The results for the three and six months ended June 30, 2018 are not necessarily indicative of the results expected for the full year or any interim period.

Note B—Summary of Significant Accounting Policies

Our financial results are affected by the selection and application of accounting policies and methods. Except for the adoption of ASU 2014-9 "Revenue from Contracts with Customers" ("Topic 606" or "ASC 606") described below in "Revenue Recognition", there were no material changes in the six months ended June 30, 2018 to the application of significant accounting policies and estimates as described in our audited consolidated financial statements for the year ended December 31, 2017.

Concentrations of credit risk and other risks and uncertainties

Financial instruments that subject the Company to credit risk primarily consist of cash, cash equivalents, and accounts receivable. The Company maintains the majority of its cash with accredited financial institutions.

The Company and its contract manufacturers rely on sole source suppliers and service providers for certain components. There can be no assurance that a shortage or stoppage of shipments of the materials or components that the Company purchases will not result in a delay in production or adversely affect the Company's business. On an on-going basis, the Company validates alternate suppliers relative to certain key components as needed.

For the three and six months ended June 30, 2018 and 2017, no customer represented greater than 10% of revenue. There were no customers that represented greater than 10% of total gross receivable balance as of June 30, 2018 or December 31, 2017.

Principles of consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries including ImaTx, Inc. ("ImaTx"), ConforMIS Europe GmbH, ConforMIS UK Limited and ConforMIS Hong Kong Limited. All intercompany balances and transactions have been eliminated in consolidation.

Cash and cash equivalents

The Company considers all highly liquid investment instruments with original maturities of 90 days or less when purchased, to be cash equivalents. The Company's cash equivalents consist of demand deposits, money market accounts, and repurchase agreements on deposit with certain financial institutions, in addition to cash deposits in excess of federally insured limits. Demand deposits are carried at cost which approximates their fair value. Money market accounts are carried at fair value based upon level 1 inputs. Repurchase agreements are valued using level 2 inputs. See "Note C-Fair Value Measurements" below. The associated risk of concentration is mitigated by banking with credit worthy financial institutions. The Company had $2.1 million and $2.2 million as of June 30, 2018 and December 31, 2017, respectively, held in foreign bank accounts that are not federally insured. In addition, the Company has recorded restricted cash of $0.5 million as of June 30, 2018 and December 31, 2017. Restricted cash consisted of security provided for lease obligations.

Investment securities

The Company classifies its investment securities as available-for-sale. Those investments with maturities less than 12 months at the date of purchase are considered short-term investments. Those investments with maturities greater than 12 months at the date of purchase are considered long-term investments. The Company's investment securities classified as available-for-sale are recorded at fair value based upon quoted market prices at period end. Unrealized gains and losses, deemed temporary in nature, are reported as a separate component of accumulated other comprehensive income (loss).

A decline in the fair value of any security below cost that is deemed other than temporary results in a charge to earnings and the corresponding establishment of a new cost basis for the security. Premiums (discounts) are amortized (accreted) over the life of the related security using the constant yield method. Dividend and interest income are recognized when earned and reported in other income. Realized gains and losses are included in earnings and are derived using the specific identification method for determining the cost of securities sold.

Fair value of financial instruments

Certain of the Company's financial instruments, including cash and cash equivalents (excluding money market funds), accounts receivable, accounts payable, accrued expenses and other liabilities are carried at cost, which approximates their fair value because of the short-term maturity. Based on borrowing rates currently available to the Company for loans with similar terms, the carrying value of the Company's long-term debt approximates its fair value.

Accounts receivable and allowance for doubtful accounts

Accounts receivable consist of billed and unbilled amounts due from medical facilities. Upon completion of a procedure, revenue is recognized and an unbilled receivable is recorded. Upon receipt of a purchase order number from a medical facility, a billed receivable is recorded and the unbilled receivable is reversed. As a result, the unbilled receivable balance fluctuates based on the timing of the Company's receipt of purchase order numbers from the medical facilities. In estimating whether accounts receivable can be collected, the Company performs evaluations of customers and continuously monitors collections and payments and estimates an allowance for doubtful accounts based on the aging of the underlying invoices, collections experience to date and any specific collection issues that have been identified. The allowance for doubtful accounts is recorded in the period in which revenue is recorded or when collection risk is identified.

Inventories

Inventories consist of raw materials, work-in-process components and finished goods. Inventories are stated at the lower of cost, determined using the first-in first-out method, or market value. The Company regularly reviews its inventory quantities on hand and related cost and records a provision for any excess or obsolete inventory based on its estimated forecast of product demand and existing product configurations. The Company also reviews its inventory value to determine if it reflects the lower of cost or market, based on net realizable value. Appropriate consideration is given to inventory items sold at negative gross margin, purchase commitments and other factors in evaluating net realizable value. During the three and six months ended June 30, 2018, the Company recognized provisions in cost of revenue of $0.4 million and $0.9 million, respectively, to adjust its inventory value to the lower of cost or market for estimated unused product related to known and potential cancelled cases, which is included in cost of revenue. During the three and six months ended June 30, 2017, $1.1 million and $1.6 million, respectively, was recognized in cost of revenue for estimated unused product.

Property and equipment

Property and equipment is stated at cost less accumulated depreciation and is depreciated using the straight-line method over the estimated useful lives of the respective assets. Leasehold improvements are amortized over their useful life or the life of the lease, whichever is shorter. Assets capitalized under capital leases are amortized in accordance with the respective class of assets and the amortization is included with depreciation expense. Maintenance and repair costs are expensed as incurred.

Business combinations and purchase accounting

The Company includes the results of operations of the businesses that it acquires as of the applicable acquisition date. The purchase price of the acquisition is allocated to the assets acquired and liabilities assumed based on their estimated fair values. The excess of the purchase price over the fair values of these identifiable assets and liabilities is recorded as goodwill. Acquisition-related expenses are recognized separately from the business combination and are expensed as incurred.

On August 9, 2017, the Company completed the purchase of certain assets and assumed certain liabilities of Broad Peak Manufacturing, LLC ("BPM"). The Company completed the BPM purchase price allocation. Of the total purchase price, approximately $2.2 million related to earn out provisions tied to certain employee retention by the Company and achieving certain cost targets that was paid into an escrow account. An additional $0.7 million could be earned by BPM if the actual cost targets are exceeded. Alternatively, the earn out provisions could be paid back to the Company if the employee retention and cost targets are not achieved. The Company's best estimate of the range of possibilities at the time of the acquisition was that none of the consideration related to the employee retention will be returned and that less than $0.1 million of additional consideration will be earned as a result of exceeding the cost targets. For the six months ended June 30, 2018, the Company's estimate of contingent consideration did not require an adjustment to the variable consideration.

Intangibles and other long-lived assets

Intangible assets consist of developed technology and a favorable lease asset from the Company's acquisition of BPM in August 2017. Intangible assets are carried at cost less accumulated amortization. The Company tests impairment of long-lived assets when events or changes in circumstances indicate that the assets might be impaired. For assets with determinable useful lives, amortization is computed using the straight-line method over the estimated economic lives of the respective intangible assets. Furthermore, periodically the Company assesses whether long-lived assets, including intangible assets, should be tested for recoverability

whenever events or circumstances indicate that their carrying value may not be recoverable. The amount of impairment, if any, is measured based on fair value, which is determined using estimated undiscounted cash flows to be generated from such assets or group of assets. If the cash flow estimates or the significant operating assumptions upon which they are based change in the future, the Company may be required to record impairment charges. During the three and six months ended June 30, 2018 and 2017, no such impairment charges were recognized.

Goodwill

Goodwill relates to amounts that arose in connection with the acquisition of ImaTx, Inc. in 2009 and the acquisition of BPM in August 2017. The Company tests goodwill at least annually for impairment, or more frequently when events or changes in circumstances indicate that the assets may be impaired. This impairment test is performed annually during the fourth quarter at the reporting unit level. Goodwill may be considered impaired if the carrying value of the reporting unit, including goodwill, exceeds the reporting unit's fair value. The Company is comprised of one reporting unit. When testing goodwill for impairment, the Company first assesses the qualitative factors to determine whether it is more likely than not that the fair value of its reporting unit is less than its carrying amount. This qualitative analysis is used as a basis for determining whether it is necessary to perform the one-step goodwill impairment analysis. If the Company determines that it is more likely than not that its fair value is less than its carrying amount, then the one-step goodwill impairment test will be performed. If the one-step approach is performed, the Company will estimate fair value of the reporting unit using the market approach to compare the Company's market capitalization with the carrying amount of its net assets on the date of the test, since the Company only has one reporting unit. An impairment of goodwill is recognized when the carrying amount exceeds the fair value. During the Company's qualitative analysis indicated that a step one analysis is required to determine the fair value of the reporting unit for the period ended June 30, 2018. The Company used the market approach noting the reporting unit's fair value was substantially in excess of its carrying value.

Revenue recognition

Adoption of ASC Topic 606, Revenue from Contracts with Customers

The Company adopted ASU No. 2014-9, "Revenue from Contracts with Customers (ASC 606)" as of January 1, 2018. ASU 2014-9 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 core principle of the revenue model is that an entity recognizes revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In applying the revenue model to contracts within its scope, an entity identifies the contract(s) with a customer, identifies the performance obligations in the contract, determines the transaction price, allocates the transaction price to the performance obligations in the contract, and recognizes revenue when (or as) the entity satisfies a performance obligation.

Based on the Company's assessment, generally revenue recognition from the sale of its products to customers effectively remains unaffected by the adoption of ASC 606. The assessment of the royalty revenue associated with the Company's 2015 license agreements previously entered into with Wright Medical Group Inc. and MicroPort Orthopedics, Inc. was affected by the adoption of ASC 606. Previously, under ASC 605, the Company recognized an initial $5.1 million, in aggregate, as deferred royalty revenue under these agreements, to be recognized ratably through 2031. The Company's analysis of these contracts indicated that under ASC 606 the licenses are functional and thus revenue would have been recognized in full on the execution date. Further the on-going royalty from MicroPort was previously recognized as royalty revenue upon receipt of payment. Under ASC 606, royalty is recognized in the period the sale occurred. The Company elected to apply the adoption of ASU 2014-09 using the modified retrospective method for contracts that were not complete as of December 31, 2017, resulting in an adjustment to the 2018 opening balance of accumulated deficit to recognize the deferred royalty revenue immediately. Comparative information has not been restated and continues to be reported under the accounting policy in effect for those periods, including ASC 605, Revenue Recognition. For more information about revenue recognition prior to January 1, 2018, refer to "Note B - Summary of Significant Accounting Policies-Revenue recognition" in the Company's Annual Report on Form 10-K for the year ended December 31, 2017.

The following table summarizes the balance sheet adjustments upon adoption of ASC 606 (in thousands):

	As Reported December 31, 2017	Balance at January 1, 2018	ASC 606 Adjustment
Current Assets			
Accounts receivable, net	$ 13,200	$ 13,400	$ 200 (1)
Current liabilities			
Deferred revenue	305	—	(305) (2)
Long-term liabilities			
Deferred revenue	4,014	—	(4,014) (2)
Stockholders’ equity			
Accumulated deficit	(436,821)	(432,302)	4,519 (1),(2)

(1) MicroPort sales-based royalty recognized in period earned under Topic 606, previously recognized when cash received and amortization of deferred royalty revenue.

(2) Wright Medical and MicroPort royalty deferred and recognized ratably through 2031 under Topic 605, recognized in full at contract inception date under Topic 606.

The following table summarizes the effect of ASC 606 on the Company's consolidated financial statements as of June 30, 2018 (in thousands, except per share amounts):

Balance Sheet as of June 30, 2018	As Reported	Pro-forma (1)	Effect
Current Assets			
Accounts receivable, net	$ 12,215	$ 12,037	$ 178 (2)
Current liabilities			
Deferred revenue	—	305	(305) (3)
Long-term Liabilities			
Deferred revenue	—	3,862	(3,862) (3)
Stockholders’ equity			
Accumulated deficit	(458,360)	(462,691)	4,345 (2),(3)

Statement of Operations for the three months ended June 30, 2018	As Reported	Pro-forma (1)	Effect
Revenue			
Royalty	$ 192	$ 263	$ (71) (2),(3)
Net loss	(14,057)	(13,986)	(71) (2),(3)
Net loss per share - basic and diluted	$ (0.24)	$ (0.23)	$ —

Statement of Operations for the six months ended June 30, 2018	As Reported	Pro-forma (1)	Effect
Royalty	$ 365	$ 539	$ (174) (2),(3)
Net loss	(26,058)	(25,884)	(174) (2),(3)
Net loss per share - basic and diluted	$ (0.46)	$ (0.45)	$ —

Cash Flows for the six months ended June 30, 2018	As Reported	Pro-forma (1)	Effect
Cash flows from operating activities:			
Net loss	$ (26,058)	$ (25,884)	$ (174) (2),(3)
Changes in operating assets and liabilities	(18,664)	(18,838)	174 (2),(3)

(1) Pro-forma balances without adoption of ASC 606.

(2) MicroPort sales-based royalty recognized in period earned under Topic 606, previously recognized when cash received and amortization of deferred royalty revenue.

(3) Wright Medical and MicroPort royalty deferred and recognized ratably through 2031 under Topic 605, recognized in full at contract inception date under Topic 606.

Revenue Recognition

Revenue is recognized when, or as, obligations under the terms of a contract are satisfied, which occurs when control of the promised products or services is transferred to customers. Revenue is measured as the amount of consideration the Company expects to receive in exchange for transferring products or services to a customer (“transaction price”). When determining the transaction price of a contract, an adjustment is made if payment from a customer occurs either significantly before or significantly after performance, resulting in a significant financing component. Applying the practical expedient in paragraph 606-10-32-18, the Company does not assess whether a significant financing component exists if the period between when the Company performs its obligations under the contract and when the customer pays is one year or less. None of the Company’s contracts contained a significant financing component as of June 30, 2018. Payment is typically due between 30 - 60 days from invoice.

To the extent that the transaction price includes variable consideration, such as prompt-pay discounts or rebates, the Company estimates the amount of variable consideration that should be included in the transaction price utilizing the expected value to which the Company expects to be entitled. Variable consideration is included in the transaction price if, in the Company’s judgment, it is probable that a significant future reversal of cumulative revenue under the contract will not occur. Actual amounts of consideration ultimately received may differ from the Company's estimates. Estimates of variable consideration and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of the Company’s anticipated performance and all information (historical, current and forecasted) that is reasonably available.

If the contract contains a single performance obligation, the entire transaction price is allocated to the single performance obligation. Contracts that contain multiple performance obligations require an allocation of the transaction price based on the estimated relative standalone selling prices of the promised products or services underlying each performance obligation. The Company determines standalone selling prices based on observable prices or a cost-plus margin approach when one is not available. Revenue is recognized at the time the related performance obligation is satisfied by transferring control of a promised good or service to a customer. The Company's performance obligations are satisfied at the same time, typically upon surgery, therefore, product revenue is recognized at a point in time upon completion of the surgery. Since the Company does not have contracts that extend beyond a duration of one year, there is no transaction price related to performance obligations that have not been satisfied.

Certain customer contracts include terms that allow the Company to bill for orders that are cancelled after the product is manufactured and could result in revenue recognition over time. However, the impact of adopting over time revenue recognition was deemed immaterial.

The Company does not have any contract assets or liabilities with customers. Unconditional rights to consideration are reported as receivables. Incidental items that are immaterial in the context of the contract are recognized as expense.

Disaggregation of Revenue

See "Note M-Segment and Geographic Data" for disaggregated product revenue by geography.

Variable Consideration

Revenues from product sales are recorded at the net sales price (transaction price), which includes estimates of variable consideration for which reserves are established and which result from rebates that are offered within contracts between the Company and some of its customers. The amount of variable consideration which is included in the transaction price may be constrained, and is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period.

The following table summarizes activity for rebate allowance reserve for the six months ended June 30, 2018 (in thousands):

	June 30, 2018
Beginning Balance	$ 119
Provision related to current period sales	92
Adjustment related to prior period sales	40
Payments or credits issued to customer	(58)
Ending Balance	$ 193

Costs to Obtain and Fulfill a Contract

The Company currently expenses commissions paid for obtaining product sales. Sales commissions are paid following the manufacture and implementation of the implant. Due to the period being less than one year, the Company will apply the practical expedient, whereby the Company recognizes the incremental costs of obtaining contracts as an expense when incurred if the amortization period of the assets that the Company otherwise would have recognized is one year or less. These costs are included in sales and marketing expense. Further, the Company incurs costs to buy, build, replenish, restock, sterilize and replace the reusable instrumentation trays associated with the sale of its products and services. The reusable instrument trays are not contract specific and are used for multiple contracts and customers, therefore does not meet the criteria to capitalize under ASC 606.

Shipping and handling costs

Shipping and handling activities prior to the transfer of control to the customer (e.g. when control transfers after delivery) are considered fulfillment activities, and not performance obligations. Amounts invoiced to customers for shipping and handling are classified as revenue. Shipping and handling costs incurred are included in general and administrative expense. Shipping and handling expense was $0.3 million three months ended June 30, 2018 and 2017, and $0.7 million for the six months ended June 30, 2018 and 2017.

Taxes collected from customers and remitted to government authorities

The Company's policy is to present taxes collected from customers and remitted to government authorities on a net basis and not to include tax amounts in revenue.

Research and development expense

The Company's research and development costs consist of engineering, product development, quality assurance, clinical and regulatory expense. These costs primarily relate to employee compensation, including salary, benefits and stock-based compensation. The Company also incurs costs related to consulting fees, materials and supplies, and marketing studies, including data management and associated travel expense. Research and development costs are expensed as incurred.

Advertising expense

Advertising costs are expensed as incurred, which are included in sales and marketing. Advertising expense was $0.1 million for the three months ended June 30, 2018 and 2017, and $0.3 million and for the six months ended June 30, 2018 and 2017.

Segment reporting

Operating segments are defined as components of an enterprise about which separate financial information is available and is evaluated on a regular basis by the chief operating decision-maker, or decision-making group, in deciding how to allocate resources to an individual segment and in assessing performance of the segment. The Company's chief operating decision-maker is its chief executive officer. The Company's chief executive officer reviews financial information presented on an aggregate basis for purposes of allocating resources and evaluating financial performance. The Company has one business segment and there are no segment managers who are held accountable for operations, operating results and plans for products or components below the aggregate Company level. Accordingly, in light of the Company's current product offerings, management has determined that the primary form of internal reporting is aligned with the offering of the Conformis customized joint replacement products and that the Company operates as one segment. See "Note M—Segment and Geographic Data".

Comprehensive loss

At June 30, 2018 and 2017, accumulated other comprehensive loss consists of foreign currency translation adjustments and changes in unrealized gain and loss of available-for-sale securities, net of tax. The following table summarizes accumulated beginning and ending balances for each item in Accumulated other comprehensive income (loss) (in thousands):

	Foreign currency translation adjustments	Change in unrealized gain (loss) on available-for-sale securities, net of tax	Accumulated other comprehensive income (loss)
Balance December 31, 2017	$ (3,203)	$ (33)	$ (3,236)
Change in period	946	28	974
Balance June 30, 2018	$ (2,257)	$ (5)	$ (2,262)

Foreign currency translation and transactions

The assets and liabilities of the Company's foreign operations are translated into U.S. dollars at current exchange rates at the balance sheet date, and income and expense items are translated at average rates of exchange prevailing during the quarter. Net translation gains and losses are recorded in Accumulated other comprehensive (loss) income. Gains and losses realized from transactions denominated in foreign currencies, including intercompany balances not of a long-term investment nature, are included in the Consolidated Statements of Operations.

Income taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the consolidated financial statement carrying amounts of existing assets and liabilities and their respective tax bases, operating losses and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized as income in the period that includes the enactment date.

In evaluating the need for a valuation allowance, the Company considers all reasonably available positive and negative evidence, including recent earnings, expectations of future taxable income and the character of that income. In estimating future taxable income, the Company relies upon assumptions and estimates of future activity including the reversal of temporary differences. Presently, the Company believes that a full valuation allowance is required to reduce deferred tax assets to the amount expected to be realized.

The tax benefit from an uncertain tax position is only recognized if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the consolidated financial statements from these positions are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution. The Company reviews its tax positions on an annual basis and more frequently as facts surrounding tax positions change. Based on these future events, the Company may recognize uncertain tax positions or reverse current uncertain tax positions, the impact of which would affect the consolidated financial statements.

The Company has operations in Germany. The operating results of German operations will be permanently reinvested in that jurisdiction. As a result, the Company has only provided for income taxes at local rates when required.

The Company is subject to U.S. federal, state, and foreign income taxes. The Company recorded a provision for income taxes of $14,000 and $56,000 for the three months ended June 30, 2018 and 2017, respectively, and $47,000 and $63,000 for the six months ended June 30, 2018 and 2017, respectively. The Company recognizes interest and penalties related to income taxes as a component of income tax expense. As of June 30, 2018 and 2017, a cumulative balance of $30,000 and $17,000 of interest and penalties have been accrued, respectively.

In December 2017, the SEC staff issued SAB 118 to address the application of GAAP in situations when a registrant does not have the necessary information available, prepared, or analyzed (including computations) in

reasonable detail to complete the accounting for certain income tax effects of H.R.1. The Company has recognized the provisional tax impacts related to deemed repatriated earnings and the revaluation of deferred tax assets and liabilities and included these amounts in its consolidated financial statements for the year ended December 31, 2017. The Company has an accumulated deficit from its foreign operations and does not have an associated liability from the repatriation tax on accumulated earnings in H.R.1. The ultimate impact to the Company may differ from these provisional amounts, possibly materially, due to, among other things, additional analysis, changes in interpretations and assumptions the Company has made, additional regulatory guidance that may be issued, and actions the Company may take as a result of H.R.1. The Company's accounting treatment is expected to be complete when the 2017 U.S. corporate income tax return is filed in the second half of 2018.

At June 30, 2018, the Company's foreign earnings, which have not been significant, have been retained indefinitely by foreign subsidiary companies for reinvestment. Upon repatriation of those earnings, in the form of dividends or otherwise, the Company could be subject to withholding taxes payable to the various foreign countries. At June 30, 2018, the Company has an accumulated E&P Deficit.

Medical device excise tax

The Company has been subject to the Health Care and Education Reconciliation Act of 2010 (the "Act"), which imposes a tax equal to 2.3% on the sales price of any taxable medical device by a medical device manufacturer, producer or importer of such device. Under the Act, a taxable medical device is any device defined in Section 201(h) of the Federal Food, Drug, and Cosmetic Act, intended for humans, which includes an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which meets certain requirements. The Consolidated Appropriations Act of 2016 includes a two-year moratorium on the medical device excise tax, which moratorium suspended taxes on the sale of a taxable medical device by the manufacturer, producer, or importer of the device during the period beginning on January 1, 2016 and ending on December 31, 2017. On January 22, 2018, legislation was passed that suspends the medical device excise tax for sales in 2018 and 2019. The tax is not scheduled to take effect again until sales on or after January 1, 2020. It is unclear at this time if the suspension will be further extended, and we are currently subject to the tax after December 31, 2019. As such, the Company did not incur medical device excise tax expense during the six months ended June 30, 2018 and 2017.

Stock-based compensation

The Company accounts for stock-based compensation in accordance with ASC 718, Stock Based Compensation. ASC 718 requires all stock-based payments to employees and consultants, including grants of stock options, to be recognized in the consolidated statements of operations based on their fair values. The Company uses the Black-Scholes option pricing model to determine the weighted-average fair value of options granted and recognizes the compensation expense of stock-based awards on a straight-line basis over the vesting period of the award.

The determination of the fair value of stock-based payment awards utilizing the Black-Scholes option pricing model is affected by the stock price, exercise price, and a number of assumptions, including expected volatility of the stock, expected life of the option, risk-free interest rate and expected dividends on the stock. The Company evaluates the assumptions used to value the awards at each grant date and if factors change and different assumptions are utilized, stock-based compensation expense may differ significantly from what has been recorded in the past. If there are any modifications or cancellations of the underlying unvested securities, the Company may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense.

Net loss per share

The Company calculates net loss per share in accordance with ASC 260, "Earnings per Share". Basic earnings per share ("EPS") is calculated by dividing the net income or loss for the period by the weighted average number of common shares outstanding for the period, without consideration for common stock equivalents. Diluted EPS is computed by dividing the net income or loss for the period by the weighted average number of common shares outstanding for the period and the weighted average number of dilutive common stock equivalents outstanding for the period determined using the treasury stock method.

The following table sets forth the computation of basic and diluted earnings per share attributable to stockholders (in thousands, except share and per share data):

(in thousands, except share and per share data)	Three Months Ended June 30, 2018	Three Months Ended June 30, 2017	Six Months Ended June 30, 2018	Six Months Ended June 30, 2017
Numerator:				
Numerator for basic and diluted loss per share:				
Net loss	$ (14,057)	$ (12,090)	$ (26,058)	$ (29,250)
Denominator:				
Denominator for basic loss per share:				
Weighted average shares	59,763,259	43,193,065	57,208,114	43,035,672
Basic loss per share attributable to Conformis, Inc. stockholders	$ (0.24)	$ (0.28)	$ (0.46)	$ (0.68)
Diluted loss per share attributable to Conformis, Inc. stockholders	$ (0.24)	$ (0.28)	$ (0.46)	$ (0.68)

The following table sets forth potential shares of common stock equivalents that are not included in the calculation of diluted net loss per share because to do so would be anti-dilutive as of the end of each period presented:

	Three Months Ended June 30, 2018	Three Months Ended June 30, 2017	Six Months Ended June 30, 2018	Six Months Ended June 30, 2017
Stock options and restricted stock awards	50,158	355,741	110,009	589,122

Recent accounting pronouncements

In June 2018, the FASB issued ASU No. 2018-07, "Improvements to Nonemployee Share-Based Payment Accounting." This ASU supersedes Subtopic 505-50, "Equity - Equity-Based Payments to Non-Employees" and expands on the scope of Topic 718, "Compensation - Stock Compensation", to include share-based payments issued to nonemployees for goods or services. This ASU is effective for fiscal years beginning after December 15, 2018, including interim periods within that fiscal year. Early adoption is permitted. The Company is currently evaluating the impact of this pronouncement on its consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, "Leases (Topic 842)." This ASU amends various aspects of existing guidance for leases and requires additional disclosures about leasing arrangements. It will require companies to recognize lease assets and lease liabilities by lessees for those leases classified as operating leases under GAAP. Topic 842 retains a distinction between finance leases and operating leases. The classification criteria for distinguishing between finance leases and operating leases are substantially similar to the classification criteria for distinguishing between capital leases and operating leases in the previous leases guidance. This ASU is effective for annual periods beginning after December 15, 2018, including interim periods within those fiscal years; earlier adoption is permitted. In the financial statements in which the ASU is first applied, leases shall be measured and recognized at the beginning of the earliest comparative period presented with an adjustment to equity. Practical expedients are available for election as a package and if applied consistently to all leases. The Company has began its assessment process to evaluate the impact on its consolidated financial statements and expects to adopt this pronouncement commencing in the first quarter of 2019.

Note C—Fair Value Measurements

The Fair Value Measurements topic of the FASB Codification establishes a framework for measuring fair value in accordance with US GAAP, clarifies the definition of fair value within that framework and expands disclosures about fair value measurements. This guidance requires disclosure regarding the manner in which fair value is determined for assets and liabilities and establishes a three-tiered value hierarchy into which these assets and liabilities must be grouped, based upon significant levels of inputs as follows:

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

Level 2—Observable inputs, other than Level 1 prices, such as quoted prices in active markets for similar assets and liabilities, quoted prices for identical or similar assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data.

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

The Company's investment policy is consistent with the definition of available-for-sale securities. All investments have been classified within Level 1 or Level 2 of the fair value hierarchy because of the sufficient observable inputs for revaluation. The Company's Level 1 cash and equivalents and investments are valued using quoted prices that are readily and regularly available in the active market. The Company's Level 2 investments are valued using third-party pricing sources based on observable inputs, such as quoted prices for similar assets at the measurement date; or other inputs that are observable, either directly or indirectly.

The following table summarizes, by major security type, the Company's assets that are measured at fair value on a recurring basis and are categorized using the fair value hierarchy and where they are classified on the Consolidated Balance Sheets (in thousands):

	June 30, 2018					
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Cash and cash equivalents	Short-term (1) investments
Cash	$ 14,936	$ —	$ —	$ 14,936	$ 14,936	$ —
Level 1 securities:						
Money market funds	12,195	—	—	12,195	12,195	—
U.S. treasury bonds	14,201	2	(1)	14,202	1,991	12,212
Level 2 securities:						
Commercial paper	1,249	—	—	1,249	—	1,249
Agency bond	4,004	—	(6)	3,998	—	3,998
Total	$ 46,585	$ 2	$ (7)	$ 46,580	$ 29,122	$ 17,459

	December 31, 2017					
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Cash and cash equivalents	Short-term (1) investments
Cash	$ 9,849	$ —	$ —	$ 9,849	$ 9,849	$ —
Level 1 securities:						
Money market funds	3,499	—	—	3,499	3,499	—
U.S. treasury bonds	9,243	—	(4)	9,239	—	9,239
Level 2 securities:						
Corporate bonds	4,935	—	(6)	4,929	—	4,929
Agency bonds	12,734	—	(22)	12,712	—	12,712
Repurchase agreement	5,000	—	—	5,000	5,000	—
Total	$ 45,260	$ —	$ (32)	$ 45,228	$ 18,348	$ 26,880

(1) Contractual maturity due within one year.

Note D—Accounts Receivable

Accounts receivable consisted of the following (in thousands):

	June 30, 2018	December 31, 2017
Total receivables	$ 12,698	$ 13,835
Allowance for doubtful accounts and returns	(483)	(635)
Accounts receivable, net	$ 12,215	$ 13,200

Accounts receivable included unbilled receivable of $2.0 million and $1.4 million at June 30, 2018 and December 31, 2017, respectively. Write-offs related to accounts receivable were approximately $39,000 and

$3,000 for the three months ended June 30, 2018 and 2017, respectively, and $65,000 and $11,000 for the six months ended June 30, 2018 and 2017, respectively.

Summary of allowance for doubtful accounts and returns activity was as follows (in thousands):

	June 30, 2018	December 31, 2017
Beginning balance	(635)	(681)
Provision for bad debts on trade receivables	20	15
Other allowances	67	(61)
Accounts receivable write offs	65	92
Ending balance	$ (483)	$ (635)

Note E—Inventories

Inventories consisted of the following (in thousands):

	June 30, 2018	December 31, 2017
Raw Material	$ 4,205	$ 2,905
Work in process	1,642	1,718
Finished goods	3,213	4,561
Total Inventories	$ 9,060	$ 9,184

Note F—Property and Equipment

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

	Estimated Useful Life (Years)	June 30, 2018	December 31, 2017
Equipment	5-7	$ 20,420	$ 19,331
Furniture and fixtures	5-7	955	955
Computer and software	3	8,453	7,877
Leasehold improvements	2-8	1,909	1,830
Reusable instruments	5	563	—
Total property and equipment		32,300	29,993
Accumulated depreciation		(15,345)	(13,479)
Property and equipment, net		$ 16,955	$ 16,514

During the period ended March 31, 2018, the Company substantially completed the reusable instrumentation tray design and commenced capitalization under ASC 360 "Property, Plant, and Equipment".

Depreciation expense related to property and equipment was $1.0 million and $0.8 million for the three months ended June 30, 2018 and 2017, respectively. Depreciation expense related to property and equipment was $1.9 million and $1.6 million for the six months ended June 30, 2018 and 2017, respectively.

Note G—Intangible Assets

The components of intangible assets consisted of the following (in thousands):

	Estimated Useful Life (Years)	June 30, 2018	December 31, 2017
Developed technology	10	$ 979	$ 979
Accumulated amortization		(832)	(783)
Developed technology, net		147	196
Acquired favorable lease	5	15	15
Accumulated amortization		(3)	(1)
Acquired favorable lease, net		12	14
Intangible assets, net		$ 159	$ 210

The Company recognized amortization expense of $24,000 and $62,000 for the three months ended June 30, 2018, and 2017, respectively, and $49,000 and $124,000 for the six months ended June 30, 2018 and 2017, respectively. The weighted-average remaining life of total amortizable intangible assets is 1.69 years for the developed technology and license agreements and favorable lease asset.

The estimated future aggregated amortization expense for intangible assets owned as of June 30, 2018 consisted of the following (in thousands):

	Amortization expense
2018 (remainder of the year)	$ 50
2019	101
2020	3
2021	3
2022	2
	$ 159

Note H—Accrued Expenses

Accrued expenses consisted of the following (in thousands):

	June 30, 2018	December 31, 2017
Accrued employee compensation	$ 4,325	$ 2,989
Deferred rent	124	115
Accrued legal expense	655	1,231
Accrued consulting expense	21	115
Accrued vendor charges	1,281	912
Accrued revenue share expense	891	968
Accrued clinical trial expense	195	196
Accrued other	1,182	1,194
	$ 8,674	$ 7,720

Note I—Commitments and Contingencies

Operating Leases - Real Estate

The Company maintains its corporate headquarters in a leased building located in Billerica, Massachusetts. The Company moved its corporate headquarters from Bedford, Massachusetts in April 2017. The Company maintains its manufacturing facilities in leased buildings located in Wilmington, Massachusetts and Wallingford, Connecticut.

The Billerica facility is leased under a long-term, non-cancellable lease that is scheduled to expire in October 2025.

The Company leases its Wilmington, Massachusetts facility under a long-term, non-cancellable lease that commenced in April 2015 and will expire in March 2022 (the "Wilmington Lease"). The Company also rents a satellite facility under short-term non-cancellable operating lease. The Company has a right to extend the term for one additional five-year period following termination of the lease in March 2022. The initial base rental rate for the additional space is $0.2 million annually, subject to 2% annual increases until the expiration of the initial term.

On August 9, 2017, the Company entered into a lease for 4,099 square feet of space in Wallingford, Connecticut which houses the Company's polishing and passivation processes. The lease term is five years with the option to extend for two additional years beyond the original term and an additional three years past the first extension term.

The future minimum rental payments under the Company’s non-cancellable operating leases for real estate as of June 30, 2018 were as follows (in thousands):

Year		Minimum lease Payments
2018 remainder of year	$	765
2019		1,558
2020		1,595
2021		1,633
2022		1,397
2023-2025		2,939
	$	9,887

Rent expense of $0.4 million and $0.6 million for the three months ended June 30, 2018 and 2017, respectively, and $0.8 million and $0.9 million for the six months ended June 30, 2018 and 2017, respectively, was charged to operations. The Company’s real estate operating lease agreements contain scheduled rent increases, which are being amortized over the terms of the agreements using the straight-line method. Deferred rent was $0.8 million as of June 30, 2018 and December 31, 2017. Deferred rent is included in accrued expenses and other long-term liabilities.

License and revenue share agreements

Revenue share agreements

The Company is party to revenue share agreements with certain past and present members of its scientific advisory board under which these advisors agreed to participate on a scientific advisory board and to assist with the development of the Company’s customized implant products and related intellectual property. These agreements provide that the Company will pay the advisor a specified percentage of the Company’s net revenue, ranging from 0.1% to 1.33%, with respect to the Company’s products on which the advisor made a technical contribution or, in some cases, products covered by one or more claims of one or more Company patents on which the advisor is a named inventor. The specific percentage is determined by reference to product classifications set forth in the agreement and is often tiered based on the level of net revenue collected by the Company on such product sales. The Company’s payment obligations under these agreements typically expire a fixed number of years after expiration or termination of the agreement or a fixed number of years after the first sale of a product, but in some cases expire on a product-by-product basis or expiration of the last to expire of the Company’s patents where the advisor is a named inventor that claims the applicable product.

Philipp Lang, M.D., the Company’s former Chief Executive Officer and former director, joined the Company’s scientific advisory board in 2004 prior to becoming an employee. The Company first entered into a revenue share agreement with Dr. Lang in 2008 when he became the Company’s Chief Executive Officer. In 2011, the Company entered into an amended and restated revenue share agreement with Dr. Lang. This agreement provides that the specified percentage of the Company’s net revenue payable to Dr. Lang ranges from 0.875% to 1.33% and applies to all of the Company’s current products, including the Company’s iUni, iDuo, iTotal CR,

iTotal PS, and Hip System products, as well as certain other knee, hip and shoulder replacement products and related instrumentation the Company may develop in the future. This agreement provides that the Company's payment obligations expire on a product-by-product basis on the last to expire of the Company's patents on which Dr. Lang is named an inventor that claim the applicable product and that these payment obligations survived the termination of Dr. Lang's employment with the Company. Pursuant to the terms of this revenue share agreement with Dr. Lang, the Company incurred revenue share expense of $243,000 and $231,000 for the three months ended June 30, 2018, and 2017, respectively, and $493,000 and $489,000 for the six months ended June 30, 2018 and 2017, respectively.

The Company incurred aggregate revenue share expense including all amounts payable under the Company's scientific advisory board and Dr. Lang's revenue share agreements of $0.9 million during the three months ended June 30, 2018, representing 4.7% of product revenue and $1.8 million during the six months ended June 30, 2018, representing 4.7% of product revenue, $0.9 million during the three months ended June 30, 2017, representing 4.9% of product revenue, and $1.9 million during the six months ended June 30, 2017, representing 4.8% of product revenue. Revenue share expense is included in research and development. See "Note K—Related Party Transactions" for further information regarding the Company's arrangement with Dr. Lang.

Other obligations

In the ordinary course of business, the Company is a party to certain non-cancellable contractual obligations typically related to product royalty and research and development. The Company accrues a liability for such matters when it is probable that future expenditures will be made and such expenditures can be reasonably estimated. There have been no contingent liabilities requiring accrual at June 30, 2018 or December 31, 2017.

Legal proceedings

In the ordinary course of the Company's business, the Company is subject to routine risk of litigation, claims and administrative proceedings on a variety of matters, including patent infringement, product liability, securities-related claims, and other claims in the United States and in other countries where the Company sells its products. An estimate of the possible loss or range of loss as a result of any of these matters cannot be made; however, management does not believe that these matters, individually or in the aggregate, are material to its financial condition, results of operations or cash flows.

On February 29, 2016, the Company filed a lawsuit against Smith & Nephew, Inc. ("Smith & Nephew") in the United States District Court for the District of Massachusetts Eastern Division, and the Company amended its complaint on June 13, 2016 (the "Smith & Nephew Lawsuit"). The Smith & Nephew Lawsuit alleges that Smith & Nephew's Visionaire® patient-specific instrumentation as well as the implants systems used in conjunction with the Visionaire instrumentation infringe nine of the Company's patents, and it requests, among other relief, monetary damages for willful infringement, enhanced damages and a permanent injunction.

On May 27, 2016, Smith & Nephew filed its answer and counterclaims in response to the Company's lawsuit, which it subsequently amended on July 22, 2016. Smith & Nephew denied that its Visionaire® patient-specific instrumentation as well as the implants systems used in conjunction with the Visionaire instrumentation infringe the patents asserted by the Company in the lawsuit. It also alleged two affirmative defenses: that the Company's asserted patents are invalid and that the Company is barred from relief under the doctrine of laches. In addition, Smith & Nephew asserted a series of counterclaims, including counterclaims seeking declaratory judgments that Smith & Nephew's accused products do not infringe the Company's patents and that the Company's patents are invalid. Smith & Nephew also alleged that Conformis infringes ten patents owned or exclusively licensed by Smith & Nephew: two of those patents Smith & Nephew alleged are infringed by the Company's iUni and iDuo products; three of those patents Smith & Nephew alleged are infringed by the Company's iTotal products; and five of those patents Smith & Nephew licenses from Kinamed, Inc. of Camarillo, California and alleged are infringed by the Company's iUni, iDuo and iTotal products. Due to Smith & Nephew's licensing arrangement with Kinamed, Kinamed was named as a party to the lawsuit. Smith & Nephew and Kinamed requested, among other relief, monetary damages for willful infringement, enhanced damages and a permanent injunction. On March 9, 2017, the Court entered a stipulation of dismissal by the parties that dismissed from the lawsuit eight patents asserted by Smith & Nephew, including the patents involving Kinamed, and two patents asserted by Conformis. With the dismissal of all claims involving Kinamed's patents, Kinamed is no longer a party to the lawsuit.

Between September 21, 2016 and March 1, 2017, Smith & Nephew filed sixteen petitions with the United States Patent & Trademark Office ("USPTO") requesting Inter Partes Review ("IPR") of the nine patents that the Company asserted against Smith & Nephew in the lawsuit. In its petitions, Smith & Nephew alleged that the Company's patents are obvious in light of certain prior art. As of October 31, 2017, the USPTO decided to institute IPR proceedings with respect to seven of the petitions; decided to deny the requests for IPR with respect to seven of the petitions; and, with respect to the remaining two petitions, decided to institute IPR proceedings for some of the subject patent claims and to deny the requests for the remaining subject patent claims ("Subject Patent Claims"). On April 24, 2018, the Supreme Court of the United States issued its ruling in SAS Institute, Inc. v. Iancu (the "SAS Decision") which held that the IPR proceedings cannot be instituted in part and denied in part. In response to the SAS Decision and guidance from the USPTO, the Patent Trial and Appeal Board ("PTAB") issued an order on April 27, 2018 including the Subject Patent Claims within the prior instituted IPR proceedings. In total, the USPTO instituted IPR proceedings for claims in six of the patents in the Smith & Nephew lawsuit (five patents that are currently asserted, and one of the patents that was voluntarily dismissed from the lawsuit), and denied the petitions for claims in three of the patents (two patents that are currently asserted and one of the patents that was voluntarily dismissed from the lawsuit). Smith & Nephew filed requests for rehearing of three of the petitions that were denied and the PTAB denied those requests. Smith & Nephew filed requests with the USPTO for reexamination of two of the patents for which IPR proceedings were not instituted and the USPTO granted those requests for reexamination.

Between December 18, 2017 and April 18, 2018, IPR hearings were held for the six patents for which IPR proceedings were instituted. On March 26, 2018, the USPTO issued its first ruling holding that our U.S. Patent No. 9,055,953 (the "'953 Patent") is invalid over prior art. On April 19, 2018, the USPTO issued its second ruling holding that our U.S. Patent No. 9,216,025 (the "'025 Patent") is invalid over prior art. On May 25, 2018, the Company filed a notice of appeal for the '953 Patent with the USPTO, and on June 7, 2018, the Company filed a notice of appeal for the '025 Patent with the USPTO. On June 19, 2018, the Company filed a motion to consolidate the appeals for the '953 and '025 Patents, which was granted on June 20, 2018. On June 11, 2018, the USPTO issued its third ruling holding that our U.S. Patent No. 7,981,158 (the "'158 Patent") is invalid over prior art. On June 12, 2018, the USPTO issued its fourth ruling holding that our U.S. Patent No. 8,551,169 (the "'169 Patent") is invalid over prior art. The '953 Patent is not part of the lawsuit having been voluntarily dismissed on March 9, 2017. The '025, '169 and '158 Patents are part of the lawsuit. The Company expects to receive rulings on the remaining IPR proceedings by February 7, 2019.

On January 27, 2017, Smith & Nephew filed a motion seeking a stay of the Smith & Nephew Lawsuit until any requested IPRs are resolved, and the Company filed an opposition to that motion. On April 27, 2017, the Court stayed certain aspects of the proceedings and indicated that it would make a final decision on the motion to stay after the USPTO has decided more of the petitions for IPR. The Company is presently unable to predict the outcome of the motion to stay the proceedings, the instituted IPRs, the reexaminations, or the Smith & Nephew Lawsuit or to reasonably estimate a range of potential losses, if any, related thereto. An adverse outcome of some or all of the IPR proceedings, the reexaminations, and the Smith & Nephew Lawsuit could have a material adverse effect on the Company's business, financial condition or results of operations.

Legal costs associated with legal proceedings are accrued as incurred.

Indemnifications

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnifications. The Company's exposure under these agreements is unknown because it involves claims that may be made against the Company in the future, but have not yet been made. To date, the Company has not paid any claims or been required to defend any action related to its indemnification obligations. However, the Company may record charges in the future as a result of these indemnification obligations. In accordance with its bylaws, the Company has indemnification obligations to its officers and directors for certain events or occurrences, subject to certain limits, while they are serving at the Company's request in such capacity. There have been no claims to date and the Company has a director and officer insurance policy that enables it to recover a portion of any amounts paid for future claims.

Note J—Debt and Notes Payable

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

	June 30, 2018	December 31, 2017
Oxford Finance, LLC, Term A Loan	$ 15,000	$ 15,000
Oxford Finance, LLC, Term B Loan	15,000	15,000
	30,000	30,000
Less unamortized debt issuance costs	(279)	(333)
Long-term debt, less debt issuance costs	$ 29,721	$ 29,667

Principal payments due as of June 30, 2018 consisted of the following (in thousands):

	Principal Payment
2018 (remainder of the year)	$ —
2019	—
2020	13,750
2021	15,000
2022	1,250
Total	$ 30,000

2017 Secured Loan Agreement

On January 6, 2017, the Company entered into $50 million the 2017 Secured Loan Agreement with Oxford. Through the 2017 Secured Loan Agreement, the Company accessed $15 million Term Loan A at closing $15 million and Term Loan B on June 30, 2017, and the Company has access to an additional $20 million of borrowings, at its option, through June 2018, subject to the satisfaction of certain revenue milestones and customary drawdown conditions, which the Company did not satisfy as of the end of June 2018. On July 31, 2018, the Company and Oxford entered into the Amendment. The Amendment amended the Company's financial covenants, including the revenue covenant and requires the Company to maintain at least $10 million in cash collateral. The Amendment also required liens on the Company's copyrights, trademarks and patents. In connection with the Amendment, the Company also agreed to pay to Oxford a fee of $1 million within 30 days of consummation of a sale of the Company. The proceeds of the Term A and Term B Loans are used to fund the Company's ongoing working capital needs.

The 2017 Secured Loan Agreement is secured by substantially all of the Company's personal property other than the Company's intellectual property. Under the terms of the 2017 Secured Loan Agreement, the Company cannot grant a security interest in its intellectual property to any other party.

The Term A Loan and Term B Loan under the 2017 Secured Loan Agreement bear interest at a floating annual rate calculated at the greater of 30 day LIBOR or 0.53%, plus 6.47%. The Company is required to make monthly interest-only payments in arrears commencing on the second payment date following the funding date of each term loan, and continuing on the payment date of each successive month thereafter through and including the payment date immediately preceding the amortization date of February 1, 2020. Commencing on the amortization date, and continuing on the payment date of each month thereafter, the Company is required to make consecutive equal monthly payments of principal of each term loan, together with accrued interest, in arrears, to Oxford. All unpaid principal, accrued and unpaid interest with respect to each term loan, and a final payment in the amount of 5.0% of the amount of loans advanced, is due and payable in full on the term loan maturity date. The 2017 Secured Loan Agreement has a term of five years and matures on January 1, 2022.

At the Company's option, the Company may prepay all, but not less than all, of the term loans advanced by Oxford under the 2017 Secured Loan Agreement, subject to a prepayment fee and an amount equal to the sum of all outstanding principal of the term loans plus accrued and unpaid interest thereon through the prepayment date, a final payment, plus all other amounts that are due and payable, including Oxford's expenses and interest at the default rate with respect to any past due amounts.

The 2017 Secured Loan Agreement also specifies events of default, the occurrence and continuation of which could cause interest to be charged at the rate that is otherwise applicable plus 5.0% and would provide Oxford, as collateral agent with the right to exercise remedies against us and the collateral securing the 2017 Secured Loan Agreement, including foreclosure against assets securing the 2017 Secured Loan Agreement, including the Company’s cash. These events of default include, among other things, the Company’s failure to pay any amounts due under the 2017 Secured Loan Agreement, a breach of covenants under the 2017 Secured Loan Agreement, including, among other customary debt covenants, achieving certain revenue levels and limiting the amount of cash and cash equivalents held by the Company's foreign subsidiaries, the Company’s insolvency, a material adverse change, the occurrence of any default under certain other indebtedness in an amount greater than $500,000, one or more judgments against the Company in an amount greater than $500,000, a material adverse change with respect to any governmental approval and any delisting event.

As of June 30, 2018, the Company was not in breach of covenants under the 2017 Secured Loan Agreement.

Note K—Related Party Transactions

Vertegen

In April 2007, the Company entered into a license agreement with Vertegen, Inc., or Vertegen, which was amended in May 2015 (the “Vertegen Agreement”). Vertegen is an entity that is wholly owned by Dr. Lang, the Company’s former Chief Executive Officer. Under the Vertegen Agreement, Vertegen granted the Company an exclusive, worldwide license under specified Vertegen patent rights and related technology to make, use and sell products and services in the fields of diagnosis and treatment of articular disorders and disorders of the human spine. The Company may sublicense the rights licensed to it by Vertegen. The Company is required to use commercially reasonable efforts, at its sole expense, to prosecute the patent applications licensed to the Company by Vertegen. Pursuant to the Vertegen Agreement, the Company is required to pay Vertegen a 6% royalty on net sales of products covered by the patents licensed to the Company by Vertegen, the subject matter of which is directed primarily to spinal implants, and any proceeds from the Company enforcing the patent rights licensed to the Company by Vertegen. Such 6% royalty rate will be reduced to 3% in the United States during the five-year period following the expiration of the last-to-expire applicable patent in the United States and in the rest of the world during the five-year period following the expiration of the last-to-expire patent anywhere in the world. The Company has not sold any products subject to this agreement and has paid no royalties under this agreement. The Company has cumulatively paid approximately $150,000 in expenses as of June 30, 2018 in connection with the filing and prosecution of the patent applications licensed to the Company by Vertegen.

The Vertegen Agreement may be terminated by the Company at any time by providing notice to Vertegen. In addition, Vertegen may terminate the Vertegen Agreement in its entirety if the Company is in material breach of the agreement, and the Company fails to cure such breach during a specified period.

Revenue share agreements

As described in Note I, the Company is a party to certain agreements with advisors that participate as members of the Company’s scientific advisory board. In September 2011, the Company entered into an amended and restated revenue share agreement with Philipp Lang, M.D., the Company’s former Chief Executive Officer and former director, which amended and restated a similar agreement entered into in 2008 when Dr. Lang stepped down as chair of the Company’s scientific advisory board and became the Company’s Chief Executive Officer. This agreement provides that the specified percentage of the Company's net revenue payable to Dr. Lang ranges from 0.875% to 1.33% and applies to all of the Company's current products products, including the Company’s iUni, iDuo, iTotal CR, iTotal PS, and Conformis Hip System products, as well as certain other knee, hip and shoulder replacement products and related instrumentation the Company may develop in the future. Under the agreement, the specific percentage is determined by reference to product classifications set forth in the agreement and is tiered based on the level of net revenue collected by the Company on such product sales. The agreement provides that the Company’s payment obligations expire on a product-by-product basis on the last to expire of the Company’s patents on which Dr. Lang is a named inventor that claim the applicable product and that these payment obligations survived the termination of Dr. Lang’s employment with the Company. Pursuant to the terms of this revenue share agreement with Dr. Lang, the Company incurred revenue share expense of $243,000 and $231,000 for the three months ended June 30, 2018 and 2017, respectively, and $493,000 and $489,000 for the six months ended June 30, 2018 and 2017, respectively.

Note L—Stockholders' Equity

Common stock

On January 29, 2018, the Company closed an offering of its common stock pursuant to the Shelf Registration Statement and issued and sold 15,333,333 shares of its common stock (including 2,000,000 shares of common stock issued in connection with the exercise in full by the underwriters of their over-allotment option) at a public offering price of $1.50 per share, for aggregate net proceeds of approximately $21.3 million. The Company intends to use the net proceeds of the offering of the shares for general corporate purposes, which may include research and development costs, sales and marketing costs, clinical studies, manufacturing development, the acquisition or licensing of other businesses or technologies, repayment and refinancing of debt, including the Company's secured term loan facility, working capital and capital expenditures.

Common stockholders are entitled to dividends as and when declared by the board of directors, subject to the rights of holders of all classes of stock outstanding having priority rights as to dividends. There have been no dividends declared to date.

Summary of common stock activity was as follows:

	Shares
Outstanding December 31, 2017	45,528,519
Issuance of common stock - option exercises	80,000
Issuance of restricted common stock	2,288,217
Forfeiture of unvested restricted stock	(116,439)
Issuance of common stock - Secondary offering	15,333,333
Outstanding June 30, 2018	63,113,630

Preferred stock

The Company's Restated Certificate of Incorporation authorizes the Company to issue 5,000,000 shares of preferred stock, $0.00001 par value, all of which is undesignated. No shares were issued and outstanding at June 30, 2018 and December 31, 2017.

Demand registration rights

In conjunction with the IPO, the Company entered into an Amended and Restated Information and Registration Rights Agreement effective June 29, 2015 (the "Registration Rights Agreement"), which provided, among other things, registration rights to certain investors that had held the Company's preferred stock prior to the IPO. Subject to specified limitations set forth in a registration rights agreement, at any time, the holders of at least 25% of the then outstanding registrable shares may at any time demand in writing that the Company register all or a portion of the registrable shares under the Securities Act on a Form other than Form S-3 for an offering of at least 20% of the then outstanding registrable shares or a lesser percentage of the then outstanding registrable shares provided that it is reasonably anticipated that the aggregate offering price would exceed $20 million. The Company is not obligated to file a registration statement pursuant to these rights on more than two occasions. Additionally, after such time as the Company became eligible to use Form S-3, subject to specified limitations set forth in the registration rights agreement, the holders of at least 25% of the then outstanding registrable shares became able to at any time demand in writing that the Company register all or a portion of the registrable shares under the Securities Act on Form S-3 for an offering of at least 25% of the then outstanding registrable shares having an anticipated aggregate offering price to the public, net of selling expenses, of at least $5 million (a "Resale Registration Statement"). The Company is not obligated to effect a registration pursuant to a Resale Registration Statement on more than one occasion.

Incidental registration rights

If the Company proposes to file a registration statement in connection with a public offering of its common stock, subject to certain exceptions, the holders of registrable shares are entitled to notice of registration and, subject to specified exceptions, including market conditions, the Company will be required, upon the holder's request, to register their then held registrable shares.

Warrants

The Company also issued warrants to certain investors and consultants to purchase shares of the Company's preferred stock and common stock. Based on the Company's assessment of the warrants granted in 2013 and 2014 relative to ASC 480, *Distinguishing Liabilities from Equity*, the warrants are classified as equity. No warrants were issued in the three and six months ended June 30, 2018. According to ASC 480, an entity shall classify as a liability any financial instrument, other than an outstanding share, that, at inception, both a) embodies an obligation to repurchase the issuer's equity shares, or is indexed to such obligation and b) requires or may require the issuer to settle the obligation by transferring assets. The warrants do not contain any provision that requires the Company to repurchase the shares and are not indexed to such an obligation. The warrants also do not require the Company to settle by transferring assets. All warrants were exercisable immediately upon issuance.

Common stock warrants

The Company also issued warrants to certain investors and consultants to purchase shares of common stock. Warrants to purchase 28,926 shares of common stock were outstanding as of June 30, 2018 and December 31, 2017. Outstanding warrants are currently exercisable with varying exercise expiration dates from 2020 through 2024. At June 30, 2018 and December 31, 2017, the weighted average warrant exercise price per share for common stock underlying warrants and the weighted average contractual life was as follows:

	Number of Warrants	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life	Number of Warrants Exercisable	Weighted Average Price Per Share
Outstanding December 31, 2017	28,926	$ 9.80	5.66	28,926	$ 9.80
Outstanding June 30, 2018	28,926	$ 9.80	5.16	28,926	$ 9.80

Stock option plans

As of June 30, 2018, 530,043 shares of common stock were available for future issuance under the 2015 Stock Incentive Plan ("2015 Plan"). The 2015 Plan provides for an annual increase, to be added on the first day of each fiscal year, beginning with the fiscal year ending December 31, 2016 and continuing until, and including, the fiscal year ending December 31, 2025, equal to the lesser of (a) 3,000,000 shares of our common stock, (b) 3% of the number of share of our common stock outstanding on the first day of such fiscal year and (c) an amount determined by the Board. Effective January 1, 2018, an additional 1,365,856 shares of our common stock were added to the 2015 Plan under the terms of this provision.

Activity under all stock option plans was as follows:

	Number of Options	Weighted Average Exercise Price per Share	Aggregate Intrinsic Value (in Thousands)
Outstanding December 31, 2017	3,627,995	$ 6.48	
Granted	165,219	1.36	
Exercised	(80,000)	1.40	8
Expired	(373,278)	6.23	
Cancelled/Forfeited	(76,435)	5.58	
Outstanding June 30, 2018	3,263,501	$ 6.40	$ —
Total vested and exercisable	2,409,811	$ 6.95	$ —

The total fair value of stock options that vested during the three and six months ended June 30, 2018 was $0.2 million and $0.6 million, respectively. The weighted average remaining contractual term for the total stock options outstanding was 5.83 years as of June 30, 2018. The weighted average remaining contractual term for the total stock options vested and exercisable was 4.71 years as of June 30, 2018.

Restricted common stock award activity under the plan was as follows:

	Number of Shares	Weighted Average Fair Value
Unvested December 31, 2017	1,339,121	$ 6.06
Granted	2,288,217	1.39
Vested	(271,755)	6.06
Forfeited	(116,439)	6.00
Unvested June 30, 2018	3,239,144	$ 2.76

The total fair value of restricted common stock awards that vested during the three and six months ended June 30, 2018 was $1.1 million and $1.6 million.

Stock-based compensation

The Company uses the Black-Scholes option pricing model to determine the fair value of stock options. The determination of the fair value of stock-based payment awards on the date of grant using a pricing model is affected by the value of the Company’s common stock as well as assumptions regarding a number of complex and subjective variables. The valuation of the Company’s common stock prior to the IPO was performed with the assistance of an independent third-party valuation firm using a methodology that includes various inputs including the Company’s historical and projected financial results, peer company public data and market metrics, such as risk-free interest and discount rates. As the valuations included unobservable inputs that were primarily based on the Company’s own assumptions, the inputs were considered level 3 inputs within the fair value hierarchy.

The fair value of options at date of grant was estimated using the Black-Scholes option pricing model, based on the following assumptions:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Risk-free interest rate	2.75%	2.14%	2.75% - 2.90%	2.14%
Expected term (in years)	6.25	6.02	6.25	6.05
Dividend yield	—%	—%	—%	—%
Expected volatility	52.81%	50.95%	52.81% - 56.44%	50.95%

Risk-free interest rate. The risk-free interest rate is based on U.S. Treasury zero-coupon issues with remaining terms similar to the expected term on the options.

Expected term. The expected term of stock options represents the period the stock options are expected to remain outstanding and is based on the “SEC Shortcut Approach” as defined in “Share-Based Payment” (SAB 107) ASC 718-10-S99, “Compensation-Stock Compensation-Overall-SEC Materials,” which is the midpoint between the vesting date and the end of the contractual term. With certain stock option grants, the exercise price may exceed the fair value of the common stock. In these instances, the Company adjusts the expected term accordingly.

Dividend yield. The Company has never declared or paid any cash dividends and does not plan to pay cash dividends in the foreseeable future, and, therefore, used an expected dividend yield of zero in the valuation model.

Expected volatility. Expected volatility measures the amount that a stock price has fluctuated or is expected to fluctuate during a period. The Company does not have sufficient history of market prices of its common stock as it is a newly public company. Therefore, the Company estimates volatility using historical volatilities of similar public entities.

Forfeitures. The Company recognizes forfeitures as they occur.

Stock-based compensation expense was $0.9 million and $1.4 million for the three months ended June 30, 2018 and 2017, respectively. Stock-based compensation expense was calculated based on awards ultimately expected to vest. To date, the amount of stock-based compensation capitalized as part of inventory was not material.

The following is a summary of stock-based compensation expense (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Cost of revenues	$ 47	$ 117	$ 85	$ 215
Sales and marketing	157	224	282	482
Research and development	274	405	564	897
General and administrative	434	703	853	1,147
	$ 912	$ 1,449	$ 1,784	$ 2,741

As of June 30, 2018, the Company had $2.0 million of total unrecognized compensation expense for options that will be recognized over a weighted average period of 2.93 years. As of June 30, 2018, the Company had $7.7 million of total unrecognized compensation expense for restricted awards that will be recognized over a weighted average period of 3.31 years.

Note M—Segment and Geographic Data

The Company operates as one reportable segment as described in Note B to the Consolidated Financial Statements. The countries in which the Company has local revenue generating operations have been combined into the following geographic areas: the United States (including Puerto Rico), Germany and the rest of world, which consists of Europe predominately (including the United Kingdom) and other foreign countries. Sales are attributable to a geographic area based upon the customer's country of domicile. Net property, plant and equipment are based upon physical location of the assets.

Geographic information consisted of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Product Revenue				
United States	$ 16,356	$ 15,219	32,383	31,183
Germany	2,186	2,428	5,273	6,393
Rest of World	366	399	735	849
	$ 18,908	$ 18,046	38,391	38,425

	June 30, 2018	December 31, 2017
Property and equipment, net		
United States	$ 16,872	$ 16,424
Germany	83	90
	$ 16,955	$ 16,514

Note N—Subsequent Events

On July 31, 2018, the Company and Oxford entered into the Amendment. The Amendment amended the Company's financial covenants, including the revenue covenant and requires the Company to maintain at least $10 million in cash collateral. The Amendment also required liens on the Company's copyrights, trademarks and patents. In connection with the Amendment, the Company also agreed to pay to Oxford a fee of $1 million within 30 days of consummation of a sale of the Company.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the year ended December 31, 2017. Some of the information contained in this discussion and analysis or set forth elsewhere in this Quarterly Report on Form 10-Q, including information with respect to our plans and strategy for our business, includes forward looking statements that involve risks and uncertainties. As a result of many factors, including those factors set forth in the ''Risk Factors'' section of our Annual Report on Form 10-K for the fiscal year ended December 31, 2017, our actual results could differ materially from the results described, in or implied, by these forward-looking statements.

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical facts, contained in this Quarterly Report on Form 10-Q, including statements regarding our strategy, future operations, future financial position, future revenue, projected costs, prospects, our ability to raise additional funds, plans and objectives of management and expected market growth are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will,” or “would” or the negative of these terms or other similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words.

These forward-looking statements include, among other things, statements about:

- our estimates regarding the potential market opportunity and timing of estimated commercialization for our current and future products, including our iUni, iDuo, iTotal CR, iTotal PS and Conformis Hip System, which we previously referred to as our iTotal Hip system;
- our expectations regarding our sales, expenses, gross margin and other results of operations;
- our strategies for growth and sources of new sales;
- maintaining and expanding our customer base and our relationships with our independent sales representatives and distributors;
- our current and future products and plans to promote them;
- the anticipated trends and challenges in our business and in the markets in which we operate;
- the implementation of our business model, strategic plans for our business, products, product candidates and technology;
- the anticipated timing of our product launches;
- the future availability of raw materials used to manufacture, and finished components for, our products from third-party suppliers, including single source suppliers;
- product liability claims;
- patent infringement claims;
- our ability to retain and hire necessary employees and to staff our operations appropriately;
- our ability to compete in our industry and with innovations by our competitors;
- potential reductions in reimbursement levels by third-party payors and cost containment efforts of accountable care organizations;
- our ability to protect proprietary technology and other intellectual property and potential claims against us for infringement of the intellectual property rights of third parties;

- potential challenges relating to changes in and compliance with governmental laws and regulations affecting our U.S. and international businesses, including regulations of the U.S. Food and Drug Administration and foreign government regulators, such as more stringent requirements for regulatory clearance of our products;
- the anticipated adequacy of our capital resources to meet the needs of our business or our ability to raise any additional capital; and
- our expectations regarding the time during which we will be an emerging growth company under the JOBS Act.

We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make. We have included important factors in the cautionary statements included in this Quarterly Report on Form 10-Q, particularly in the "Risk Factors" section, that could cause actual results or events to differ materially from the forward-looking statements that we make. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, collaborations, joint ventures or investments that we may make or enter into.

You should read this Quarterly Report on Form 10-Q and the documents that we have filed as exhibits to this Quarterly Report on Form 10-Q and our other filings with the SEC completely and with the understanding that our actual future results may be materially different from what we expect. We do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

Overview

We are a medical technology company that uses our proprietary iFit Image-to-Implant technology platform to develop, manufacture and sell joint replacement implants that are individually sized and shaped, which we refer to as customized, to fit each patient's unique anatomy. The worldwide market for joint replacement products is approximately $17.5 billion annually and growing, and we believe our iFit technology platform is applicable to all major joints in this market. We offer a broad line of customized knee implants designed to restore the natural shape of a patient's knee. In clinical studies, iTotal CR, our cruciate-retaining total knee replacement implant and best-selling product, demonstrated superior clinical outcomes, including better function and greater patient satisfaction compared to off-the-shelf implants. In a study published in the May 2018 in The Journal of Knee Surgery, a peer-reviewed orthopedic journal, entitled "In Vivo Tibial Fit and Rotational Analysis of a Customized, Patient-Specific TKA versus Off-the-Shelf TKA," indicated that the iTotal CR knee replacement implant provided better rotational alignment and tibial fit compared to off-the-shelf implants (i.e., non-customized). We provided financial support for this study and the author is a paid consultant of ours on other matters. In addition, in a February 2018 report from Beyond Compliance, results were presented summarizing four year data from the England and Wales National Joint Registry ("Registry") demonstrating high survivorship in patients treated with the iTotal CR knee replacement implant, specifically the data showed a low cumulative percent revision of 0.5% for Conformis patients as compared with 1.9% for all total knee replacement patients.

Our iFit technology platform comprises three key elements:

- *iFit Design*, our proprietary algorithms and computer software that we use to design customized implants and associated single-use patient-specific instrumentation, which we refer to as iJigs, based on computed tomography, or CT scans of the patient and to prepare a surgical plan customized for the patient that we call iView.
- *iFit Printing*, a three-dimensional, or 3D, printing technology that we use to manufacture iJigs and that we may extend to manufacture certain components of our customized knee replacement implants.
- *iFit Just-in-Time Delivery*, our just-in-time manufacturing and delivery capabilities.

We believe our iFit technology platform enables a scalable business model that greatly lowers our inventory requirements, reduces the amount of working capital required to support our operations and allows us to launch new products and product improvements more rapidly, as compared to manufacturers of off-the-shelf implants.

All of our joint replacement products have been cleared by the FDA under the premarket notification process of Section 510(k) of the Federal Food, Drug, and Cosmetic Act, or the FDCA, and have received certification to CE Mark. We market our products to orthopedic surgeons, hospitals and other medical facilities and patients. We use direct sales representatives, independent sales representatives and distributors to market and sell our products in the United States, Germany, the United Kingdom and other markets.

We were incorporated in Delaware and commenced operations in 2004.

Components of our results of operations

The following is a description of factors that may influence our results of operations, including significant trends and challenges that we believe are important to an understanding of our business and results of operations.

Revenue

Our product revenue is generated from sales to hospitals and other medical facilities that are served through a direct sales force, independent sales representatives and distributors in the United States, Germany, the United Kingdom, Austria, Ireland, Switzerland, Singapore, Hong Kong, Malaysia, Monaco and Australia. In order for surgeons to use our products, the medical facilities where these surgeons treat patients typically require us to enter into pricing agreements. The process of negotiating a pricing agreement can be lengthy and time-consuming, require extensive management time and may not be successful.

Revenue from sales of our products fluctuates principally based on the selling price of the joint replacement product, as the sales price of our products varies among hospitals and other medical facilities. In addition, our product revenue may fluctuate based on the product sales mix and mix of sales by geography. Our product revenue

from international sales can be significantly impacted by fluctuations in foreign currency exchange rates, as our sales are denominated in the local currency in the countries in which we sell our products. We expect our product revenue to fluctuate from quarter-to-quarter due to a variety of factors, including seasonality, as we have historically experienced lower sales in the summer months and around year-end, the timing of the introduction of our new products, if any, and the impact of the buying patterns and implant volumes of medical facilities.

Royalty revenue is generated from our agreements with MicroPort Orthopedics Inc., a wholly owned subsidiary of MicroPort Scientific Corporation, and Wright Medical Group, Inc. and its wholly owned subsidiary Wright Medical Technology, Inc., entered into in April 2015. Historically, we have accounted for the agreements with Wright Medical and MicroPort under ASC 605-25, Multiple-Element Arrangements and Staff Accounting Bulletin No. 104, Revenue Recognition (ASC 605). In accordance with ASC 605, we were required to identify and account for each of the separate units of accounting. We identified the relative selling price for each and then allocated the total consideration based on their relative values. In connection with these agreements, in April 2015, we recognized in aggregate (i) back-owed royalties of $3.4 million as royalty revenue and (ii) the value attributable to the settlements of $0.2 million as other income. Additionally, we recognized an initial $5.1 million in aggregate as deferred royalty revenue, to be recognized as royalty revenue ratably through the expiration of the last to expire of our patents and patent applications licensed to Wright Medical, which currently is expected to occur in 2031. On January 1, 2018, we adopted ASC 606, Revenue from Contracts with Customers. Our analysis of these contracts under ASC 606 indicated that the licenses are functional and thus revenue should have been recognized in full upon the license execution date, which resulted in a $4.3 million adjustment to our opening balance of accumulated deficit. In addition, the on-going royalty from MicroPort, which was previously recognized as royalty revenue upon receipt of payment, is now recognized in the period the sale occurred, resulting in a $0.2 million adjustment to our opening balance of accumulated deficit.

Cost of revenue

We produce our computer aided designs, or CAD, in-house and through contractors in India and use them to direct all of our product manufacturing efforts. We manufacture all of our patient-specific instruments, or iJigs, tibial trays used in our total knee implants, and polyethylene tibia tray inserts for our iTotal CR, and starting in December 2017, for our iTotal PS product, in our facilities in Wilmington, Massachusetts. Also starting in December 2017, we passivate our tibial trays used in our total and partial knee products in our facilities in Wallingford, Connecticut. We outsource the production of the remainder of the tibial components and the manufacture of femoral and other implant components to third-party suppliers. Our suppliers make our customized implant components using the CAD designs we supply. Cost of revenue consists primarily of costs of raw materials, manufacturing personnel, manufacturing supplies, inbound freight and manufacturing overhead and depreciation expense.

We calculate gross margin as revenue less cost of revenue divided by revenue. Our gross margin has been and will continue to be affected by a variety of factors, including primarily volume of units produced, mix of product components manufactured by us versus sourced from third parties, our average selling price, the geographic mix of sales, product sales mix, the number of cancelled sales orders resulting in wasted implants, and royalty revenue.

We expect our gross margin from the sale of our products, which excludes royalty revenue, to expand over time to the extent we are successful in continuing to reduce our manufacturing costs per unit and increasing our manufacturing efficiency as sales volume increases. We believe that areas of opportunity to expand our gross margins in the future, if and as the volume of our product sales increases, include the following:

- absorbing overhead costs across a larger volume of product sales;
- obtaining more favorable pricing for the materials used in the manufacture of our products;
- obtaining more favorable pricing of certain component of our products manufactured for us by third parties;
- increasing the proportion of certain components of our products that we manufacture in-house, which we believe we can manufacture at a lower unit cost than vendors we currently use;
- developing new versions of our software used in the design of our customized joint replacement implants, which we believe will reduce costs associated with the design process; and
- expanding our CAD labor in India, which we believe will reduce labor costs required to design our products.

We continue to explore the application of our 3D printing technology to select metal components of our products, which we believe may be a future opportunity for reducing our manufacturing costs. We also continue to explore other opportunities to reduce our manufacturing costs. However, these and the above opportunities may not be realized. In addition, our gross margin may fluctuate from period to period.

Operating expenses

Our operating expenses consist of sales and marketing, research and development and general and administrative expenses. Personnel costs are the most significant component of operating expenses and consist of salaries, benefits, stock-based compensation and sales commissions.

Sales and marketing. Sales and marketing expense consists primarily of personnel costs, including salary, employee benefits and stock-based compensation for personnel employed in sales, marketing, customer service, medical education and training, as well as investments in surgeon training programs, industry events and other promotional activities. In addition, our sales and marketing expense includes sales commissions and bonuses, generally based on a percentage of sales, to our sales managers, direct sales representatives and independent sales representatives. Recruiting, training and retaining productive sales representatives and educating surgeons about the benefits of our products are required to generate and grow revenue. We expect sales and marketing expense to significantly increase as we build up our sales and support personnel and expand our marketing efforts. Our sales and marketing expense may fluctuate from period to period due to the seasonality of our revenue and the timing and extent of our expenses.

Research and development. Research and development expense consists primarily of personnel costs, including salary, employee benefits and stock-based compensation for personnel employed in research and development, regulatory and clinical areas. Research and development expense also includes costs associated with product design, product refinement and improvement efforts before and after receipt of regulatory clearance, development prototypes, testing, clinical study programs and regulatory activities, contractors and consultants, and equipment and software to support our development. As our revenue increases, we will also incur additional expenses for revenue share payments to our past and present scientific advisory board members. We expect research and development expense to increase in absolute dollars as we develop new products to expand our product pipeline, add research and development personnel and conduct clinical activities.

General and administrative. General and administrative expense consists primarily of personnel costs, including salary, employee benefits and stock-based compensation for our administrative personnel that support our general operations, including executive management, general legal and intellectual property, finance and accounting, information technology and human resources personnel. General and administrative expense also includes outside legal costs associated with intellectual property and general legal matters, financial audit fees, insurance, fees for other consulting services, depreciation expense, freight, and facilities expense. We expect our general and administrative expense will increase in absolute dollars as we increase our headcount and expand our infrastructure to support growth in our business and our operations. As our revenue increases we also will incur additional expenses for freight. Our general and administrative expense may fluctuate from period to period due to the timing and extent of the expenses.

Total other income (expense), net

Total other income (expense), net consists primarily of interest expense and amortization of debt discount associated with our term loans outstanding during the year and realized gains (losses) from foreign currency transactions. The effect of exchange rates on our foreign currency-denominated asset and liability balances are recorded as foreign currency translation adjustments in the consolidated statements of comprehensive loss.

Income tax provision

Income tax provision consists primarily of a provision for income taxes in foreign jurisdictions in which we conduct business. We maintain a full valuation allowance for deferred tax assets including net operating loss carryforwards and research and development credits and other tax credits.

Consolidated results of operations

Comparison of the three months ended June 30, 2018 and 2017

The following table sets forth our results of operations expressed as dollar amounts, percentage of total revenue and year-over-year change (in thousands):

	2018		2017		2018 vs 2017	
Three Months Ended June 30,	Amount	As a% of Total Revenue	Amount	As a% of Total Revenue	$ Change	% Change
Revenue						
Product revenue	$ 18,908	99 %	$ 18,046	98 %	$ 862	5 %
Royalty	192	1	438	2	(246)	(56)
Total revenue	19,100	100	18,484	100	616	3
Cost of revenue	9,989	52	12,236	66	(2,247)	(18)
Gross profit	9,111	48	6,248	34	2,863	46
Operating expenses:						
Sales and marketing	9,809	51	9,375	51	434	5
Research and development	4,850	25	4,335	23	515	12
General and administrative	5,802	30	6,444	35	(642)	(10)
Total operating expenses	20,461	107	20,154	109	307	2
Loss from operations	(11,350)	(59)	(13,906)	(75)	2,556	18
Total other income/(expenses), net	(2,693)	(14)	1,872	10	(4,565)	(244)
Loss before income taxes	(14,043)	(74)	(12,034)	(65)	(2,009)	(17)
Income tax provision	14	—	56	—	(42)	(75)
Net loss	$ (14,057)	(74)%	$ (12,090)	(65)%	$ (1,967)	(16)%

Product revenue. Product revenue was $18.9 million for the three months ended June 30, 2018 compared to $18.0 million for the three months ended June 30, 2017, an increase of $0.9 million or 5%, due principally to increased sales of our iTotal PS, partially offset by decreased sales of our partial knee products and iTotal CR.

The following table sets forth, for the periods indicated, our product revenue by geography expressed as U.S. dollar amounts, percentage of product revenue and year-over-year change (in thousands):

	2018		2017		2018 vs 2017	
Three Months Ended June 30,	Amount	As a % of Product Revenue	Amount	As a % of Product Revenue	$ Change	% Change
United States	$ 16,356	87%	$ 15,219	84%	$ 1,137	7 %
Germany	2,186	12	2,428	13	(242)	(10)
Rest of world	366	1	399	3	(33)	(8)
Product revenue	$ 18,908	100%	$ 18,046	100%	$ 862	5 %

Product revenue in the United States was generated through our direct sales force and independent sales representatives. The percentage of product revenue generated in the United States was 87% for the three months ended June 30, 2018 compared to 84% for the three months ended June 30, 2017. We believe the higher level of revenue as a percentage of product revenue inside the United States in the three months ended June 30, 2018 was due to the introduction of the iTotal PS in the United States, coupled with the change in the reimbursement of our iUni and iDuo partial implants and continued weakness in our iTotal CR business in Germany.

Cost of revenue, gross profit and gross margin. Cost of revenue was $10.0 million for the three months ended June 30, 2018 compared to $12.2 million for the three months ended June 30, 2017, a decrease of $2.2 million or 18%. The decrease was due primarily to vertical integration and other cost saving initiatives, coupled with a decrease in unused product, partially offset by slightly higher material scrap costs. Gross profit was $9.1 million for the three months ended June 30, 2018 compared to $6.2 million for the three months ended June 30, 2017, an increase of $2.9 million or 46%. Gross margin increased 1,400 basis points to 48% for the three months

ended June 30, 2018 from 34% for the three months ended June 30, 2017. This increase in gross margin was driven primarily by savings from vertical integration efforts and other cost saving initiatives, as well as an increase in average selling price.

Sales and marketing. Sales and marketing expense was $9.8 million for the three months ended June 30, 2018 compared to $9.4 million for the three months ended June 30, 2017, an increase of $0.4 million or 5%. The increase was due primarily to higher commissions related to the increase in revenue. Sales and marketing expense remained consistent as a percentage of total revenue of 51% for the three months ended June 30, 2018 compared to the three months ended June 30, 2017.

Research and development. Research and development expense was $4.9 million for the three months ended June 30, 2018 compared to $4.3 million for the three months ended June 30, 2017, an increase of $0.5 million or 12%. The increase was due primarily to a $0.2 million increase in prototype costs in connection with the commercialization of the Conformis Hip System, $0.2 million in personnel costs and $0.1 million increase in other expenses. Research and development expense increased as a percentage of total revenue to 25% for the three months ended June 30, 2018 from 23% for the three months ended June 30, 2017.

General and administrative. General and administrative expense was $5.8 million for the three months ended June 30, 2018 compared to $6.4 million for the three months ended June 30, 2017, a decrease of $0.6 million or 10%. The decrease was due primarily to a $0.5 million decrease in litigation and general legal expenses, a $0.4 million decrease in salaries and incentives, and a $0.2 million decrease in business insurance, partially offset by a $0.6 million increase primarily due to a refund received in 2017 of previously paid medical device excise tax and a $0.2 million increase in other general administrative costs. General and administrative expense decreased as a percentage of total revenue to 30% for the three months ended June 30, 2018 from 35% for the three months ended June 30, 2017.

Total other income/(expense), net. Other income/(expense), net was $(2.7) million for the three months ended June 30, 2018 compared to $1.9 million for the three months ended June 30, 2017, a change of $(4.6) million, or 244%. The change was primarily due to a $4.2 million increase in foreign currency exchange transaction expense and a $0.4 million increase in interest expense associated with long-term debt.

Income taxes. Income tax provision was $14,000 and $56,000 for the three months ended June 30, 2018 and 2017, respectively. We continue to generate losses for U.S. federal and state tax purposes and have net operating loss carryforwards creating a deferred tax asset. We maintain a full valuation allowance for deferred tax assets.

On December 22, 2017, the Tax Act was enacted to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018. The tax act reduces the U.S. federal corporate income tax rate effective January 1, 2018 from its current 35% rate to a new 21% corporate rate and impose a one-time transition tax on unremitted foreign earnings on foreign subsidiaries. The Company has not yet completed its evaluation of the impact of the changes in the tax bill but expects the net impact of these changes will be favorable to its financial results in future fiscal quarters.

Comparison of the six months ended June 30, 2018 and 2017

The following table sets forth our results of operations expressed as dollar amounts, percentage of total revenue and year-over-year change (in thousands):

	2018		2017		2018 vs 2017	
Six Months Ended June 30,	**Amount**	**As a% of Total Revenue**	**Amount**	**As a% of Total Revenue**	**$ Change**	**% Change**
Revenue						
Product revenue	$ 38,391	99 %	$ 38,425	99 %	$ (34)	— %
Royalty	365	1	514	1	(149)	(29)
Total revenue	38,756	100	38,939	100	(183)	—
Cost of revenue	20,858	54	26,196	67	(5,338)	(20)
Gross profit	17,898	46	12,743	33	5,155	40
Operating expenses:						
Sales and marketing	20,220	52	20,191	52	29	—
Research and development	9,544	25	8,895	23	649	7
General and administrative	11,942	31	14,902	38	(2,960)	(20)
Total operating expenses	41,706	108	43,988	113	(2,282)	(5)
Loss from operations	(23,808)	(61)	(31,245)	(80)	7,437	24
Total other income/(expenses), net	(2,203)	(6)	2,058	5	(4,261)	(207)
Loss before income taxes	(26,011)	(67)	(29,187)	(75)	3,176	11
Income tax provision	47	—	63	—	(16)	(25)
Net loss	$ (26,058)	(67)%	$ (29,250)	(75)%	$ 3,192	11 %

Product revenue. Product revenue was $38.4 million for the six months ended June 30, 2018, consistent with the six months ended June 30, 2017. Increased sales of our iTotal PS was offset by decreased sales of our partial knee products and iTotal CR.

The following table sets forth, for the periods indicated, our product revenue by geography expressed as U.S. dollar amounts, percentage of product revenue and year-over-year change (in thousands):

	2018		2017		2018 vs 2017	
Six Months Ended June 30,	**Amount**	**As a % of Product Revenue**	**Amount**	**As a % of Product Revenue**	**$ Change**	**% Change**
United States	$ 32,383	84%	$ 31,183	81%	$ 1,200	4 %
Germany	5,273	14	6,393	17	$ (1,120)	(18)
Rest of world	735	2	849	2	(114)	(13)
Product revenue	$ 38,391	100%	$ 38,425	100%	$ (34)	— %

Product revenue in the United States was generated through our direct sales force and independent sales representatives. Product revenue outside the United States was generated through our direct sales force and distributors. The percentage of product revenue generated in the United States was 84% for the six months ended June 30, 2018 compared to 81% for the six months ended June 30, 2017. We believe the higher level of revenue as a percentage of product revenue inside the United States in the six months ended June 30, 2018 was due to the introduction of the iTotal PS in the United States, coupled with the change in the reimbursement of our iUni and iDuo partial implants and continued weakness in our iTotal CR business in Germany.

Royalty revenue was $0.4 million and $0.5 million for the six months ended June 30, 2018 and 2017, respectively.

Cost of revenue, gross profit and gross margin. Cost of revenue was $20.9 million for the six months ended June 30, 2018 compared to $26.2 million for the six months ended June 30, 2017, a decrease of $5.3 million or 20%. The decrease was due primarily to vertical integration and other cost saving initiatives, coupled with a reduction in unused product, partially offset by slightly higher material scrap costs. Gross profit was $17.9 million for the six months ended June 30, 2018 compared to $12.7 million for the six months ended June 30, 2017, an increase of $5.2 million or 40%. Gross margin increased 1300 basis points to 46% for the six months ended June 30, 2018 from 33% for the six months ended June 30, 2017. This increase in gross margin was driven primarily by savings from vertical integration efforts and other cost saving initiatives, as well as an increase in average selling price.

Sales and marketing. Sales and marketing expense was $20.2 million for the six months ended June 30, 2018 consistent with the six months ended June 30, 2017. An increase in consulting and marketing and promotion totaling $0.4 million were offset by a decease in personnel costs of $0.4 million. Sales and marketing expense was consistent as a percentage of total revenue to 52% for the six months ended June 30, 2018 compared to the six months ended June 30, 2017.

Research and development. Research and development expense was $9.5 million for the six months ended June 30, 2018 compared to $8.9 million for the six months ended June 30, 2017, an increase of $0.6 million or 7%. The increase was due primarily to a $0.4 million increase in prototype costs related to the commercialization of the Conformis Hip System and a $0.2 million increase in personnel costs. Research and development expense increased as a percentage of total revenue to 25% for the six months ended June 30, 2018 from 23% for the six months ended June 30, 2017.

General and administrative. General and administrative expense was $11.9 million for the six months ended June 30, 2018 compared to $14.9 million for the six months ended June 30, 2017, a decrease of $3.0 million or 20%. The decrease was due primarily to a $1.6 million decrease in patent litigation and general legal expenses, a $0.7 million decrease in personnel costs, a $0.4 million decrease in business insurance, a $0.3 million decrease in facility expenses, a $0.3 million decrease in severance expense and a $0.3 million decrease in other general administrative costs, partially offset by a $0.6 million refund received in 2017 of previously paid medical device excise tax. General and administrative expense decreased as a percentage of total revenue to 31% for the six months ended June 30, 2018 from 38% for the six months ended June 30, 2017.

Total other income/(expense), net. Other income/(expense), net was $(2.2) million for the six months ended June 30, 2018 compared to $2.1 million for the six months ended June 30, 2017, a change of $(4.3) million, or 207%. The change was primarily due to a $3.5 million increase in foreign currency exchange transaction expense and a $0.8 million increase in interest expense associated with long-term debt.

Income taxes. Income tax provision was approximately $47,000 for the six months ended June 30, 2018 and $63,000 for the six months ended June 30, 2017. We continue to generate losses for U.S. federal and state tax purposes and have net operating loss carryforwards creating a deferred tax asset. We maintain a full valuation allowance for deferred tax assets.

Liquidity, capital resources and plan of operations

Sources of liquidity and funding requirements

From our inception in June 2004 through the six months ended June 30, 2018, we have financed our operations primarily through private placements of preferred stock, our initial public offering, or IPO, equity offerings, bank debt and product revenue beginning. We have not yet attained profitability and continue to incur operating losses. As of June 30, 2018, we had an accumulated deficit of $458.4 million.

On January 6, 2017, we entered into a senior secured $50 million loan and security agreement (the "2017 Secured Loan Agreement") with Oxford Finance LLC ("Oxford"). Through the 2017 Secured Loan Agreement, we accessed the initial $15 million of borrowings at closing (the "Term A Loan"), and an additional $15 million of borrowings on June 30, 2017 (the "Term B Loan"). We also had access to, but did not draw, an additional $20 million of borrowings, at our option, through June 2018, subject to the satisfaction of certain revenue milestones and customary drawdown conditions, which we did not satisfy as of the end of June 2018. On July 31, 2018, we entered into an amendment (the "Amendment") to the 2017 Secured Loan Agreement. The Amendment amended our financial covenants, including the revenue covenant and requires us to maintain at least $10 million in cash collateral. The Amendment also required liens on our copyrights, trademarks and patents. The 2017 Secured Loan Agreement is secured by substantially all of our personal property. Additionally, pursuant to the terms of the Amendment, we entered into an Intellectual Property Security Agreement, pursuant to which we pledged our copyrights, trademarks and patents to secure our obligations under the 2017 Secured Loan Agreement. The proceeds of the Term A and Term B Loans have been and will be used to fund our ongoing working capital needs.

The Term A Loan and Term B Loan under the 2017 Secured Loan Agreement bear interest at a floating annual rate calculated at the greater of 30 day LIBOR or 0.53%, plus 6.47%. We are required to make monthly interest-only payments in arrears commencing on the second payment date following the funding date of each term loan, and continuing on the payment date of each successive month thereafter through and including the payment date immediately preceding the amortization date of February 1, 2020. Commencing on the amortization date, and continuing on the payment date of each month thereafter, we are required to make consecutive equal monthly payments of principal of each term loan, together with accrued interest, in arrears, to Oxford. All unpaid principal, accrued and unpaid interest with respect to each term loan, and a final payment in the amount of 5.0% of the amount of loans advanced, is due and payable in full on the term loan maturity date. The 2017 Secured Loan Agreement has a term of five years and matures on January 1, 2022.

At our option, we may prepay all, but not less than all, of the term loans advanced by Oxford under the 2017 Secured Loan Agreement, subject to a prepayment fee and an amount equal to the sum of all outstanding principal of the term loans plus accrued and unpaid interest thereon through the prepayment date, a final payment, plus all other amounts that are due and payable, including Oxford's expenses and interest at the default rate with respect to any past due amounts.

The 2017 Secured Loan Agreement also specifies events of default, the occurrence and continuation of which could cause interest to be charged at the rate that is otherwise applicable plus 5.0% and would provide Oxford, as collateral agent with the right to exercise remedies against us and the collateral securing the 2017 Secured Loan Agreement, including foreclosure against assets securing the 2017 Secured Loan Agreement, including our cash. These events of default include, among other things, our failure to pay any amounts due under the 2017 Secured Loan Agreement, a breach of covenants under the 2017 Secured Loan Agreement, including, among other customary debt covenants, achieving certain revenue levels and limiting the amount of cash and cash equivalents held by our foreign subsidiaries, our insolvency, a material adverse change, the occurrence of any default under certain other indebtedness in an amount greater than $500,000, one or more judgments against us in an amount greater than $500,000, a material adverse change with respect to any governmental approval and any delisting event.

In January 2017, we filed a shelf registration statement on Form S-3, which was declared effective by the SEC on May 9, 2017 (the "Shelf Registration Statement"). The Shelf Registration Statement allows us to sell from time-to-time up to $200 million of common stock, preferred stock, debt securities, warrants, or units comprised of any combination of these securities, for our own account in one or more offerings. On May 10, 2017, we filed with the SEC a prospectus supplement, pursuant to which we may issue and sell up to $50 million of our common stock and entered into the Distribution Agreement with Canaccord Genuity, pursuant to which Canaccord has agreed to sell shares of our common stock from time to time, as our agent in an "at-the-market" offering ("ATM") as defined in

Rule 415 promulgated under the U.S. Securities Act of 1933, as amended. We are not obligated to sell any number of shares under the Distribution Agreement. As of June 30, 2018, we have sold 228,946 shares under the Distribution Agreement resulting in net proceeds of $1.0 million.

On January 29, 2018, we closed an offering of our common stock pursuant to the Shelf Registration Statement and issued and sold 15,333,333 shares of our common stock (including 2,000,000 shares of common stock issued in connection with the exercise in full by the underwriters of their over-allotment option) at a public offering price of $1.50 per share, for aggregate net proceeds of approximately $21.3 million. For further information regarding this public offering, see "Note N - Stockholders' Equity" to the consolidated financial statements appearing in this Quarterly Report on Form 10-Q.

We expect to incur substantial expenditures in the foreseeable future in connection with the following:

- expansion of our sales and marketing efforts;
- expansion of our manufacturing capacity;
- funding research, development and clinical activities related to our existing products and product platform, including iFit design software and product support;
- funding research, development and clinical activities related to new products that we may develop, including other joint replacement products;
- pursuing and maintaining appropriate regulatory clearances and approvals for our existing products and any new products that we may develop; and
- preparing, filing and prosecuting patent applications, and maintaining and enforcing our intellectual property rights and position.

We anticipate that our principal sources of funds in the future will be revenue generated from the sales of our products, future potential capital raises through the issuance of equity or other securities, and revenues that we may generate in connection with licensing our intellectual property. We will need to generate significant additional revenue to achieve and maintain profitability, and even if we achieve profitability, we cannot be sure that we will remain profitable for any substantial period of time. It is also possible that we may allocate significant amounts of capital toward products or technologies for which market demand is lower than anticipated and, as a result, abandon such efforts. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, or if we expend capital on projects that are not successful, our ability to continue to support our business growth and to respond to business challenges could be significantly limited, and we may even have to scale back our operations. Our failure to become and remain profitable could impair our ability to raise capital, expand our business, maintain our research and development efforts or continue to fund our operations.

We may need to engage in additional equity or debt financings to secure additional funds. We may not be able to obtain additional financing on terms favorable to us, or at all. To the extent that we raise additional capital through the future sales of equity or debt, the ownership interest of our stockholders will be diluted. The terms of these future or debt securities may include liquidation or other preferences that adversely affect the rights of our existing common stockholders or involve negative covenants that restrict our ability to take specific actions, such as incurring additional debt or making capital expenditures.

At June 30, 2018, we had cash and cash equivalents and investments of $46.6 million and $0.5 million in restricted cash allocated to lease deposits. Based on our current operating plan, we expect that our existing cash and cash equivalents and investments as of June 30, 2018, including borrowings under our 2017 Secured Loan Agreement, and anticipated revenue from operations, including from projected sales of our products, will enable us to fund our operating expenses and capital expenditure requirements and pay our debt service as it becomes due for at least the next 12 months from the date of filing. We have based this expectation on assumptions that may prove to be wrong, such as the revenue that we expect to generate from the sale of our products and the gross profit we expect to generate from those revenues, and we could consume our capital resources sooner than we expect.

Cash flows

The following table sets forth a summary of our cash flows for the periods indicated, as well as the year-over-year change (in thousands):

	Six Months Ended June 30,			
	2018	**2017**	**$ Change**	**% Change**
Net cash (used in) provided by:				
Operating activities	$ (18,664)	$ (21,018)	$ 2,354	11 %
Investing activities	7,057	(7,356)	14,413	196
Financing activities	21,436	32,604	(11,168)	(34)
Effect of exchange rate on cash	945	(2,280)	3,225	141
Total	$ 10,774	$ 1,950	$ 8,824	453 %

Net cash used in operating activities. Net cash used in operating activities was $18.7 million for the six months ended June 30, 2018 and $21.0 million for the six months ended June 30, 2017, a decrease of $2.4 million. These amounts primarily reflect net loss of $26.1 million for the six months ended June 30, 2018 and $29.3 million for the six months ended June 30, 2017. The net cash used in operating activities for the six months ended June 30, 2018 was affected by changes in our operating assets and liabilities, including a decrease from inventory of $0.2 million, a decrease from accounts payable and accrued liabilities of $2.8 million, and a decrease from deferred revenue and other long term liabilities of $0.1 million, offset by an increase from prepaid expenses of $1.2 million, an increase from accounts receivable of $1.6 million, and an increase from stock compensation expense of $1.0 million.

Net cash (used in) provided by investing activities. Net cash provided by investing activities was $7.1 million for the six months ended June 30, 2018, and for the six months ended June 30, 2017 net cash used by investing activities was $7.4 million, a change of $14.4 million. These amounts primarily reflect a decrease in cash used to purchase investments of $6.3 million, an increase in cash provided from matured investments of $7.0 million, a decrease in costs related to the acquisition of property, plant, and equipment of $0.7 million, and a decrease from restricted cash of $0.5 million.

Net cash provided by financing activities. Net cash provided by financing activities was $21.4 million for the six months ended June 30, 2018 and $32.6 million for the six months ended June 30, 2017, a decrease of $11.2 million. The decrease was primarily due to a decrease from issuance of debt of $30.0 million and a decrease from proceeds from the exercise of common stock options of $1.9 million, offset by an increase from proceeds from issuance of common stock of $20.3 million and an increase from debt issuance costs of $0.4 million.

Contractual obligations and commitments

We described our contractual obligations and commitments under Management’s Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report filed on Form 10-K for the year ended December 31, 2017.

2017 Secured Loan Agreement

On January 6, 2017, we entered into the 2017 Secured Loan Agreement with Oxford. Through the Secured Loan Agreement with Oxford, we accessed $15 million of borrowings on January 6, 2017 and a second $15 million of borrowings on June 30, 2017. We also had access to, but did not draw, an additional $20 million of borrowings, at our option, through June 2018, subject to the satisfaction of certain revenue milestones and customary drawdown conditions, which we did not satisfy as of the end of June 2018. In connection with the Amendment, we also agreed to pay to Oxford a fee of $1 million within 30 days of consummation of the sale of our company. For further information regarding the Secured Loan Agreement and the Amendment, see “Note J-Debt and Notes Payable-2017 Secured Loan Agreement”

Revenue share agreements

We are party to revenue share agreements with certain past and present members of our scientific advisory board under which these advisors agreed to participate on our scientific advisory board and to assist with the development of our customized implant products and related intellectual property. These agreements provide that

we will pay the advisor a specified percentage of our net revenue, ranging from 0.1% to 1.33%, with respect to our products on which the advisor made a technical contribution or, in some cases, which we covered by a claim of one of or patents on which the advisor is a named inventor. The specific percentage is determined by reference to product classifications set forth in the agreement and is tiered based on the level of net revenue collected by us on such product sales. Our payment obligations under these agreements typically expire a fixed number of years after expiration or termination of the agreement, but in some cases expire on a product-by-product basis or expiration of the last to expire of our patents where the advisor is a named inventor that claims the applicable product.

Philipp Lang, M.D., our former Chief Executive Officer and former director, joined our scientific advisory board in 2004 prior to becoming an employee. We first entered into a revenue share agreement with Dr. Lang in 2008 when he became our Chief Executive Officer. In 2011, we entered into an amended and restated revenue share agreement with Dr. Lang. This agreement provides that the specified percentage of our net revenue payable to Dr. Lang ranges from 0.875% to 1.33% and applies to all of our current products, including our iUni, iDuo, iTotal CR, and iTotal PS products, as well as certain other knee, hip and shoulder replacement products and related instrumentation we may develop in the future. The agreement provides that our payment obligations expire on a product-by-product basis on the last to expire of our patents on which Dr. Lang is named an inventor that claim the applicable product and that these payment obligations survived the termination of Dr. Lang's employment with us. Pursuant to the terms of this revenue share agreement with Dr. Lang, we incurred revenue share expense of $243,000 and $231,000 for the three months ended June 30, 2018 and 2017, respectively, and $493,000 and $489,000 for the six months ended June 30, 2018 and 2017, respectively. We have raised concerns with Dr. Lang relating to this revenue share agreement and are seeking to enter into discussions with Dr. Lang concerning the scope of this agreement.

The aggregate revenue share percentage of net revenue from our currently marketed knee replacement products, including percentages under revenue share agreements with all of our scientific advisory board members and one of our directors, ranges, depending on the particular product, from 3.4% to 5.8%. We incurred aggregate revenue share expense including all amounts payable under our scientific advisory board and Dr. Lang revenue share agreements of $0.9 million during the three months ended June 30, 2018, representing 4.7% of product revenue and $1.8 million during the six months ended June 30, 2018, representing 4.7% of product revenue, $0.9 million during the three months ended June 30, 2017, representing 4.9% of product revenue, and $1.9 million during the six months ended June 30, 2017, representing 4.8% of product revenue. Revenue share expense is included in research and development. For further information, see "Note I-Commitments and Contingencies -Revenue Share Agreements" or "Note K—Related Party Transactions - Revenue Share Agreements" to the consolidated financial statements appearing in this Quarterly Report on Form 10-Q .

Segment information

We have one primary business activity and operate as one reportable segment.

Off-balance sheet arrangements

Through June 30, 2018, we did not have any relationships with unconsolidated organizations or financial partnerships, such as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Critical accounting policies and significant judgments and use of estimates

We have prepared our consolidated financial statements in conformity with accounting principles generally accepted in the United States. Our preparation of these financial statements and related disclosures requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting periods. The accounting estimates that require our most significant estimates include revenue recognition, accounts receivable valuation, inventory valuations, goodwill valuation, intangible valuation, purchase accounting, impairment assessments, equity instruments, stock compensation, income tax reserves and related allowances, and the lives of property and equipment. We evaluate our estimates and judgments on an ongoing basis. Actual results may differ from these estimates under different assumptions or conditions. Our critical accounting policies are more fully described under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical accounting policies and significant judgments and use of

estimates” in our Annual Report on Form 10-K for the year ended December 31, 2017 and Note B to the consolidated financial statements appearing in this Quarterly Report on Form 10-Q.

Recent accounting pronouncements

Information with respect to recent accounting developments is provided in Note B to the consolidated financial statements appearing in this Quarterly Report on Form 10-Q.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to various market risks, which may result in potential losses arising from adverse changes in market rates, such as interest rates and foreign exchange rates. We do not enter into derivatives or other financial instruments for trading or speculative purposes and do not believe we are exposed to material market risk with respect to our cash and cash equivalents and investments.

Interest rate risk

We are exposed to interest rate risk in connection with borrowings made under the 2017 Secured Loan Agreement, which bears interest at floating annual rate calculated at the greater of 30 day LIBOR or 0.53%, plus 6.47%. For variable rate debt, interest rate changes generally do not affect the fair value of the debt instrument, but do impact future earnings and cash flows, assuming other factors are held constant. A hypothetical 100 basis point change in interest rates during any of the periods presented would not have had a material impact on our consolidated financial statements.

In addition, we are exposed to limited market risk related to fluctuation in interest rates and market prices. Our primary exposure to market risk is interest rate sensitivity, which is affected by changes in the general level of U.S. interest rates. As of June 30, 2018, we had cash and cash equivalents of $29.1 million consisting of demand deposits and money market accounts on deposit with certain financial institutions. We had $2.1 million as of June 30, 2018 and $2.2 million as of December 31, 2017 held in foreign bank accounts that were not federally insured. A hypothetical 100 basis point change in interest rates during any of the periods presented would not have had a material impact on our consolidated financial statements.

Foreign currency exchange risk

Fluctuations in the rate of exchange between the U.S. dollar and foreign currencies could adversely affect our financial results. Approximately 16% of our product revenue for the six months ended June 30, 2018 and 19% of our product revenue for the six months ended June 30, 2017 were denominated in foreign currencies. We expect that foreign currencies will continue to represent a similarly significant percentage of our net sales in the future. Costs of revenue related to these sales are primarily denominated in U.S. dollars; however, operating costs, including sales and marketing and general and administrative expense, related to these sales are largely denominated in the same currencies as the sales, thereby partially limiting our transaction risk exposure. Additionally, fluctuations in foreign currency exchange rates may cause us to recognize transaction gains and losses in our statement of operations.

In 2016, we began transferring excess cash residing in our German bank account to the U.S. As a result, intercompany loans with ConforMIS Europe GmbH, our wholly owned subsidiary, generated as a result of selling our products to customers in Germany, are no longer considered to be of a long-term investment nature, and gains and losses realized on intercompany loan balances, which are generated from the sale of our products to foreign customers, are included in the consolidated statements of operations. For the six months ended June 30, 2018, we recognized $1.0 million in foreign exchange transaction loss on intercompany loan balances included in foreign currency transaction loss. To date, we have not engaged in any foreign currency hedging transactions. As our international operations grow, we will continue to reassess our approach to managing the risks relating to fluctuations in currency rates. A 10% increase or decrease in foreign currency exchange rates would have resulted in additional income or expense of $3.9 million for the six months ended June 30, 2018 and $3.6 million for the six months ended June 30, 2017.

We do not believe that inflation and change in prices had a significant impact on our results of operations for any periods presented in our consolidated financial statements.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer (our principal executive officer and principal financial officer, respectively), evaluated the effectiveness of our disclosure controls and procedures as of June 30, 2018. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits 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 by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of June 30, 2018, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the three months ended June 30, 2018 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

In the ordinary course of our business, we are subject to routine risk of litigation, claims and administrative proceedings on a variety of matters, including patent infringement, product liability, securities-related claims, and other claims in the United States and in other countries where we sell our products.

On February 29, 2016, we filed a lawsuit against Smith & Nephew, Inc. ("Smith & Nephew") in the United States District Court for the District of Massachusetts Eastern Division, and we amended our complaint on June 13, 2016 (the "Smith & Nephew Lawsuit"). The Smith & Nephew Lawsuit alleges that Smith & Nephew's Visionaire® patient-specific instrumentation as well as the implants systems used in conjunction with the Visionaire instrumentation infringe nine of our patents, and it requests, among other relief, monetary damages for willful infringement, enhanced damages and a permanent injunction.

On May 27, 2016, Smith & Nephew filed its answer and counterclaims in response to our lawsuit, which it subsequently amended on July 22, 2016. Smith & Nephew denied that its Visionaire® patient-specific instrumentation as well as the implants systems used in conjunction with the Visionaire instrumentation infringe the patents asserted by us in the lawsuit. It also alleged two affirmative defenses: that the patents we asserted are invalid and that we are barred from relief under the doctrine of laches. In addition, Smith & Nephew asserted a series of counterclaims, including counterclaims seeking declaratory judgments that Smith & Nephew's accused products do not infringe our patents and that our patents are invalid. Smith & Nephew also alleged that Conformis infringes ten patents owned or exclusively licensed by Smith & Nephew: two of those patents Smith & Nephew alleged are infringed by our iUni and iDuo products; three of those patents Smith & Nephew alleged are infringed by our iTotal products; and five of those patents Smith & Nephew licenses from Kinamed, Inc. of Camarillo, California and alleged are infringed by our iUni, iDuo and iTotal products. Due to Smith & Nephew's licensing arrangement with Kinamed, Kinamed was named as a party to the lawsuit. Smith & Nephew and Kinamed requested, among other relief, monetary damages for willful infringement, enhanced damages and a permanent injunction. On March 9, 2017, the Court entered a stipulation of dismissal by the parties that dismissed from the lawsuit eight patents asserted by Smith & Nephew, including the patents involving Kinamed, and two patents asserted by us. With the dismissal of all claims involving Kinamed's patents, Kinamed is no longer a party to the lawsuit.

Between September 21, 2016 and March 1, 2017, Smith & Nephew filed sixteen petitions with the United States Patent & Trademark Office ("USPTO") requesting Inter Partes Review ("IPR") of the nine patents that we asserted against Smith & Nephew in the lawsuit. In its petitions, Smith & Nephew alleged that our patents are obvious in light of certain prior art. As of October 31, 2017, the USPTO decided to institute IPR proceedings with respect to seven of the petitions; decided to deny the requests for IPR with respect to seven of the petitions; and, with respect to the remaining two petitions, decided to institute IPR proceedings for some of the subject patent claims and to deny the requests for the remaining subject patent claims ("Subject Patent Claims"). On April 24, 2018, the Supreme Court of the United States issued its ruling in SAS Institute, Inc. v. Iancu (the "SAS Decision") which held that the IPR proceedings cannot be instituted in part and denied in part. In response to the SAS Decision and guidance from the USPTO, the Patent Trial and Appeal Board ("PTAB") issued an order on April 27, 2018 including the Subject Patent Claims within the prior instituted IPR proceedings. In total, the USPTO instituted IPR proceedings for claims in six of the patents in the Smith & Nephew lawsuit (five patents that are currently asserted, and one of the patents that was voluntarily dismissed from the lawsuit), and denied the petitions for claims in three of the patents (two patents that are currently asserted and one of the patents that was voluntarily dismissed from the lawsuit). Smith & Nephew filed requests for rehearing of three of the petitions that were denied and the PTAB denied those requests. Smith & Nephew filed requests with the USPTO for reexamination of two of the patents for which IPR proceedings were not instituted and the USPTO granted those requests for reexamination.

Between December 18, 2017 and April 18, 2018, IPR hearings were held for the six patents for which IPR proceedings were instituted. On March 26, 2018, the USPTO issued its first ruling holding that our U.S. Patent No. 9,055,953 (the "'953 Patent") is invalid over prior art. On April 19, 2018, the USPTO issued its second ruling holding that our U.S. Patent No. 9,216,025 (the "'025 Patent") is invalid over prior art. On May 25, 2018, we filed a notice of appeal for the '953 Patent with the USPTO, and on June 7, 2018, we filed a notice of appeal for the '025 Patent with the USPTO. On June 19, 2018, we filed a motion to consolidate the appeals for the '953 and '025 Patents, which was granted on June 20, 2018. On June 11, 2018, the USPTO issued its third ruling holding that our U.S. Patent No. 7,981,158 (the "'158 Patent") is invalid over prior art. On June 12, 2018, the USPTO issued its fourth ruling holding that our U.S. Patent No. 8,551,169 (the "'169 Patent") is invalid over prior art. The '953 Patent

is not part of the lawsuit having been voluntarily dismissed on March 9, 2017. The '025, '169 and '158 Patents are part of the lawsuit. We expect to receive rulings on the remaining IPR proceedings by February 7, 2019.

On January 27, 2017, Smith & Nephew filed a motion seeking a stay of the Smith & Nephew Lawsuit until any requested IPRs are resolved, and we filed an opposition to that motion. On April 27, 2017, the Court stayed certain aspects of the proceedings and indicated that it would make a final decision on the motion to stay after the USPTO has decided more of the petitions for IPR. We are presently unable to predict the outcome of the motion to stay the proceedings, the instituted IPRs, the reexaminations, or the Smith & Nephew Lawsuit or to reasonably estimate a range of potential losses, if any, related thereto. An adverse outcome of some or all of the IPR proceedings, the reexaminations, and the Smith & Nephew Lawsuit could have a material adverse effect on our business, financial condition or results of operations.

ITEM 1A. RISK FACTORS

We operate in a rapidly changing environment that involves a number of risks that may have a material adverse effect on our business, financial condition and results of operations. The following description of risk factors consists of updates to the risk factors previously disclosed in Part 1, Item 1A in our Annual Report on Form 10-K for the fiscal year ended *December 31, 2017* (the "Form 10-K"). For a detailed discussion of the other risks that affect our business, please refer to the entire section entitled "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended *December 31, 2017*. There have been no material changes to our risk factors as previously disclosed in our Annual Report on Form 10-K. *Risk factors and other information included in this Quarterly Report on Form 10-Q should be carefully considered. Additional risks and uncertainties not presently known to us or that we presently deem less significant may also impair our business operations. Please see page 29 of this Quarterly Report on Form 10-Q for a discussion of some of the forward-looking statements that are qualified by these risk factors. If any of the risks actually occur, our business, financial condition, results of operations and future growth* prospects could be materially and adversely affected.

Risks related to our financial position

We expect to incur substantial expenditures in the foreseeable future and expect to require additional capital to support business growth. This capital might not be available on terms favorable to us or at all.

We are a party to an Equity Distribution Agreement, or Distribution Agreement, with Canaccord Genuity Inc., or Canaccord, as sales agent, pursuant to which we may issue and sell shares of our common stock from time to time in "at-the-market" offerings. We also expect to engage in additional equity or debt financings to secure additional funds within the next two years, and we may need to engage in additional equity or debt financings to secure additional funds after that. We may not be able to obtain additional financing on terms favorable to us, or at all. To the extent that we raise additional capital through the future sale of equity or debt, including pursuant to the Distribution Agreement, the ownership interest of our stockholders will be diluted. The terms of these future equity or debt securities may include liquidation or other preferences that adversely affect the rights of our existing common stockholders or involve negative covenants that restrict our ability to take specific actions, such as incurring additional debt or making capital expenditures.

Risks related to other legal and compliance matters

If we are found to have violated laws protecting the privacy or security of patient health information or other personal data, we could be subject to civil or criminal penalties, litigation or regulatory investigations, which could increase our liabilities and harm our reputation or our business.

There are a number of federal and state laws in the United States and foreign countries protecting the privacy and security of personal data, including patient health information and patient records, and restricting the collection, use, disclosure and transfer of that protected information. In particular, Health Insurance Portability and Accountability Act, HIPAA, privacy, security and breach notification rules protect medical records and other personal health information by limiting their use and disclosure, giving individuals the right to access, amend and seek accounting of their own health information, limiting most use and disclosure of health information to the minimum amount reasonably necessary to accomplish the intended purpose, requiring appropriate data security measures, and requiring data breach notification in certain circumstances. Similarly, the General Data Protection Regulation, or GDPR, came into force in the European Union, or EU, on May 25, 2018 and applies to the products and services that we offer to EU patients, our reach and development activities in the EU, our online or other tracking of

individuals in the EU and our EU employees. The GDPR created a range of new compliance obligations, including requirements relating to processing health and other sensitive data, obtaining consent of the individuals to whom the personal data relates, providing information to individuals regarding data processing activities, implementing safeguards to protect the security and confidentiality of personal data, providing notification of data breaches, and taking certain measures when engaging third-party processors. The GDPR also imposes strict rules on the transfer of personal data to countries outside the EU, including the United States, and significantly increased financial penalties for noncompliance (including possible fines of up to 4% of global annual revenues for the preceding financial year or €20 million (whichever is higher) for the most serious infringements). The GDPR also conferred a private right of action on data subjects and consumer associations to lodge complaints with supervisory authorities, seek judicial remedies, and obtain compensation for damages resulting from violations of the GDPR. If we or any of our service providers are found to be in violation of HIPAA rules, the GDPR, or other data protection laws, we could be subject to civil or criminal penalties, litigation, or regulatory investigations, which could increase our liabilities, harm our reputation, and have a material adverse effect on our business, financial condition, and operating results.

ITEM 2. UNREGISTERED SALES OF SECURITIES AND USE OF PROCEEDS

Unregistered Sales of Securities

We did not sell any shares of our common stock, shares of our preferred stock or warrants to purchase shares of our stock, or grant any stock options or restricted stock awards, during the period covered by this Quarterly Report on Form 10-Q that were not registered under the Securities Act of 1933, as amended, or the Securities Act, and that have not otherwise been described in a Current Report on Form 8-K.

ITEM 5. OTHER INFORMATION

On July 31, 2018, we entered into a second amendment to the amended and restated employment agreement with Mark Augusti, our Chief Executive Officer (the “Augusti Amendment”). The Augusti Amendment is effective as of July 31, 2018 and provides clarifications and addresses inconsistencies between Mr. Augusti’s existing amended and restated employment agreement (“Existing Agreement”) and the employment agreements we have with other executive officers. The Existing Agreement provides for full vesting of any unvested equity grants, if Mr. Augusti terminates his employment for Good Reason or we terminate his employment other than for Cause (collectively a “Qualifying Termination”; where “Good Reason” and “Cause” are defined in the Existing Agreement) during the period between three months before or 24 months following a Change in Control Transaction (“Change of Control Period”; where “Change in Control Transaction” is defined in the Existing Agreement). The Augusti Amendment provides that, upon a Qualifying Termination outside of the Change of Control Period, vesting of any outstanding unvested equity grants, if any, shall be accelerated in a number of shares that would have become vested if employment continued for (i) 18 months following a Qualifying Termination that occurs before November 14, 2018 or (ii) 12 months following a Qualifying Termination that occurs on or after November 14, 2018. The Augusti Amendment further provides that, upon a termination due to death or disability, vesting of any outstanding unvested equity grants, if any, shall be accelerated in a number of shares that would have become vested if employment continued for 12 months following such termination. For clarification on bonus payments due upon termination, the Augusti Amendment provides that, upon a Qualifying Termination that occurs within the Change of Control Period, the Company will pay Mr. Augusti the greater of (a) the bonus accrued by the Company for Mr. Augusti for the calendar year that is prior to the year in which the Qualifying Termination occurs, unless an annual bonus was already paid for that prior year, and a bonus of 75% of Mr. Augusti’s base salary for the calendar year in which the Qualifying Termination occurs or (b) 1.5 times a Target Bonus (defined in the Existing Agreement). The Augusti Amendment further provides that, upon a Qualifying Termination that occurs outside the Change of Control Period, we will pay Mr. Augusti the bonus accrued for the year prior to a Qualifying Termination, unless an annual bonus was already paid for that prior year, and, (x) an amount equal to 1.5 times a bonus of 75% of Mr. Augusti’s base salary for the calendar year in which the Qualifying Termination occurs, if the Qualifying Termination occurs before November 14, 2018 or (y) an amount equal to 75% of Mr. Augusti’s base salary for the calendar year in which the Qualifying Termination occurs, if the Qualifying Termination occurs on or after November 14, 2018. The Augusti Amendment further provides that, upon a termination due to death, we will pay Mr. Augusti a continuation of base salary for 12 months following such termination. The Augusti Amendment further clarifies that, upon a Qualifying Termination, we will pay the premiums, including any employee portion, for Mr. Augusti’s timely election of benefits under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”), provided Mr. Augusti remains eligible for COBRA. Lastly, the Augusti Amendment increases the amount of paid time off that Mr. Augusti may accrue per year from four to five weeks, consistent with other executive officers.

The foregoing description is qualified in its entirety by reference to the text of the Augusti Amendment filed as exhibit 10.1 hereto.

On July 31, 2018, Conformis, Inc. (the “Company”) entered into a Fourth Amendment (the “Amendment”) to the Loan and Security Agreement dated January 6, 2017 (as previously amended, the “Loan and Security Agreement”) with Oxford Finance LLC (“Oxford”).

The Amendment, among other things, amends the financial covenants of the Company, requires the Company to maintain at least $10 million in cash collateral and creates liens on the Company’s copyrights, trademarks and patents. Pursuant to the terms of the Amendment, the Company and Oxford also entered into an Intellectual Property Security Agreement, pursuant to which the Company pledged its copyrights, trademarks and patents to secure the obligations of the Company under the Loan and Security Agreement. In connection with the Amendment, the Company and Oxford also entered into a Success Fee Agreement, pursuant to which the Company agreed to pay to Oxford a success fee of $1 million within thirty days of consummation of a sale of the Company.

Except as modified by the Amendment, all terms and conditions of the Loan and Security Agreement remain in full force and effect. A copy of the Amendment is attached hereto as Exhibit 10.2 and is incorporated herein by reference.

ITEM 6. EXHIBITS

The exhibits filed as part of this Quarterly Report on Form 10-Q are set forth on the Exhibit Index, which Exhibit Index is incorporated herein by reference.

EXHIBIT INDEX

Exhibit Number	Description of Exhibit
10.1*†	Second Amendment to Amended and Restated Employment Agreement dated July 31, 2018, by and between Conformis, Inc. and Mark Augusti, its Chief Executive Officer.
10.2*	Fourth Amendment to Loan and Security Agreement, dated July 31, 2018, by and among Registrant and Oxford Finance LLC
31.1*	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-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 of Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-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 of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2*#	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, 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.LAB	XBRL Taxonomy Extension Label Linkbase Database
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document

* Filed herewith.

† Indicates management contract or plan.

\# This certification will not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent specifically incorporated by reference into such filing.

SIGNATURES

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.

Date: August 2, 2018

CONFORMIS, INC.

By: /s/ Mark A. Augusti

Mark A. Augusti
President and Chief Executive Officer

Date: August 2, 2018

CONFORMIS, INC.

By: /s/ Paul Weiner

Paul Weiner
Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

Exhibit 10.1

CONFORMIS, INC.

SECOND AMENDMENT TO THE AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the "***Second Amendment***") is entered into and effective as of July 31, 2018 (the "***Effective Date of the Second Amendment***") by and between Conformis, Inc. (previously known as ConforMIS, Inc.), a Delaware corporation (the "***Company***"), and Mark A. Augusti (the "***Executive***") and amends that certain letter agreement of employment dated October 19, 2016, as amended and restated effective December 2, 2016 and as amended by a first amendment effective August 1, 2017 (collectively the "***Agreement***").

WHEREAS, the Company and Executive desire to amend the Agreement as set forth herein,

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

1. All capitalized terms used and not otherwise defined in this Second Amendment shall have the same meanings ascribed to them in the Agreement.

2. Section 11 of the Agreement is hereby deleted in its entirety and replaced with the following:

11. **<u>Vacation Time</u>**: You will be entitled to accrue the amount of Paid Time Off ("PTO") per year generally available to senior officers of the Company, but in any event not less than five (5) weeks during each calendar year, prorated from the Effective Date. Accrual and use of PTO is governed by the Company's PTO Policy, including any limits on the maximum number of PTO hours that may be accrued in any calendar year or carried over from one calendar year to the next, which, as of the Effective Date of the Second Amendment, is a maximum of 200 hours of accrued PTO in any calendar year and no more than 80 hours of PTO carried over from one calendar year to the next calendar year.

3. Section 13 of the Agreement is hereby deleted in its entirety and replaced with the following:

13. **<u>Severance Benefits</u>**: Notwithstanding the foregoing, in the event that the Company terminates your employment without "Cause" or you resign from employment with "Good Reason" (each term as defined below and in either case a "Qualifying Termination"), you will be eligible for the benefits outlined in sub-sections A, B, or C (the "Severance Benefits"), subject to the terms set forth in this letter agreement:

A. If a Qualifying Termination occurs (x) prior to three (3) months before or (y) more than twenty-four (24) months following, a Change in Control Transaction (as defined below), and the Qualifying Termination occurs prior to the two-year anniversary of the Effective Date: (i) The Company will provide you with severance pay in the form of continuation of your base salary for a total of eighteen (18) months, such amount to be paid in accordance with the Company's then current payroll practices, except as otherwise specified in this letter agreement, beginning on the Company's first regular payroll date that occurs after the Payment Date (as defined below); (ii) the Company will pay to you (a) the bonus accrued by the Company for you for the calendar year that is prior to the year in which the Qualifying Termination occurs, provided the Company has not already paid you a Target Bonus (or other annual bonus) for the prior year, and (b) an amount equal to 1.5 times a bonus of seventy-five percent (75%) of your base salary for the calendar year in which the Qualifying Termination occurs; and (iii) subject to the terms and conditions provided for in COBRA, and subject to your timely election of COBRA, the Company shall pay the premium payments for you and your eligible dependents for group health and dental insurance after the date on which your employment terminates through (1) the end of the period during which you are receiving base salary continuation, or (2) the date you become employed with benefits substantially comparable to the benefits provided under the corresponding Company plan, or (3) the date you become ineligible for COBRA benefits (the "COBRA Period"); *provided, however*, that such Company-paid premiums may be recorded as additional income pursuant to Section 6041 of the Internal Revenue Code of 1986, as amended (the "Code") and not entitled to any tax qualified treatment to the extent necessary to comply with or avoid the discriminatory treatment prohibited by the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 or Section 105(h) of the Code; and (iv) the vesting of your then outstanding unvested equity grants, if any, shall be accelerated in a number of shares that would have become vested had you continued as an employee of the Company for eighteen (18) months following a Qualifying Termination. You shall be responsible for the entire COBRA premium should you elect to maintain this coverage after the earlier of the dates specified in Sections 13.A.iii(1)-(3) above.

B. If a Qualifying Termination occurs (x) prior to three (3) months before or (y) more than twenty-four (24) months following, a Change in Control Transaction, and the Qualifying Termination occurs on or after the two-year anniversary of the Effective Date: (i) The Company will provide you with severance pay in the form of continuation of your base salary for a total of twelve (12) months, such amount to be paid in accordance with the Company's then current payroll practices, except as otherwise specified in this letter agreement, beginning on the Company's first regular payroll date that occurs after the Payment Date; (ii) the Company will pay to you (a) the bonus accrued by the Company for you for the calendar year that is prior to the year in which the Qualifying Termination occurs, provided the Company has not already paid you a Target Bonus (or other annual bonus) for the prior year, and (b) a bonus of seventy-five percent (75%) of your base salary for the calendar year in which the Qualifying Termination occurs; and (iii) you will be eligible for the same COBRA premium assistance as set forth in Section 13.A.iii above, subject to the same terms, conditions, and limitations as described therein; and (iv) the vesting of your then outstanding unvested equity grants, if any, shall be accelerated in a number of shares that would have become vested had you continued as an employee of the Company for twelve (12) months following a Qualifying Termination.

C. If a Qualifying Termination occurs within three (3) months prior or twenty-four (24) months following a Change in Control Transaction, and regardless of whether the Qualifying Termination occurs prior to, on, or after the two-year anniversary of the Effective Date: (i) The Company will provide you with severance pay in the form of continuation of your base salary for a total of eighteen (18) months, such amount to be paid in accordance with the Company's then current payroll practices, except as otherwise specified in this letter agreement, beginning on the Company's first regular payroll date that occurs after the Payment Date; (ii) the Company will pay to you the greater of (a) the bonus accrued by the Company for you for the calendar year that is prior to the year in which the Qualifying Termination occurs, provided the Company has not already paid you a Target Bonus (or other annual bonus) for the prior year, and a bonus of seventy-five percent (75%) of your base salary for the calendar year in which the Qualifying termination occurs and (b) an amount equal to 1.5 times the Target Bonus, to be paid in one lump sum on the Company's first regular payroll date that occurs after the Payment Date; (iii) you will be eligible for the same COBRA premium assistance as set forth in Section 13.A.iii above, subject to the same terms, conditions, and limitations as described therein; and (iv) the vesting of 100% of your then outstanding unvested equity grants shall be accelerated, such that all unvested equity grants vest and become fully exercisable or non-forfeitable as of the date your employment terminates.

You will not be eligible for, nor shall you have a right to receive, any payments or benefits from the Company following your termination date other than as set forth in this Section. For the sake of clarity, it shall not be a "Qualifying Termination" if your employment terminates because of your death or due to your Disability (as defined below).

D. The Severance Benefits will be subject to the following terms and conditions:

i. Solely for purposes of Section 409A of the Code, each salary continuation payment is considered a separate payment.

ii. Any severance or other benefits under this letter agreement will begin only upon the date of your "separation from service" (as defined under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h)) which occurs on or after the date of termination of the employment. To the extent that the termination of your employment does not constitute a separation from service under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) (as the result of further services that are reasonably anticipated to be provided by you to the Company, or any of its parents, subsidiaries or affiliates, at the time your employment terminates), any severance benefits payable that constitute deferred compensation under Section 409A of the Code shall be delayed until after the date of a subsequent event constituting a separation from service under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h). For purposes of clarification, this Section shall not cause any forfeiture of benefits on your part, but shall only act as a delay until such time as a "separation from service" occurs.

Further, if you are a "specified employee" (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date your separation from service becomes effective, any severance benefits payable hereunder that constitute non-qualified deferred compensation under Section 409A of the Code shall be delayed until the earlier of (i) the business day following the six-month anniversary of the date your separation from service becomes effective, and (ii) the date of your death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (A) the business day following the six-month anniversary of the date your separation from service becomes effective, and (B) your death, the Company shall pay you in a lump sum the aggregate value of the non-qualified deferred compensation that the

Company otherwise would have paid you prior to that date as described above. Neither the Company nor you shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code. The Company makes no representation or warranty and shall have no liability to you or any other person if any provision of this letter agreement is determined to constitute deferred compensation subject to Section 409A of the Code, but do not satisfy an exemption from, or the conditions of, Section 409A of the Code.

iii. The Company's obligation to provide the Severance Benefits will be contingent upon your entering into and complying with a separation and release of claims agreement in a form to be provided by the Company (which will include a release of all releasable claims and non-disparagement and cooperation obligations) (the "Release"), which Release must be signed and any applicable revocation period with respect thereto must have expired by the sixtieth (60th) day following your termination of employment. The Severance Benefits shall be paid or commence on the first payroll period following the date the Release becomes effective (the "Payment Date"). Notwithstanding the foregoing, if the 60th day following the date of termination occurs in the calendar year following the date on which your employment terminates, then the Payment Date shall be no earlier than January 1 of such subsequent calendar year. In addition, to remain eligible for the Severance Benefits you must comply with all post-employment obligations, including those in the Restrictive Covenant Agreement that you shall sign as a condition of employment.

iv. The Company's obligations to pay or provide the Severance Benefits will be contingent upon your having tendered your resignation from the Board and all offices you hold in the Company (and any other boards on which you serve or offices that you hold at the request of the Company), effective as of the date of termination.

v. You agree to give prompt written notice of any subsequent employment you obtain during the COBRA Period that results in your eligibility for comparable medical and dental benefits. If the Company makes any overpayment of COBRA premium amounts, you agree to promptly return any such overpayment to the Company. The foregoing shall not create any obligation on your part to seek reemployment after the date of termination of your employment.

4. Section 14 of the Agreement is hereby deleted in its entirety and replaced with the following:

14. **Benefits in the Event of a Termination that is Not a Qualifying Termination**: In the event of any termination of your employment that is not a Qualifying Termination, including without limitation, your termination by the Company for Cause, your resignation without Good reason, or termination due to your death or Disability, the Company's obligations under this letter agreement shall immediately cease and you shall be entitled only to the Accrued Compensation (as defined below). You shall not be entitled to any other compensation or consideration, including any bonus not yet awarded for which you may have been eligible had your employment not ended. However, in the event your employment terminates due to your death or Disability (i) the vesting of your then outstanding unvested equity grants, if any, shall be accelerated in a number of shares that would have become vested had you continued as an employee of the Company for twelve (12) months following your death or disability; and (ii), provided such termination occurs between the end of a calendar year and the Bonus Payment Date, you (or your estate, as applicable) will be paid any bonus you would have received for the prior calendar year had you remained employed by the Company on the Bonus Payment Date (any such bonus to be paid on the Bonus Payment Date). In addition, in the event your employment terminates due to your death, the Company will provide you with severance pay in the form of continuation of your base salary for a total of twelve (12) months, such amount to be paid in accordance with the Company's then current payroll practices, except as otherwise specified in this letter agreement, beginning on the Company's first regular payroll date that occurs after the Payment Date.

15. All terms and conditions of the Agreement not expressly amended by this Second Amendment remain in full force and effect.

16. This Second Amendment may be executed in one or more counterparts, and by facsimile or scanned and electronically mailed or otherwise electronically transferred signatures, each of which shall be an original document, and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Company and Executive hereby indicate their acceptance of the terms of this Second Amendment by the signatures of their authorized representatives below.

Company:

/s/ Kenneth P. Fallon, III

Kenneth P. Fallon, III, Chairman

Executive:

/s/ Mark A. Augusti

Mark A. Augusti

Exhibit 10.2

FOURTH AMENDMENT TO
LOAN AND SECURITY AGREEMENT

THIS **FOURTH AMENDMENT** to Loan and Security Agreement (this "**Amendment**") is entered into as of July 31, 2018, by and between **OXFORD FINANCE LLC**, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 ("**Oxford**"), as collateral agent (in such capacity, "**Collateral Agent**"), the Lenders listed on Schedule 1.1 of the Loan Agreement (as defined below) or otherwise party thereto from time to time (each a "**Lender**" and collectively, the "**Lenders**") including Oxford in its capacity as a Lender and **CONFORMIS, INC.**, a Delaware corporation ("**Conformis**") and **IMATX, INC.**, a California corporation ("**ImaTx**" and individually, collectively, jointly and severally with Conformis, "**Existing Borrower**") and **CONFORMIS CARES LLC**, a Delaware limited liability company ("**New Borrower**" and together with Existing Borrower, individually, collectively, jointly and severally, " **Borrower**"), each with offices located at 600 Technology Park Drive, Billerica, Massachusetts 01821.

RECITALS

A. Collateral Agent, Lenders and Borrower have entered into that certain Loan and Security Agreement dated as of January 6, 2017 (as amended from time to time, including by that certain First Amendment to Loan and Security Agreement dated as of March 9, 2017, that certain Second Amendment to Loan and Security Agreement dated as of June 30, 2017 and that certain Third Amendment to Loan and Security Agreement dated as of December 18, 2017, the "**Loan Agreement**").

B. Lenders have extended credit to Borrower for the purposes permitted in the Loan Agreement.

C. Borrower has requested that Collateral Agent and Lenders (i) add New Borrower as a "Borrower" under the Loan Agreement; (ii) modify the Collateral; (iii) modify the Financial Covenants; and (iv) make certain other revisions to the Loan Agreement as more fully set forth herein.

D. Collateral Agent and Lenders have agreed to make such modifications, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

2. Joinder.

2.1 New Borrower. New Borrower hereby is added as a "Borrower" under the Loan Agreement. All references in the Agreement to "Borrower" shall hereafter mean and include the Existing Borrower and New Borrower individually and collectively, jointly and severally; and New Borrower shall hereafter have all rights, duties and obligations of "Borrower" thereunder.

2.2 Joinder to Loan Agreement. New Borrower hereby joins the Loan Agreement and each of the Loan Documents, and agrees to comply with and be bound by all of the terms, conditions and covenants of the Loan Agreement and Loan Documents, as if it were originally named a "Borrower" therein. Without limiting the generality of the preceding sentence, New Borrower agrees that it will be jointly and severally liable, together with

Existing Borrower, for the payment and performance of all obligations and liabilities of Borrower under the Loan Agreement, including, without limitation, the Obligations. Each Borrower may, acting singly, request Credit Extensions pursuant to the Loan Agreement. Each Borrower hereby appoints the other as agent for the other for all purposes hereunder, including with respect to requesting Credit Extensions pursuant to the Loan Agreement. Each Borrower hereunder shall be obligated to repay all Credit Extensions made pursuant to the Loan Agreement, regardless of which Borrower actually receives said Credit Extension, as if each Borrower hereunder directly received all Credit Extensions.

2.3 Subrogation and Similar Rights. Each Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law, and (b) any right to require Collateral Agent or any Lender to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Collateral Agent and or any Lender may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Amendment, the Loan Agreement, the Loan Documents or any other related documents, each Borrower irrevocably waives, until the payment in full of all Obligations, all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Collateral Agent and the Lenders under this Amendment and the Loan Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by Borrower with respect to the Obligations in connection with this Amendment, the Loan Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by Borrower with respect to the Obligations in connection with this Amendment, the Loan Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is made to a Borrower in contravention of this Section, such Borrower shall hold such payment in trust for Collateral Agent and the Lenders and such payment shall be promptly delivered to Collateral Agent for application to the Obligations, whether matured or unmatured.

2.4 Grant of Security Interest. New Borrower hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. New Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that are permitted by the terms of the Loan Agreement to have priority to Collateral Agent's Lien. New Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral, without notice to New Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of the Loan Agreement, by New Borrower, or any other Person, shall be deemed to violate the rights of Collateral Agent under the Code.

2.5 Representations and Warranties. New Borrower hereby represents and warrants to Collateral Agent and each Lender that all representations and warranties in the Loan Documents made on the part of Existing Borrower are true and correct on the date hereof with respect to New Borrower (except to the extent such representations and warranties relate to a specific prior date), with the same force and effect as if New Borrower were named as "Borrower" in the Loan Documents in addition to Existing Borrower.

3. Amendments to Loan Agreement.

3.1 Section 13.1 (Definitions). The following terms and their respective definitions hereby are added or amended and restated in their entirety, as applicable, to Section 13.1 of the Loan Agreement as follows:

"**Fourth Amendment Effective Date**" means July 31, 2018.

“**IP Agreements**” means those certain Intellectual Property Security Agreements entered into by and between each Borrower and Collateral Agent dated as of the Fourth Amendment Effective Date, as such agreements may be amended from time to time.

“**Lawsuit**” is defined in Section 5.2(d).

“**Loan Documents**” are, collectively, this Agreement, the Perfection Certificates, each Compliance Certificate, the IP Agreements, the UK Share Charge Documents, German Share Pledge Documents, each Disbursement Letter, the Post Closing Letter, the Success Fee Agreement, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent in connection with this Agreement; all as amended, restated, or otherwise modified.

“**Success Fee Agreement**” means that certain Success Fee Agreement, dated as of the Effective Date, by and among Borrower, the Collateral Agent and Lenders.

3.2 Section 13.1 (Definitions). Clause (f) of the definition of “Permitted Investments” is hereby amended by deleting “and” before “(iv)” and adding the following before “;” at the end thereof: “, and (v) by a Borrower in any other Borrower;”.

3.3 Section 13.1 (Definitions). Clause (i) of the definition of “Permitted Investments” is hereby amended by replacing the reference to “this paragraph (h)” with “this paragraph (i)”.

3.4 Section 5.2 (Collateral). Section 5.2(d) of the Loan Agreement hereby is amended and restated in its entirety as follows:

“(d) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens. (i) Except with respect to certain patents as set forth on Annex I being challenged by Smith & Nephew, Inc. in *Conformis, Inc. v. Smith & Nephew, Inc.* in the United States District Court for the District of Massachusetts Eastern Division (Civil Action No. 1:16-cv-10420-IT) and in proceedings initiated by Smith & Nephew at the US Patent and Trademark Office (the “***Lawsuit***”), each of Borrower’s and its Subsidiaries’ Patents is valid and enforceable and no part of Borrower’s or its Subsidiaries’ Intellectual Property has been judged invalid or unenforceable, in whole or in part, and (ii) to the best of Borrower’s knowledge, except with respect to claims asserted against Borrower by Smith & Nephew, Inc. as counter-plaintiff in the Lawsuit with respect to Intellectual Property owned by Smith & Nephew, Inc., no claim has been made that any part of the Intellectual Property or any practice by Borrower or its Subsidiaries violates the rights of any third party except to the extent such claim could not reasonably be expected to have a Material Adverse Change. Except as noted on the Perfection Certificates, as of the Effective Date, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material license or other material agreement with respect to which Borrower or such Subsidiary is the licensee that (i) prohibits or otherwise restricts Borrower or its Subsidiaries from granting a security interest in Borrower’s or such Subsidiaries’ interest in such material license or material agreement or any other property, or (ii) for which a default under or termination of could reasonably be expected to interfere with Collateral Agent’s or any Lender’s right to sell any Collateral. Borrower shall provide written notice to Collateral Agent and each Lender within ten (10) Business Days of Borrower or any of its Subsidiaries entering into or becoming bound by any material license or agreement with respect to which Borrower or any Subsidiary is the licensee of Intellectual Property (other than over-the-counter software that is commercially available to the public).”

3.5 Section 6.2 (Financial Statements, Reports, Certificates). Section 6.2(a)(viii) of the Loan Agreement hereby is amended and restated in its entirety as follows:

"(viii) (A) prompt notice of the registration with the United States Copyright Office of any copyright, including any subsequent ownership right of Borrower or any of its Subsidiaries in or to any such registered copyright, (B) together with each Compliance Certificate for each fiscal quarter, notice of any new copyright, patent, trademark, and (C) prompt notice of any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property;"

3.6 Section 6.8 (Financial Covenant). Section 6.8 of the Loan Agreement hereby is amended and restated in its entirety as follows:

"**6.8 Financial Covenants.**

(a) Minimum Product Revenue. Borrower shall achieve trailing six (6) month Product Revenue, to be tested as of the last day of the applicable month, on a consolidated basis with respect to Borrower and its Subsidiaries, of not less than the amounts set forth below for each respective testing date:

Testing Date	**Minimum Product Revenue**
June 30, 2018	$35,000,000.00
July 31, 2018	$35,000,000.00
August 31, 2018	$35,000,000.00
September 30, 2018	$35,000,000.00
October 31, 2018	$35,000,000.00
November 30, 2018	$35,000,000.00
December 31, 2018	$35,000,000.00
January 31, 2019	$43,043,093.00
February 28, 2019	$42,115,776.00
March 31, 2019	$42,402,051.00
April 30, 2019	$41,308,131.00
May 31, 2019	$39,468,262.00
June 30, 2019	$38,960,063.00
July 31, 2019	$37,385,167.00
August 31, 2019	$38,659,698.00
September 30, 2019	$38,684,227.00
October 31, 2019	$40,168,982.00
November 30, 2019	$42,398,444.00
December 31, 2019	$43,234,496.00

New minimum Product Revenue levels with respect to the fiscal year commencing January 1, 2020 and each fiscal year thereafter shall be established by the mutual agreement of Borrower, Collateral Agent and Lenders based on Product Revenue projections delivered by Borrower to Collateral Agent and the Lenders no later than November 30, 2019 with respect to the fiscal year commencing January 1, 2020 and November 30 for each subsequent fiscal year and pursuant to an

amendment to this Agreement which Borrower hereby agrees to execute no later than December 31, 2019 with respect to the fiscal year commencing January 1, 2020 and December 31 for each subsequent fiscal year; provided that (a) any agreement by the Collateral Agent and the Lenders to establish new minimum Product Revenue levels shall be conditioned on receipt of revenue projections that are acceptable to Collateral Agent and Lenders in their sole discretion; and (b) if Borrower, Collateral Agent and Lenders do not execute an amendment to establish new minimum Product Revenue levels by December 31 of the applicable fiscal year, then (i) on or before February 28 of the following fiscal year, Borrower shall deliver to Collateral Agent and Lenders an executed term sheet, satisfactory to Collateral Agent and Lenders in their sole discretion, for a new credit facility for Borrower, the proceeds of which will be used to repay the Obligations (other than inchoate indemnity obligations and other obligations that are stated to survive the termination of the Agreement) in full in cash (the "**Refinancing Term Sheet Requirement**"), and (ii) on or before March 31 of the following fiscal year, Borrower shall repay the Obligations (other than inchoate indemnity obligations and other obligations that are stated to survive the termination of the Agreement) in full in cash with the proceeds from such new credit facility (the "**Payoff Requirement**") and it shall be an immediate Event of Default if Borrower does not satisfy either the Refinancing Term Sheet Requirement or the Payoff Requirement by such dates. For illustration purposes only, if Borrower, Collateral Agent and Lenders do not execute an amendment to establish new minimum Product Revenue levels by December 31, 2019 for the fiscal year commencing January 1, 2020, Borrower shall satisfy (i) the Refinancing Term Sheet Requirement on or before February 28, 2020, and (ii) the Payoff Requirement on or before March 31, 2020.

(b) Minimum Cash. Borrower shall at all times maintain not less than Ten Million Dollars ($10,000,000.00) in cash in Deposit Accounts subject to Control Agreements in favor of Collateral Agent."

3.7 Section 6.9 (Protection of Intellectual Property Rights). Section 6.9 of the Loan Agreement hereby is amended and restated in its entirety as follows:

"**6.9 Protection of Intellectual Property Rights.** Borrower and each of its Subsidiaries shall: (a) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower's business; (b) promptly advise Collateral Agent in writing of material infringement by a third party of its Intellectual Property; and (c) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent. If Borrower or any of its Subsidiaries that is a co-Borrower or Guarantor under this Agreement (i) obtains any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) applies for any patent or the registration of any trademark or servicemark, then together with each Compliance Certificate for each quarter of Borrower, Borrower or such Subsidiary shall provide written notice thereof to Collateral Agent and shall execute such intellectual property security agreements and other documents and take such other actions as Collateral Agent shall reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in such property. If Borrower or any of its Subsidiaries that is a co-Borrower or a Guarantor under this Agreement decides to register any copyrights or mask works in the United States Copyright Office, Borrower or such Subsidiary shall: (x) provide Collateral Agent with at least fifteen (15) days prior written notice of Borrower's or such Subsidiary's intent to register such copyrights or mask works together with a copy of the application it intends to file with the United States Copyright Office (excluding exhibits thereto); (y) execute an intellectual property security agreement and such other documents and take such other actions as Collateral Agent may reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in the copyrights or mask works intended to be registered with the United States Copyright Office; and (z) and hereby does authorize the Collateral Agent to record such intellectual property security agreement

with the United States Copyright Office contemporaneously with filing the copyright or mask work application(s) with the United States Copyright Office. For the sake of clarity, Collateral Agent's rights to take actions to perfect and maintain a perfected security interest in favor of Collateral Agent, shall include any actions Collateral Agent deems necessary in its sole discretion to take, at Borrower's expense, as the result of any discrepancies between the catalogue of patents, registered trademarks or servicemarks, registered copyrights, registered mask works, or any pending applications for any of the foregoing, whether maintained by Borrower as owner, licensee or otherwise, (i) as provided by Borrower and (ii) as discovered through independent searches by Collateral Agent."

3.8 Section 7.7 (Distributions; Investments). The second parenthetical in Section 7.7 of the Loan Agreement hereby is amended by deleting the "and" appearing immediately prior to clause (ii) and replacing it with "," and adding the following text immediately before the words "or (b)": "and, (iii) dividends, distributions or payments to a Borrower".

3.9 Section 8.2(a) (Covenant Defaults). Section 8.2(a) of the Loan Agreement hereby is amended by changing the title of Section 6.8 referenced therein to "(Financial Covenants)".

3.10 Section 10 (Notices). (a) Section 10 of the Loan Agreement hereby is amended by replacing the notice address for Borrower (but not counsel to Borrower) with the following:

"CONFORMIS, INC.
600 Technology Park Drive
Billerica, MA 01821
Attn: Chief Financial Officer
Fax: (781) 345-0147
Email: paul.weiner@conformis.com"

(b) Section 10 of the Loan Agreement hereby is amended by replacing the notice address for DLA Piper LLP (US) with the following:

"DLA Piper LLP (US)
500 8th Street, NW
Washington, DC 20004
Attn: Eric Eisenberg
Fax: (202) 799-5211
Email: eric.eisenberg@dlapiper.com"

3.11 Section 12.15 (Borrower Liability). The first sentence of Section 12.15 of the Loan Agreement hereby is amended and restated as follows: "Each Borrower may, acting singly, request Credit Extensions hereunder."

3.12 General. Each reference to the phrase "[n]either Borrower" in the Loan Agreement hereby is replaced with "[n]o Borrower."

3.13 Exhibit A (Description of Collateral) to the Loan Agreement is hereby replaced with Exhibit A attached hereto.

3.14 Exhibit C (Compliance Certificate) to the Loan Agreement is hereby replaced with Exhibit C attached hereto.

4. Limitation of Amendment.

4.1 The amendments set forth in **Section 3** above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy

which Collateral Agent or any Lender may now have or may have in the future under or in connection with any Loan Document.

4.2 This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

5. Representations and Warranties. To induce Collateral Agent and Lenders to enter into this Amendment, Borrower hereby represents and warrants to Collateral Agent and Lenders as follows:

5.1 Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct in all material respects as of such date), and (b) no Event of Default has occurred and is continuing;

5.2 Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

5.3 The organizational documents of Borrower delivered to Collateral Agent and Lenders on the date hereof remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

5.4 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;

5.5 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any material Requirement of Law or regulation binding on or affecting Borrower, (b) any material contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

5.6 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower; and

5.7 This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

6. Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

7. Effectiveness. This Amendment shall be deemed effective upon (i) the due execution and delivery to Collateral Agent and Lender of (a) this Amendment by each party hereto, (b) the IP Agreements by each party hereto, (c) the Success Fee Agreement by each party hereto, (d) the Corporate Borrowing Certificates attached hereto, (e) a Perfection Certificate for New Borrower, (f) Amended and Restated Secured Promissory Notes (Term A Loan) by each Borrower, substantially in the form of Annex II attached hereto, and (g) Amended and Restated Secured Promissory Notes (Term B Loan) by each Borrower, substantially in the form of Annex III attached hereto, (ii) the filing of a UCC-3 Financing Statement Amendment for each Existing Borrower to amend the description of the Collateral and the address for such Borrower, (iii) the filing of a UCC-1 Financing Statement with the Secretary of State of the State of Delaware that identifies New Borrower as a Debtor, (iv) the good standing certificate for New Borrower certified by the Secretary

of State of the State of Delaware, and (v) Borrower's payment of all Lenders' Expenses incurred through the date of this Amendment.

[***Balance of Page Intentionally Left Blank***]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

BORROWER:

CONFORMIS, INC.

By /s/Mark Augusti
Name: Mark Augusti
Title: CEO

IMATX, INC.

By /s/Mark Augusti
Name: Mark Augusti
Title: CEO

CONFORMIS CARES LLC

By /s/Mark Augusti
Name: Mark Augusti
Title: CEO

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

COLLATERAL AGENT AND LENDER:

By /s/Colette H. Featherly
Name: Colette H. Featherly
Title: Senior Vice President

EXHIBIT A

<u>Description of Collateral</u>

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (including all Intellectual Property), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (i) equipment subject to a Lien described in clause (c) of the definition of Permitted Liens if the granting of a Lien in such equipment is prohibited by or would constitute a default under the agreement governing such equipment (but (A) only

to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such equipment or other property shall automatically be subject to the security interest granted in favor of Collateral Agent and each Lender hereunder and become part of the Collateral without any action by Borrower, Collateral Agent or any Lender, (ii) more than sixty five percent (65%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by the Borrower (the "Shares") in each of ConforMIS Europe and ConforMIS UK, and, in the event Borrower demonstrates to Collateral Agent's reasonable satisfaction, that a pledge of more than sixty five percent (65%) of the Shares of any other Subsidiary which is a Foreign Subsidiary could reasonably be expected to create a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code, more than sixty five percent (65%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or its Subsidiary in such Foreign Subsidiary, (iii) any license or contract, in each case if the granting of a Lien in such license or contract is prohibited by or would constitute a default under the agreement governing such license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Collateral Agent hereunder and become part of the "Collateral", (iv) the Lease Deposit Cash Collateral Accounts, and (v) any intent-to-use trademark at all times prior to the filing with the United States Patent and Trademark Office of an amendment to the allege use of such trademark under 15 U.S.C. 1051(c) or the filing of a verified statement of use of such trademark under 15 U.S.C. 1051(d).

ANNEX I

Patents

7,534,263

7,981,158

8,062,302

8,377,129

9,055,953

9,295,482

8,657,827

9,216,025

8,551,169

ANNEX II

Amended and Restated Secured Promissory Notes (Term A Loan)

(see attached)

AMENDED AND RESTATED SECURED PROMISSORY NOTE
(Term A Loan)

$5,000,000.00 Dated: July 31, 2018

FOR VALUE RECEIVED, the undersigned, CONFORMIS, INC., a Delaware corporation ("**Conformis**") and IMATX, INC., a California corporation ("**ImaTx**" and individually, collectively, jointly and severally with Conformis, "**Existing Borrower**") and CONFORMIS CARES LLC, a Delaware limited liability company ("**New Borrower**", and together with Existing Borrower, individually, collectively, jointly and severally, "**Borrower**"), each with offices located at 600 Technology Park Drive, Billerica, Massachusetts 01821, HEREBY PROMISE TO PAY to the order of OXFORD FINANCE LLC ("**Lender**") the principal amount of FIVE MILLION DOLLARS ($5,000,000.00) or such lesser amount as shall equal the outstanding principal balance of the Term A Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term A Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated January 6, 2017 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Term Loan Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term A Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Amended and Restated Secured Promissory Note (this " **Note**"). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term A Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.1.2(c) and Section 2.1.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term A Loan, interest on the Term A Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

This Note is intended to and does completely amend and restate, without novation, that certain Secured Promissory Note in the original principal amount of FIVE MILLION DOLLARS ($5,000,000.00) issued on January 6, 2017 by Existing Borrower in favor of Lender.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

CONFORMIS, INC.

By__
Name:__
Title:__

IMATX, INC.

By__
Name:__
Title:__

CONFORMIS CARES LLC

By__
Name:__
Title:__

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

AMENDED AND RESTATED SECURED PROMISSORY NOTE
(Term A Loan)

$5,000,000.00 Dated: July 31, 2018

FOR VALUE RECEIVED, the undersigned, CONFORMIS, INC., a Delaware corporation ("**Conformis**") and IMATX, INC., a California corporation ("**ImaTx**" and individually, collectively, jointly and severally with Conformis, "**Existing Borrower**") and CONFORMIS CARES LLC, a Delaware limited liability company ("**New Borrower**", and together with Existing Borrower, individually, collectively, jointly and severally, "**Borrower**"), each with offices located at 600 Technology Park Drive, Billerica, Massachusetts 01821, HEREBY PROMISE TO PAY to the order of OXFORD FINANCE LLC ("**Lender**") the principal amount of FIVE MILLION DOLLARS ($5,000,000.00) or such lesser amount as shall equal the outstanding principal balance of the Term A Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term A Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated January 6, 2017 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Term Loan Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term A Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Amended and Restated Secured Promissory Note (this "**Note**"). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term A Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.1.2(c) and Section 2.1.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term A Loan, interest on the Term A Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

This Note is intended to and does completely amend and restate, without novation, that certain Secured Promissory Note in the original principal amount of FIVE MILLION DOLLARS ($5,000,000.00) issued on January 6, 2017 by Existing Borrower in favor of Lender.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

CONFORMIS, INC.

By__
Name:__
Title:__

IMATX, INC.

By__
Name:__
Title:__

CONFORMIS CARES LLC

By__
Name:__
Title:__

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

AMENDED AND RESTATED SECURED PROMISSORY NOTE
(Term A Loan)

$5,000,000.00 Dated: July 31, 2018

FOR VALUE RECEIVED, the undersigned, CONFORMIS, INC., a Delaware corporation ("**Conformis**") and IMATX, INC., a California corporation ("**ImaTx**" and individually, collectively, jointly and severally with Conformis, "**Existing Borrower**") and CONFORMIS CARES LLC, a Delaware limited liability company ("**New Borrower**", and together with Existing Borrower, individually, collectively, jointly and severally, "**Borrower**"), each with offices located at 600 Technology Park Drive, Billerica, Massachusetts 01821, HEREBY PROMISE TO PAY to the order of OXFORD FINANCE LLC ("**Lender**") the principal amount of FIVE MILLION DOLLARS ($5,000,000.00) or such lesser amount as shall equal the outstanding principal balance of the Term A Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term A Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated January 6, 2017 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Term Loan Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term A Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Amended and Restated Secured Promissory Note (this "**Note**"). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term A Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.1.2(c) and Section 2.1.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term A Loan, interest on the Term A Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

This Note is intended to and does completely amend and restate, without novation, that certain Secured Promissory Note in the original principal amount of FIVE MILLION DOLLARS ($5,000,000.00) issued on January 6, 2017 by Existing Borrower in favor of Lender.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

CONFORMIS, INC.

By__
Name:__
Title:__

IMATX, INC.

By__
Name:__
Title:__

CONFORMIS CARES LLC

By__
Name:__
Title:__

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

ANNEX III

Amended and Restated Secured Promissory Notes (Term B Loan)

(see attached)

AMENDED AND RESTATED SECURED PROMISSORY NOTE
(Term B Loan)

$11,500,000.00 Dated: July 31, 2018

FOR VALUE RECEIVED, the undersigned, CONFORMIS, INC., a Delaware corporation (" **Conformis**") and IMATX, INC., a California corporation ("**ImaTx**" and individually, collectively, jointly and severally with Conformis, " **Existing Borrower**") and CONFORMIS CARES LLC, a Delaware limited liability company ("**New Borrower**", and together with Existing Borrower, individually, collectively, jointly and severally, " **Borrower**"), each with offices located at 600 Technology Park Drive, Billerica, Massachusetts 01821, HEREBY PROMISE TO PAY to the order of OXFORD FINANCE LLC ("**Lender**") the principal amount of ELEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS ($11,500,000.00) or such lesser amount as shall equal the outstanding principal balance of the Term B Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term B Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated January 6, 2017 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Term Loan Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term B Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Amended and Restated Secured Promissory Note (this " **Note**"). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term B Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.1.2(c) and Section 2.1.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term B Loan, interest on the Term B Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

This Note is intended to and does completely amend and restate, without novation, that certain Secured Promissory Note in the original principal amount of ELEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS ($11,500,000.00) issued on June 30, 2017 by Existing Borrower in favor of Lender.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

CONFORMIS, INC.

By__
Name:__
Title:__

IMATX, INC.

By__
Name:__
Title:__

CONFORMIS CARES LLC

By__
Name:__
Title:__

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

AMENDED AND RESTATED SECURED PROMISSORY NOTE
(Term B Loan)

$3,500,000.00 Dated: July 31, 2018

FOR VALUE RECEIVED, the undersigned, CONFORMIS, INC., a Delaware corporation (“ **Conformis**”) and IMATX, INC., a California corporation (“**ImaTx**” and individually, collectively, jointly and severally with Conformis, “ **Existing Borrower**”) and CONFORMIS CARES LLC, a Delaware limited liability company (“**New Borrower**”, and together with Existing Borrower, individually, collectively, jointly and severally, “ **Borrower**”), each with offices located at 600 Technology Park Drive, Billerica, Massachusetts 01821, HEREBY PROMISE TO PAY to the order of OXFORD FINANCE LLC (“**Lender**”) the principal amount of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS ($3,500,000.00) or such lesser amount as shall equal the outstanding principal balance of the Term B Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term B Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated January 6, 2017 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Term Loan Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term B Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Amended and Restated Secured Promissory Note (this “ **Note**”). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term B Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.1.2(c) and Section 2.1.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term B Loan, interest on the Term B Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys’ fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower’s obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

This Note is intended to and does completely amend and restate, without novation, that certain Secured Promissory Note in the original principal amount of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS ($3,500,000.00) issued on June 30, 2017 by Existing Borrower in favor of Lender.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

CONFORMIS, INC.

By__
Name:__
Title:__

IMATX, INC.

By__
Name:__
Title:__

CONFORMIS CARES LLC

By__
Name:__
Title:__

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

EXHIBIT C

Compliance Certificate

TO: OXFORD FINANCE LLC, as Collateral Agent and Lender

FROM: CONFORMIS, INC., for itself, and on behalf of all Borrowers

The undersigned authorized officer ("**Officer**") of CONFORMIS, INC. ("**Borrower**"), hereby certifies, on behalf of all Borrowers, that in accordance with the terms and conditions of the Loan and Security Agreement by and among Borrower, Collateral Agent, and the Lenders from time to time party thereto (the "**Loan Agreement**;" capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

(a) Borrower is in complete compliance for the period ending _______________ with all required covenants except as noted below;

(b) There are no Events of Default, except as noted below;

(c) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (a), above; provided, however, that such materiality qualifier shall not be applicable to any representations and

warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

(d) Borrower, and each of Borrower's Subsidiaries, has timely filed all required tax returns and reports, Borrower, and each of Borrower's Subsidiaries, has timely paid all foreign, federal, state, and material local taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 5.9 of the Loan Agreement;

(e) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of Borrower, further certifies that the attached financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under "Complies" column.

	Reporting Covenant	Requirement	Actual	Complies		
1)	Financial statements	Quarterly within 45 days		Yes	No	N/A
2)	Annual (CPA Audited) statements	Within 120 days after FYE		Yes	No	N/A
3)	Annual Financial Projections/Budget (prepared on a monthly basis)	Annually (no later than 3/31 of each calendar year (with any material changes within 10 days of Board approval)), and when revised		Yes	No	N/A
4)	Monthly Revenue report	Monthly within 30 days		Yes	Non	N/A
5)	8-K, 10-K and 10-Q Filings	If applicable, within 5 days of filing		Yes	No	N/A
6)	Compliance Certificate	Quarterly within 45 days		Yes	No	N/A
7)	IP Report of any new copyrights, trademarks and patents	To accompany Compliance Certificate		Yes	No	N/A
8)	Total amount of Borrower's cash and cash equivalents at the last day of the measurement period		$________	Yes	No	N/A
9)	Total amount of Borrower's Subsidiaries' cash and cash equivalents at the last day of the measurement period		$________	Yes	No	N/A

Deposit and Securities Accounts
(Please list all accounts; attach separate sheet if additional space needed)

	Institution Name	Account Number	New Account?		Account Control Agreement in place?	
1)			Yes	No	Yes	No
2)			Yes	No	Yes	No
3)			Yes	No	Yes	No
4)			Yes	No	Yes	No

Financial Covenants

	Covenant	Requirement	Actual	Compliance	
1)	Minimum Product Revenue (trailing six months)	See Section 6.8(a)	$__	Yes	No
2)	Minimum cash	$10,000,000.00 in Deposit Accounts subject to Control Agreements	$__	Yes	No

Other Matters

1)	Have there been any changes in a Key Person since the last Compliance Certificate?	Yes	No

2)	Have there been any transfers/sales/disposals/retirement of Collateral or IP prohibited by the Loan Agreement?	Yes	No
3)	Have there been any new pending or, to the knowledge of the Responsible Officer's, threatened in writing, or has Borrower received notice of any new governmental investigations pending or threatened, by or against Borrower or any of its Subsidiaries, involving more than Five Hundred Thousand Dollars ($500,000.00)?	Yes	No
4)	Have there been any amendments or other changes to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Certificate if requested by Collateral Agent or any Lender.	Yes	No

Exceptions

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

CONFORMIS, INC., on behalf of itself and all Borrowers

By: ________
Name: ________
Title: ________

Date:

LENDER USE ONLY

Received by:______ Date: ___

Verified by: ______ Date: ___

Compliance Status: Yes No

CORPORATE BORROWING CERTIFICATE

BORROWER:	CONFORMIS, INC.	**DATE**: July 31, 2018
Lender:	OXFORD FINANCE LLC, as Collateral Agent and Lender	

I hereby certify as follows, as of the date set forth above:

1. I am the Secretary, Assistant Secretary or other officer of Borrower. My title is as set forth below.

2. Borrower's exact legal name is set forth above. Borrower is a corporation existing under the laws of the State of Delaware.

3. Attached hereto as Exhibit A and Exhibit B, respectively, are true, correct and complete copies of (i) Borrower's Certificate of Incorporation (including amendments), as filed with the Secretary of State of the state in which Borrower is incorporated as set forth in paragraph 2 above; and (ii) Borrower's Bylaws. Neither such Certificate of Incorporation nor such Bylaws have been amended, annulled, rescinded, revoked or supplemented, and such Certificate of Incorporation and such Bylaws remain in full force and effect as of the date hereof.

4. The resolutions attached hereto as Exhibit C were duly and validly adopted by Borrower's Board of Directors at a duly held meeting of such directors (or pursuant to a unanimous written consent or other authorized corporate action). Such resolutions are in full force and effect as of the date hereof and have not been in any way modified, repealed, rescinded, amended or revoked, have been filed in minutes of the proceedings of the Board of Directors, and the Lenders may rely on them until each Lender receives written notice of revocation from Borrower.

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RESOLVED, that **any one** of the following officers or employees of Borrower, whose names, titles and signatures are below, may act on behalf of Borrower:

Name	Title	Signature	Authorized to Add or Remove Signatories
Mark Augusti	Chief Executive Officer and President	______________________________	☐
Paul Weiner	Chief Financial Officer	______________________________	☐
Patricia A. Davis	Chief Legal Officer, General Counsel and Corporate Secretary	______________________________	☐

[***Balance of Page Intentionally Left Blank***]

5. The persons listed above are Borrower's officers or employees with their titles and signatures shown next to their names.

By:_

Name: Patricia A. Davis

Title: Chief Legal Officer, General Counsel and Corporate Secretary

*** *If the Secretary, Assistant Secretary or other certifying officer executing above is designated by the resolutions set forth in paragraph 4 as one of the authorized signing officers, this Certificate must also be signed by a second authorized officer or director of Borrower.*

I, the Chief Financial Officer of Borrower, hereby certify as to paragraphs 1 through 5 above, as of the date set forth above.

By:_

Name: Paul Weiner

Title: Chief Financial Officer

EXHIBIT A

Certificate of Incorporation (including amendments)

[see attached]

EXHIBIT B

Bylaws

[see attached]

EXHIBIT C

Resolutions

[see attached]

CORPORATE BORROWING CERTIFICATE

BORROWER: IMATX, INC. **DATE**: July 31, 2018
Lender: OXFORD FINANCE LLC, as Collateral Agent and Lender

I hereby certify as follows, as of the date set forth above:

1. I am the Secretary, Assistant Secretary or other officer of Borrower. My title is as set forth below.

2. Borrower's exact legal name is set forth above. Borrower is a corporation existing under the laws of the State of California.

3. Attached hereto as Exhibit A and Exhibit B, respectively, are true, correct and complete copies of (i) Borrower's Certificate of Incorporation (including amendments), as filed with the Secretary of State of the state in which Borrower is incorporated as set forth in paragraph 2 above; and (ii) Borrower's Bylaws. Neither such Certificate of Incorporation nor such Bylaws have been amended, annulled, rescinded, revoked or supplemented, and such Certificate of Incorporation and such Bylaws remain in full force and effect as of the date hereof.

4. The resolutions attached hereto as Exhibit C were duly and validly adopted by Borrower's Board of Directors at a duly held meeting of such directors (or pursuant to a unanimous written consent or other authorized corporate action). Such resolutions are in full force and effect as of the date hereof and have not been in any way modified, repealed, rescinded, amended or revoked, have been filed in minutes of the proceedings of the Board of Directors, and the Lenders may rely on them until each Lender receives written notice of revocation from Borrower.

[***Balance of Page Intentionally Left Blank***]

RESOLVED, that **any one** of the following officers or employees of Borrower, whose names, titles and signatures are below, may act on behalf of Borrower:

Name	Title	Signature	Authorized to Add or Remove Signatories
Mark Augusti	Chief Executive Officer and President	______________________________	☐
Paul Weiner	Chief Financial Officer	______________________________	☐

[***Balance of Page Intentionally Left Blank***]

5. The persons listed above are Borrower's officers or employees with their titles and signatures shown next to their names.

By:__

Name: Mark Augusti

Title: President and Chief Executive Officer

**** If the Secretary, Assistant Secretary or other certifying officer executing above is designated by the resolutions set forth in paragraph 4 as one of the authorized signing officers, this Certificate must also be signed by a second authorized officer or director of Borrower.*

I, the Chief Financial Officer of Borrower, hereby certify as to paragraphs 1 through 5 above, as of the date set forth above.

By:__

Name: Paul Weiner

Title: Chief Financial Officer

EXHIBIT A

Certificate of Incorporation (including amendments)

[see attached]

EXHIBIT B

Bylaws

[see attached]

EXHIBIT C

Resolutions

[see attached]

CORPORATE BORROWING CERTIFICATE

BORROWER:	CONFORMIS CARES LLC	**DATE**: July 31, 2018
Lender:	OXFORD FINANCE LLC, as Collateral Agent and Lender	

I hereby certify as follows, as of the date set forth above:

1. I am the Secretary, Assistant Secretary or other officer of Borrower. My title is as set forth below.

2. Borrower's exact legal name is set forth above. Borrower is a limited liability company existing under the laws of the State of Delaware.

3. Attached hereto as Exhibit A and Exhibit B, respectively, are true, correct and complete copies of (i) Borrower's Certificate of Formation (including amendments), as filed with the Secretary of State of the state in which Borrower is incorporated as set forth in paragraph 2 above; and (ii) Borrower's operating agreement. Neither such Certificate of Formation nor such operating agreement have been amended, annulled, rescinded, revoked or supplemented, and such Certificate of Formation and such operating agreement remain in full force and effect as of the date hereof.

4. The resolutions attached hereto as Exhibit C were duly and validly adopted by Borrower's Board of Managers at a duly held meeting of such directors (or pursuant to a unanimous written consent or other authorized company action). Such resolutions are in full force and effect as of the date hereof and have not been in any way modified, repealed, rescinded, amended or revoked, have been filed in minutes of the proceedings of the Board of Managers, and the Lenders may rely on them until each Lender receives written notice of revocation from Borrower.

[***Balance of Page Intentionally Left Blank***]

RESOLVED, that **any one** of the following officers or employees of Borrower, whose names, titles and signatures are below, may act on behalf of Borrower:

Name	Title	Signature	Authorized to Add or Remove Signatories
Mark Augusti	Chief Executive Officer and President	______________________________	☐
Paul Weiner	Chief Financial Officer	______________________________	☐
Patricia A. Davis	Secretary	______________________________	☐

[***Balance of Page Intentionally Left Blank***]

5. The persons listed above are Borrower's officers or employees with their titles and signatures shown next to their names.

By:__

Name: Patricia A. Davis

Title: Secretary

**** If the Secretary, Assistant Secretary or other certifying officer executing above is designated by the resolutions set forth in paragraph 4 as one of the authorized signing officers, this Certificate must also be signed by a second authorized officer or director of Borrower.*

I, the Chief Financial Officer of Borrower, hereby certify as to paragraphs 1 through 5 above, as of the date set forth above.

By:__

Name: Paul Weiner

Title: Chief Financial Officer

EXHIBIT A

<u>Certificate of Formation (including amendments)</u>

[see attached]

EXHIBIT B

<u>Operating Agreement</u>

[see attached]

EXHIBIT C

<u>Resolutions</u>

[see attached]

Exhibit 31.1

CERTIFICATIONS

I, Mark A. Augusti, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of ConforMIS, 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.

Date:	August 2, 2018	By:	/s/Mark A. Augusti
			Mark A. Augusti
			President and Chief Executive Officer
			(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, Paul Weiner, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of ConforMIS, 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.

Date: August 2, 2018

By: /s/Paul Weiner

Paul Weiner
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of ConforMIS, Inc. (the "Company") for the period ended June 30, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Mark A. Augusti, President and Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

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

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

Date:	August 2, 2018	By:	/s/Mark A. Augusti
			Mark A. Augusti
			President and Chief Executive Officer
			(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of ConforMIS, Inc. (the "Company") for the period ended June 30, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Paul Weiner, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

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

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

Date: August 2, 2018

By: /s/Paul Weiner

Paul Weiner
Chief Financial Officer
(Principal Financial and Accounting Officer)